

# GUIDANCE NOTES

## CONSTITUTION OF UNINCORPORATED ASSOCIATION – CASC STATUS

**This is only intended as a guidance note, if you have any specific queries please take independent legal advice.**

**As an unincorporated association is not a separate legal entity it cannot enter into contracts or hold property. If your club intends on entering into contracts and/or holding property we strongly recommend that you incorporate a private company limited by guarantee.**

To be a CASC a sport club must register with HMRC under section 658 of CTA 2010 (HMRC has provided some model clauses which are referred to in this guidance). Registering as a CASC enables the club to benefit from a range of tax reliefs that are similar to those available to a charity, but not as extensive.

CASC status is completely separate from a sport club's legal structure. Provided its constitution meets the registration requirements, a sport club can adopt a number of different legal structures. The most common are:

- An unincorporated association.
- A company limited by guarantee

A sport club is “entitled” to be registered as a CASC if it:

- Is, and it has a written constitution that requires it to be, a club that:
  - is open to the whole community
  - is organised on an amateur basis; and
  - has as its main purpose the provision of facilities for, and the promotion of participation in, one or more eligible sports.
- Meets the location condition, which requires it to be set up and provide its facilities in a member state of the European Union.
- Meets the management condition.
- Meets the income condition. This limits the amount of income that a CASC may receive from both trading with anyone who is not a full voting member of the club (such as income from a club shop, café or green/court fees) and from property to a combined total of £100,000 during any 12-month accounting period.

**The club must be constituted (have clear rules) so that the first three conditions are binding on its members and governing committee (Management Committee).**

Should you choose to register your club as a CASC and decide that an unincorporated association is the appropriate legal form, there is an LTA Template constitution for a CASC (**Constitution**) which should be read in conjunction with this guidance and amended in accordance with your club's needs.

An unincorporated association is an aggregate of its individual members (**Members**) who are bound to each other on the terms of the Constitution.

So, the key criteria for an unincorporated association are that it should:

- Consist of two or more persons with a common non-business purpose.
- Have contractual relations between those persons (the contract in question is made between the Members, the terms of the contract are the association's Constitution, and the consideration for entering into contractual relations is the subscription paid by the Members).
- Be governed by rules.
- Be non-temporary.

There are no specific guidelines on the form or content of an unincorporated association's Constitution as long as they are not illegal. This means that there is ultimate flexibility as to what the Constitution can cover, which may attract some organisations to this type of entity. However, the Constitution should clearly establish the rights and obligations between the Members and how control is governed in the club.

Where an unincorporated association needs quite a detailed and complex Constitution to govern some of its functions, it may be more practical to give the Management Committee power to make bye-laws which can set out the more detailed provisions; these can then be changed in a normal Management Committee meeting if necessary, rather than being put to a vote at a general meeting of all the Members (which would be required every time the club changed its Constitution in accordance with Rule 26).

## Rule 2- Object

An unincorporated association must have an object or purpose which should be clearly stated in its Constitution. It is possible to have more than one object and for all the objects to carry equal weight or for there to be a principal object.

The Sport England Code for Sports' Governance (**Code**) states that the club should have a clear purpose- why the organisation exists and the area of work it is involved with.

To qualify as a CASC the objects must demonstrate that the club will be open to the whole community without discrimination, non-profit making and provide its Members and their guests with only the ordinary benefits of an amateur sports club.

Ordinary benefits are defined to include any of the following:

*Providing sporting facilities.*

*Reasonably providing and maintaining club-owned sports equipment.*

*Providing suitably qualified coaches.*

*Providing, or reimbursing the costs of, coaching courses.*

*Providing insurance cover.*

*Providing of medical treatment.*

*Reimbursing reasonable travel expenses.*

*Reasonably providing post-match refreshments for players and match officials.*

*Selling or supplying food or drink as a social benefit that is incidental to the sporting purposes of the club. It is not therefore acceptable to supply food and drink generally as a benefit of membership.*

Ordinary benefits has been extended to allow CASCs to pay:



1. Players up to £10,000 in a 12 month accounting period to play for the club.
2. More generous travel and subsistence expenses when participants attend away matches.

