

Club Organisation and Ownership of Property

Scope and context

This guideline reviews various forms of club organisation and how this relates to the ownership of property.

When forming a mountaineering club a group of individuals need to consider the legal form they wish to adopt for their association. They need to decide whether to adopt a rather informal organisation or a more formal organisation for their club. If they decide to own and operate a hut they will need to consider how the legal title to the property will be held. Unless the title to the property is vested in an incorporated body it must be vested in trustees.

Long-established but unincorporated clubs may also wish to consider whether becoming a legal entity is a helpful additional level of protection, particularly as regards the liabilities of their officers and committee members.

Options for club organisation

Unincorporated association

A club of this type is an organised group of individuals with a common interest, e.g. mountaineering. The club will have a name and constitution. The constitution is a set of rules which governs the relations between members and sets out the rights and obligations of membership. The rules will cover a range of matters including membership, subscriptions, election of officers, changes to the rules and matters relating to the club hut if the club has one. The members enter into a contract with each other based on these rules and they may be changed with their agreement.

Advantages

Little formality unless they own property and they also have a duty of care towards each other as a consequence of forming a group. Members are free to make their own decisions. Freedom from regulation but they are bound by the law generally.

Disadvantages

No separate legal identity of their own which means that they cannot enter into a contract, own property or be sued or prosecuted. Any contracts with other organisations, for example hotels, printers or builders, will be the responsibility of the individual member who establishes them. However, usually a club's constitution will contain a clause undertaking to indemnify the officers and any member acting with the consent of the committee, for expenses, costs, claims and debts which they may properly incur in the performance of their duties.

In any civil action not supported by insurance every member is responsible for the actions of any other member and their personal assets are available, theoretically at least, to meet the costs.

Legal title to their property must be vested in trustees – no more than four but not less than two. The trustees are duty bound to protect the title to the property whether it is freehold or leasehold property. The trustees may also be tasked with other duties by the club's committee.

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Incorporated organisation

Incorporation can take a number of forms –

Companies registered under the Companies Act 2006 with the Registrar of Companies

A private company limited by shares

Each member buys a share(s) in the company and by so doing becomes a shareholder or member. In the event of the company being wound up their liability is limited to the number of shares they hold in the company, e.g. £100 where they hold 100 £1 shares.

This type of company is more suitable for a trading organisation.

or

A private company limited by guarantee

Each member applies to become a member and by so doing enters into a promise or guarantee to contribute a defined sum, say £1, towards the company's assets in the event of it being wound up and there is a deficit.

Their liability is limited to the amount they have agreed to contribute to the assets of the company in the event of it being wound up, e.g. £5. The members are the guarantors of the company.

Note: The BMC and Mountaineering Scotland (MScot) are companies limited by guarantee.

Advantages

Limited liability for the club and its members. Club property, such as a hut, is vested in the company.

Disadvantages

Greater formality due to compliance with statutory requirements, e.g. the need to appoint directors, file annual returns and accounts and extra costs involved in doing this.

Registration under the Co-operative and Community Benefit Societies Act 2014

A club may incorporate itself by registering under the Co-operative and Community Benefits Societies Act 2014 as a co-operative society. Registration with the Financial Conduct Authority converts a club into a corporate body with limited liability. A club applying for registration must be able to show that it is a bona fide cooperative society providing services or amenities for its members. It must be non-profit making. The share capital is limited to a nominal amount for example £1, in effect the share is a 'membership ticket'. Voting is on the basis of one member one vote.

Advantages

Limited liability for the club and its members. Club property is vested in the name of the club as a legal entity so there is no need for trustees.

The normal form of constitution contains clauses to prevent 'carpet baggers' from buying a club's property.

Disadvantages

Greater formality due to compliance with statutory requirements, for example, the need to appoint directors, file annual returns and accounts, and extra costs for annual filing fees. A full professional audit is not required. Any changes to the club's rules need the approval of the Financial Conduct Authority. Neither the issue of annual reporting to the FCA nor changing the Rules is reported to be onerous.