Rule 2.1 in the Constitution is the model clause provided by HMRC to ensure the main purpose requirement is met, however, your club may wish to extend the objects by including objects as set out in Rule 2.2.

The Constitution should include the club's long term goals, what you want to achieve and how you want to achieve it. Please consider each of these and amend as necessary.

### Rules 3 to 11- Management Committee

The Management Committee will have control of the day to day running of the club, however, the Members can direct the Management Committee to take or refrain from taking specified action (as set out in Rule 6).

Please consider whether the Management Committee should be able to delegate their power. The club may want to establish committees for example safeguarding and disciplinary committees. Remove Rule 3.5 if the Management Committee should not be able to delegate their powers.

Under the Constitution the Management Committee Members will be able to enter into contracts on behalf of the Members.

The additional wording in Rule 3.6 is included to clarify that the Management Committee Members have authority to enter into contracts as agent for the Members. This seeks to make all the Members a party to the contract being entered into and therefore personally liable rather than only the individuals signing the contracts.

The wording included in Rule 3.7 seeks to ensure that the Management Committee Members are unable to bind all the Members, however, it leaves the individuals signing the contract and the individuals authorising the entry into the contract (usually the Management Committee Members) personally liable.

Whether your club chooses to include the wording in Rule 3.6 or Rule 3.7 will depend on how your club wants to deal with liability. Please note that although this wording attempts to clarify who is liable, the specific circumstances will decide who is actually liable and therefore there is always a risk that the desired outcome is not achieved.

The Management Committee Members will be indemnified out of the assets of the club for all expenses and other liabilities properly incurred by them in the management of the affairs of the club. **Clubs are advised to take out insurance in respect of the indemnity provided.**

Should the liability be greater than the assets of the club, either the individual who signed the contract will be personally liable or all the Members will collectively be personally liable depending on the particular circumstances. **Please seek independent legal advice if a contract is being entered into.**

Rule 3.9 seeks to prohibit any Management Committee Member from entering into a contract which binds the club or its Members for any liability which exceeds the assets of the club. If this wording is included and a Management Committee Member knowingly enters into such a contract the club and/or the Members could try to argue that he or she was not authorised to enter into the contract and therefore did not bind the club/the Members. If this were found to be the case, the individual would be personally liable and not indemnified.

### Number and Composition of Management Committee

Please consider the minimum/maximum number of Management Committee Members required by your club. We recommend between 3 and 8 Management Committee Members.



Each club will be slightly different but it would be normal to specify which positions sit on the Management Committee. The template Constitution includes a President, Chairman, Vice-Chairman, Secretary, Treasurer and a number of Independent Management Committee Members.

The Code requires that at least three of the Management Committee Members must be unrelated or non-cohabiting.

The Code also requires regular meetings (at least four times a year) decisions of which should be recorded.

The template Constitution includes an express obligation on the Management Committee to be bound by the Constitution, the LTA Rules and LTA Disciplinary Code. This has been included to ensure that the Management Committee Members are aware of their responsibilities to the club. Please remove this if it is not appropriate for your club.

### **Appointing Management Committee Members**

The template Constitution requires the Members to appoint the Management Committee Members. The Code requires that in deciding who sits on its Management Committee the club considers the skills and diversity required.

To qualify as a CASC the Management Committee Members must meet HMRC's fit and proper test.

### **Retirement of Management Committee Members**

The Code states that Management Committee Members should be subject to regular election and ideally should serve no more than 9 years.

Please consider how long each Management Committee Member should hold office and how many terms he/she can serve and amend as appropriate. You should allow Management Committee Members a chance to settle into the role and an opportunity to make a change before they are subject to re-election and it is common to see terms of 2 or 3 years.

### **Members' reserve power**

Please consider what decisions should require Member approval. The template Constitution suggests entry into large contracts or employing an individual with a significant salary. Amend as appropriate.