In recent years a number of mountaineering clubs have chosen to incorporate themselves as co-operative societies under this legislation, e.g. Bowline MC, Fell and Rock CC, Midland Association of Mountaineers, Rucksack Club and Yorkshire MC.

Incorporation – summary of benefits

Almost all UK mountaineering clubs began life as unincorporated associations. Some have incorporated and others may be considering doing so. When considering the advantages and disadvantages of incorporation club members should consider the following points –

- The benefits of limited liability for members, which will protect them from legal risk but not from criminal liability such as breach of a statutory duty, e.g. breaches of the Fire Regulations.
- An incorporated club can enter into a contract in its own right which means that there is no need for a member to do so on behalf of the club and thereby incur personal liability.
- Legal title to any property whether freehold or leasehold which the club owns will be vested in the company's name thereby avoiding legal expenses incurred with a Land Registry application every time there is a change of trustee.
- An incorporated club can sue or be sued or litigate in its own right.
- The greater formality involved due to compliance with the statutory requirements governing the incorporated bodies mentioned above.

Community Amateur Sports Club

Many sports clubs, including mountaineering clubs, can register with HM Revenue & Customs (HMRC) as a Community Amateur Sports Club (CASC).

The UK Government acknowledges that local sports clubs play a vital role in our society and in particular in promoting health through regular exercise. Historically, the voluntary sports club sector has suffered from a lack of both cash and adequate facilities despite the efforts of thousands of volunteers.

The purpose of the CASC scheme is to encourage people to participate in sport by providing clubs with more resources to enable them to improve their facilities. In effect, clubs that register as CASCs are granted quasi-charitable status with many of the tax benefits enjoyed by charities.

It was designed originally as a 'light touch' regime because once clubs had registered as CASCs they were not required to file annual returns. Changes to the scheme, in view of the changes made by HMRC, incorporating as a co-op appears to be somewhat easier and less complex than becoming a CASC

Benefits for clubs registered as CASCs

- *Non-domestic rates relief (business rates)*: Clubs are entitled to mandatory rates relief at 80% in respect of their premises.
- *Gift Aid*: Individual members who are UK taxpayers can make donations to their club using gift aid. The clubs can then reclaim basic rate tax from HMRC Charities. The donors can offset their donations against their liability to income tax. Membership subscriptions cannot be treated as Gift Aid payments.
- *Corporation tax*: Clubs are treated as companies for tax purposes and therefore their profits, including interest, may be chargeable to corporation tax. Under the CASC scheme, however, interest received and chargeable gains are exempt from corporation tax. There are also exemptions from corporation tax in respect of profits from trading and income from property.

For an overview of the CASC scheme see the appendix on page 5.

[About hut guidelines >>>](#)

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Note: If viewing this .pdf while online then clicking on any [URL](#) will take you to that website.

About Hut Guidelines

These guidelines have been produced by the Huts Group of the British Mountaineering Council and the Huts Advisory Group of Mountaineering Scotland (MScot) to assist those operating mountaineering huts in Britain.

Contact the BMC Huts Group by e-mail - huts@thebmc.co.uk or telephone 0161 445 6111

Contact the MScot Huts Advisory Group by e-mail – huts@mountaineering.scot

Websites: www.thebmc.co.uk and www.mountaineering.scot

URLs: If any of the URLs (web addresses) given on the preceding pages are found to be 'dead links' please notify huts@mountaineering.scot There may be problems when using older browsers – check your version.

Disclaimer: These guidelines were revised on the date shown below and the information herein is believed to be accurate at the time of writing. No responsibility can be accepted for any loss of benefit or entitlement arising through use of these guidelines – they are not intended to be definitive.

Version no. 1 – June 2019 *

* This replaces the previous guideline no. 1 *Community Amateur Sports Clubs*

These guidelines are updated periodically; to check on the currency of this version go to one of the websites above where the latest version will always be displayed.

APPENDIX



APPENDIX

An overview of the CASC scheme

The UK Government acknowledges that local sports clubs play a vital role in our society and in particular in promoting health through regular exercise. Historically, the voluntary sports club sector has suffered from a lack of both cash and adequate facilities despite the efforts of thousands of volunteers.

The purpose of the legislation that established the CASC scheme is to encourage people to participate in sport by providing clubs with more resources to enable them to improve their facilities. In effect, clubs that register as CASCs are granted quasi-charitable status with many of the tax benefits enjoyed by charities. It was designed originally as a 'light touch' regime because once clubs had registered as CASCs they were not required to file annual returns.

Changes to the scheme since its inception, however, now require clubs to keep records of actual participation. In particular there is now a need to have 50 per cent participating members. In view of the changes made by HMRC, incorporating as a co-op (page 2) appears to be somewhat easier and less complex than becoming a CASC.

The following changes have been applied to the original CASC scheme –

- Increases in exemptions
- New income limit conditions
- Need to have 50 percent participating members
- Travel and subsistence expenses
- Payments to players
- Restriction on the level of membership costs

For further information see –

www.sportenglandclubmatters.com/understand-the-changes-to-casc • www.cascinfo.co.uk

Requirements for registration

To register as a CASC a club must comply with the following conditions –

- Be open to the whole community
- Be organised on an amateur basis
- Have as its main purpose the provision of facilities for, and the promotion of participation in one or more eligible sports
- Not exceed the income limit
- Meet the management condition
- Meet the location condition

Open to the whole community

Membership of the club must be open to all without discrimination. The facilities must also be open to all the membership. Further, the club's fees must not represent a significant obstacle to membership or use of its facilities.

Membership means the people whom the club recognises as having accepted the rights and liabilities as set out in its governing document. Members' rights include the right to attend general meetings and vote by majority voting. There is no discrimination in not allowing junior members to vote until they are 18 years old.

Organised on an amateur basis >>

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Organised on an amateur basis

- The club must be non-profit making. Any surplus income or gains must be re-invested in the club. There must be no distribution of assets to members.
- The club provides only the ordinary benefits of an amateur sports club for members and their guests.
- The club's governing document requires any net assets on dissolution of the club to be applied for approved sporting or charitable purposes.

Provision of facilities for, and the promotion of participation in, one or more of the eligible sports

The club must make its facilities available, without discrimination, to all members. The club must not discriminate between classes or categories of members.

Fees and costs charged by the club must not represent a significant obstacle to membership

Where the fees charged by the club exceed £1,612 per annum then the club would not be open to the whole community. The fees of many clubs do not exceed £520 per annum – these are affordable for the whole community.

Discrimination

Includes all the usual grounds, e.g. sex, age, disability, ethnicity, nationality, sexual orientation, religion or other beliefs, except as a necessary consequence of the requirements of a particular sport. Single sex clubs may register as CASCs provided the restriction on membership is due to the requirements of the sport.

Membership

HMRC's view is that membership of a club must mean *full* membership. Clubs may have different classes of membership based on the age of the member – student, waged, playing member, e.g. senior membership at reduced rates for those aged over 65, which is not open to younger people. It must, however, have an open membership policy so that the selection of members on the basis of their existing attainment would not be acceptable.

Participation – Social membership threshold

The club must ensure that at least 50% of its members are 'participating members'. A participating member must participate in the sporting activities of the club on a number of occasions that is equal to or more than the club's participation threshold. If the number of participating members falls below 50% then the club must take action to remedy the situation, e.g. by encouraging members to participate or by recruiting new active members.

Participation in sporting activities includes: maintaining club facilities and serving as an officer or committee member of the club. The club needs to keep records to enable it to calculate whether the 50% requirement has been met.