### **Quorum for Management Committee Meeting**

The quorum of a meeting is the number of Management Committee Members who must be in attendance (this can be in person/on the telephone/skype) for the Management Committee to be able to make decisions.

The Rule provides that in order for a meeting to be quorate there must be at least 50% of the appointed Management Committee Members in attendance (provided always there are no less than 2 Eligible Management Committee Members) but this can be increased at your option.

### **Casting Vote**

Please consider whether the chairman of a Management Committee meeting should be entitled to a casting vote should the voting for and against be equal.

### **Management Committee Member's Conflicts of Interest**

The Code requires conflicts of interest to be recognised, managed by the chair and recorded.



## Rules 12 to 13- Membership

### Membership

You need to decide who will be entitled to be a Member of your tennis club. Where an unincorporated association has subscription rules, a Member cannot acquire rights until he has paid that subscription.

The Code seeks to promote greater diversity and an inclusive approach. Your club should take all reasonable steps to ensure you are accessible and non-discriminatory to all sections of the community.

This Rule provides that no person shall become a Member of the club unless he has completed an application form in the form approved by the Management Committee.

To qualify as a CASC the application process adopted by the Management Committee must be open and non-discriminatory. Rule 12.1 in the Constitution is the model clause provided by HMRC to ensure CASC eligibility.

Sometimes, the Management Committee may wish to establish different classes of Members, for example, a club may have junior or associate Members who may pay a lesser subscription price. Included here would be a definition of the various categories of Membership and the rights attaching to those categories.

To qualify as a CASC all Members must have the right to vote and we have therefore included a restriction on the Management Committee being able to create a class of Members that are non-voting.

These rights, amongst other things, enable the Members to censure decisions of the Management Committee.

In this section the club should include the costs of the Membership categories, how and when it should be paid to the club and the processes for joining the club as a Member.

To qualify as a CASC there is a limit set on the fees and other costs that a club can charge its Members:

- The maximum costs associated with Membership of a CASC are set at £520 a year (£10 a week).
- A club can charge more than this, subject to an upper Membership fee limit of £1,612 a year (£31 a week). However, it must make special arrangements to ensure that those who are unable to afford such fees can participate fully in the club's sporting activities for no more than £520 a year.

To qualify as a CASC your club cannot have more than 50% of its Members as social Members (i.e. not participating in tennis).

### Expulsion of Member

It is sensible in this section to include when someone ceases to be a Member or has his or her Membership withdrawn.

The Rule refers to the club's disciplinary procedure. This can be included here, however, it will be easier to amend and update if it is dealt with separately.

A Member facing expulsion is entitled to make representations in writing or in person as to why his or her Membership should not be terminated. The Members have to consider his or her views before coming to a decision. Once the Members have come to their decision there is no further right of appeal.

The Rule provides that an expelled Member will remain liable to pay any sums owed by him or her.

## Rules 14 to 18- Decision Making by Members



## **Annual General Meetings (AGM)**

It is usual for a club to have an AGM where the Management Committee report to the Members about how the club is developing.

Please include any other business that should be dealt with at an AGM.

## **Extraordinary General Meeting**

Any other general meeting is called an extraordinary general meeting.

The quorum of a general meeting relates to how many Members must be in attendance for the general meeting to pass any resolutions. Please consider what the appropriate quorum is for the AGM and extraordinary general meeting.

The template Rule provides a quorum of 10 Members or 10% of the Membership (whichever is the greater). This can be increased or decreased at your option. Bear in mind that if you have a large Membership base, you may find it difficult to get the minimum number required in order to reach the quorum level.

## **Rule 19- Finances**

Rule 19.2 in the Constitution is the model clause provided by HMRC to ensure CASC eligibility.

It is important to provide in the Constitution how the assets of the club will be dealt with. Full accounts of the club's finances should be prepared each year. As the club is an unincorporated association, the accounts are only prepared for the Members and need not be filed anywhere where they can be publicly inspected. They may however be requested by the local authority, the LTA or other bodies in connection with grant applications.