Benefits for clubs registered as CASCs

- *Non-domestic rates relief (business rates)*: Clubs are entitled to mandatory rates relief at 80% in respect of their premises.
- *Gift Aid*: Individual members who are UK taxpayers can make donations to their club using gift aid. The clubs can then reclaim basic rate tax from HMRC Charities. The donors can offset their donations against their liability to income tax. Membership subscriptions cannot be treated as Gift Aid payments

Note: *Legacies to clubs registered as CASCs are treated as exempt transfers for inheritance tax purposes.*

- *Corporation tax: >>*

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- *Corporation tax:* Clubs are treated as companies for tax purposes and therefore their profits, including interest, may be chargeable to corporation tax. Under the CASC scheme, however, interest received and chargeable gains are exempt from corporation tax. There are also exemptions from corporation tax in respect of profits from trading and income from property.

Once a CASC always a CASC

CASCs enjoy considerable tax benefits and, therefore, HMRC cannot allow them to be used as a vehicle for tax avoidance. There is, therefore, no provision for de-registration. However, a club that fails to comply with the CASC conditions can be expelled from the scheme in which case it may be liable to pay corporation tax, the club being deemed to have disposed of its property and then to have re-acquired it at market value on the date of deregistration.

Registration

HMRC must be satisfied that a club already meets the conditions of the CASC scheme before it can register a club. The club should be acting in a CASC compliant way, run by its members with a CASC compliant governing document.

Applications to register as a CASC should be made to: HM Revenue & Customs, Charities New Cases, SO 708, PO Box 205, Bootle L69 9AZ Tel 0300 123 1073

See – www.gov.uk/register-a-community-amateur-sports-club

The following documents must be submitted –

- The completed registration form CASC (A1)
- Membership booklet/rule book (if you have one)
- Copies of bank statements for the past three months
- A copy of the club's most recent financial accounts
- Governing document, i.e. the club's constitution

For examples of model constitutions see –

www.thebmc.co.uk/Download.aspx?id=1661

www.mountaineering.scot/clubs/advice-and-resources/setting-up-a-new-club

and

www.mountaineering.scot/assets/contentfiles/pdf/Mountaineering-Scotland-club-constitution-example.docx.pdf

Amendments to the club constitution

Most clubs will need to amend their constitution before they can register as a CASC. To comply with the requirements of the CASC legislation a club's constitution must include the following key clauses –

Objectives: It must make it clear that the club's main objective is to encourage participation in the sport of mountaineering.

- *Status:* It must state that the club is a non-profit making organisation and that any surplus income or gains shall be re-invested in the club and not distributed to members or third parties.
- *Membership:* It must state that membership shall be open to all without discrimination. However, a club may have different classes of membership. Subscriptions must be affordable. They must not pose a significant obstacle to people participating in the club's activities.
- *Dissolution:* Any net assets remaining after settling all the club's liabilities must be applied for the purposes of the sport's governing body (BMC or MScot) or of another club registered as a CASC or of a registered charity.

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Some specimen clauses

Objectives

The club's objectives are –

- To provide facilities for and to promote the active participation of the whole community in the sport of mountaineering in its widest sense
- To give encouragement and assistance to persons who are introducing young people to the mountains
- To promote safety in the mountains

Status

The club is a non-profit making organisation. Any surplus income or gains shall be re-invested in the club and not distributed to members or third parties.

Membership

Membership of the club shall be open to all persons irrespective of ethnicity, nationality, sexual orientation, religion or beliefs; or of age, sex, or disability except as a necessary consequence of the requirements of mountaineering as a particular sport.

The committee may refuse membership or expel from membership only for good or sufficient cause, such as conduct or character likely to bring the club or sport into disrepute. An appeal against such a decision may be made to the club's members at an AGM or to a separate appeals committee and decided by a majority vote.

There shall be three grades of membership – honorary, senior and junior.

Dissolution

In the event of dissolution the committee then in office shall remain in being for the purpose of winding up the club's affairs and after discharging the club's debts and liabilities shall distribute any assets remaining to another mountaineering club registered as a Community Amateur Sports Club (CASC) or to a registered charity associated with the sport of mountaineering or to the sport's governing body as decided at a general meeting and failing such a decision as the committee shall decide.

Note: HMRC is prepared to consider a club's application to register as a CASC along with any proposed amendments to its constitution prior to its AGM. Also, HMRC will advise the club as to whether or not the wording of the proposed amendments is acceptable.