It is up to each club to decide to what extent it would like its accounts audited. There is no requirement in law for the accounts to be audited by an independent auditor unless the club's Constitution provides for this. However as the club collects money from, and spends it on behalf of, the Members, those Members may like the comfort of knowing that the accounts will be independently audited.

## **Rule 20- Borrowing**

Without an express power in the Constitution to borrow money, an unincorporated association cannot take out a mortgage, bank loan, loan from a third party or a loan from one of the Members.

With an express power in the Constitution, the club can mortgage real property. An alternative way of raising funds is to issue Debentures with the unincorporated association's premises as security. This is usually done by charging the premises to trustees, who then hold the charge on trust for the debenture holders. If any undertaking to pay back the principal and interest is limited to the value of the funds held by the club, this will protect the individual Members and, in particular, Management Committee Members, from personal liability.

It will be for each club to determine how much the Management Committee may borrow without needing the Members' approval at a general meeting. This will depend on a number of factors such as the extent of the club's assets. Essentially it will be a balance between practicality and control of the club's finances.

## **Rule 21- Property**

As previously mentioned the club is not a legal person in its own right and cannot hold property in its own name. Therefore individuals need to hold the property on trust for the Members.



Where the Constitution is silent, the courts have tended to analyse ownership as based on contract. Usually, the club's treasurer and other Members will hold property in their own name on bare trust for the current Members subject to the Constitution. They are contractually bound to the Members to deal with the property in accordance with the Constitution of the club.

The Members holding the property will be indemnified out of the assets of the club for all expenses and other liabilities properly incurred by them. **Clubs are advised to take out insurance in respect of the indemnity provided.**

Should the liability be greater than the assets of the club, either the individuals holding the property will be personally liable or all the Members will collectively be personally liable depending on the particular circumstances. **Please seek independent legal advice if your club will be holding property.**

## Rule 22- Limitation of Liability

The Constitution includes indemnities to protect those individuals entering into contracts and/or holding property on behalf of the club. The indemnities given seek to limit the liability to the assets of the club to protect the other Members.

Although the Constitution seeks to protect the individuals being personally liable, there is always a risk that individuals will be found personally liable. In addition, should the liability be greater than the assets of the club, depending on the circumstances, either the individuals who signed the contracts and/or hold the property will be personally liable or all the Members will collectively be personally liable.

In addition the Members might become personally liable for a breach of a duty (known as tortious liability). This might arise if something happens on the club's premises (an injury for example) or because of the actions of Members (being a nuisance for example).

If an individual Member is found liable in tort, he will not be able to limit the liability to the funds held by the club as he can try in contract. Nor is he entitled to an indemnity from the other Members beyond the funds of the club.

**To best protect the club and the Members against tortious liability the club should obtain insurance. This will be issued to the Management Committee for the time being or a particular officer as a representative of the Members. If the insurance contains member-to-member indemnity then if one Member becomes liable he can claim on the policy.**

**We would advise that if your club is entering into contracts and holding property, the club should be incorporated to ensure liability is limited to protect both the individuals signing the contracts/holding the property but also the Members as a whole.**

## Rule 25- Dissolution

An unincorporated association may be dissolved:

- In accordance with the Constitution;
- By agreement of all the Members;
- Spontaneously where the association cannot fulfil its purpose any longer or when the Membership drops below two persons;
- By court order.

The effect of dissolution is that the club's activities come to an end and any remaining assets are distributed.

It is important to have in the Constitution the power to dissolve and to set out the procedure for dissolution. It is entirely for each club to decide upon the majority required to pass a resolution to dissolve the club.

It is also important that the Constitution make provision for what happens to any surplus moneys on a winding-up. To qualify as a CASC your club must provide that any surplus on a winding up is applied for approved sporting or charitable purposes.

Rule 25.3 in the Constitution is the model clause provided by HMRC to ensure qualification for CASC status.

If the total assets of the club do not cover its debts, each Member is liable to the amount of his subscription. In addition, depending on the specific circumstances, if there are outstanding creditors and /or tortious liability either the individuals who signed the contracts and/or hold the property will be personally liable or all the Members will be collectively personally liable. **Please take independent advice before winding-up your club.**