



### RFU GOVERNANCE COMMITTEE

The RFU's Governance Committee is concerned about the number of rugby clubs which have unincorporated legal status and the consequent personal financial risk to their committee members and officers. This information is sent to you for your serious consideration

(Signature)

Peter Baines - Chairman of RFU Governance Committee

### IS YOUR RUGBY CLUB A RISKY BUSINESS ?

Would you bet your house on the chance that nothing untoward will ever happen to your rugby club? If you are a committee member and yours is an unincorporated club you may be doing just that.

Without rugby's volunteer club administrators, the English game as we know it would not exist. The RFU does not want to see those very same people unnecessarily running the risk of personal financial disaster because of their commitment on behalf of the game and their community.

So if you are involved as a committee member, trustee or in any way with the running of your rugby club or Constituent Body we ask you to consider whether the way it is set up could put you and other officials at risk and if so to take steps to eliminate personal risk and, for example, change its legal status to bring in limited liability.

"Don't just imagine that insurance will cover you for any and all eventualities. Incorporation is the first line of defence, insurance is the second."

### WHY YOU MAY BE AT RISK

Although serious injury to a player on the pitch is, thankfully, rare it does happen and accidents of any kind quite unrelated to the playing of the game can occur in any rugby environment.

Public liability insurance provided by the RFU offers protection but it is not a failsafe, and not necessarily protection from every possible occurrence or for unlimited liability. An incident or accident may fall outside your cover or your cover may be invalidated by someone's actions or unexpected circumstances.

If your club could not, for any reason, afford to pay its creditors and it was not incorporated, the club's committee members may be potentially personally liable for the club's debts. Creditors would almost certainly pursue members of the committee who could be personally liable and whose houses or savings could be on the line.

RFU Management Board Chairman, Martyn Thomas, led Notts, Lincs and Derby into becoming a company limited by guarantee back in 1995. He says, "Don't just imagine that insurance will cover you for any and all eventualities. Incorporation is the first line of defence, insurance is the second."

# WHO IS AT RISK AND WHAT TO DO

Probably the most common type of local rugby club is the non profit distributing unincorporated members' club, frequently one of the smaller clubs which does not own its own premises. Is yours one of these? Do you actually know the legal status of your club?

If your club is not incorporated you need to consider what would happen and who would be responsible if a legal claim was brought against it. Any legal claim could be brought against one or more of your committee members or trustees, who might be personally liable if the club has insufficient assets or insufficient insurance to meet the claim.

You and your club need to ask yourselves whether or not it is wise to remain as an unincorporated association. If you do it is important to ensure that your club's rules protect, in so far as this is possible, both officers and members from personal liability, that the club carries adequate insurance to cover potential liabilities and that systems are in place to ensure the proper management of the club.

One of the other complications for an unincorporated club is that any property owned must be held by trustees on the club's behalf and any change of trustees requires a transfer to whoever is appointed as replacement.

Incorporating your club as a company limited by shares, guarantee or as an industrial and provident society makes sense and the RFU strongly recommends that clubs should be incorporated. In the vast majority of cases the RFU would recommend that a company limited by guarantee or as an industrial and provident society is the best solution but advice must be sought on a club's particular circumstances.

#### **CAUTIONARY TALES**

Weymouth Rugby Football Club is now a company limited by guarantee but an official says, "We waited until the horse had bolted half way down the road before we shut the gate."

They were being pursued by a woman who claimed that she injured herself while using a bridge over a culvert at the club. Eventually, they settled out of court, paying her a substantial sum, raised by club members and a brewery loan paid back by barrelage.

Said Weymouth treasurer, Julian Oddy, "We discovered that as a committee we were jointly and severally liable for any claim and if someone like this woman was rendered a paraplegic by an accident and claimed £500,000 my house and those of everyone else could well have been at risk. I personally would not still be on the club committee if we had not incorporated.

"The information we had from the RFU was very useful and incorporation was relatively easy to set up and the administration should be well within the ability of any competent treasurer. I would advise incorporating as a company limited by guarantee and becoming a CASC and to tie it in with Gift Aid."

President of Dorset & Wilts and former Westbury club Hon Sec, Ron Jones, says, "I would definitely advise clubs to incorporate. Westbury is looking into it at the moment."

The club has been caught up in some worrying situations, including a spectator getting his leg broken (a situation helped by a pro bono -free of charge- barrister; a ticket to Twickenham and heartening Guinness) and a sub let bar with almost a year's lease unpaid and complications over the right to sub let.

"Any club could be hit by a claim beyond their insurance cover or outside it and I'll bet many are sailing close to a pretty ill wind," says Ron. "They should all be looking at this."





Just as many of us know we should make a will but haven't got round to it, incorporating a club as a company limited by guarantee is an administrative process that should

not be left on the back burner.

Doing nothing and hoping that disaster does not strike is simply not an option. Please seek independent legal advice and get the ball rolling. The documents you need to assist you with this are set out on the enclosed CD-ROM.

#### **BECOMING A LIMITED COMPANY**

If a club becomes a company there are two major advantages.

- The company is a legal person in its own right able to sue and be sued. Consequently, if committee members are directors their liability is limited. They will only be personally liable in certain circumstances e.g. if they themselves commit some wrongdoing, are reckless or negligent in fulfilling their roles or if the club continues to trade when insolvent.
- The club can hold property in its own name.

Amateur rugby football clubs are generally best constituted as companies limited by guarantee, as opposed to companies limited by shares. A guarantee company does not have a share capital, but has members who are guarantors instead of shareholders. The guarantors give an undertaking to contribute a nominal amount towards the winding up of the company in the event of a shortfall upon cessation of business. It cannot distribute its profits to its members, and is therefore eligible to apply for charitable status if necessary. Membership is not usually intended to be transferable and members of a guarantee company can simply join and resign at a later date.

A company needs to be formed and registered in accordance with the Companies Acts, which impose certain statutory responsibilities on the directors. The constitution (the Memorandum and Articles of Association) is likely to be more complicated than the rules of an unincorporated club but the advantages are undeniable.

A company's constitution is a public document and must be filed at Companies House, together with its annual accounts and an annual return setting out details of the directors. Any amendments to the constitution must be made by special resolution and must also be filed at Companies House as must other relevant information such as appointment and resignations of directors and changes to the registered office.

Incorporation as a limited company will be particularly appropriate for rugby clubs which carry out a variety of activities, have significant liabilities or have land, investments or employees. It is most beneficial in limiting the liability of the club's officers or members.

More information on rugby clubs incorporated as companies limited by guarantee is available on the Club Management Section of **rfu.com/community** 



### BECOMING AN INDUSTRIAL & PROVIDENT SOCIETY

The RFU is an Industrial & Provident Society (IPS) and a number of rugby clubs have chosen to become Industrial & Provident Societies.

Like a company, an IPS has a legal personality of its own and enjoys the benefit of limited liability. IPS status is normally chosen by organisations acting in a co-operative manner, like a trade union, or organisations which operate for the benefit of the community. All members must have equal voting rights, there cannot be separate classes of members, and an IPS must also be "mutual", meaning that any profits are ploughed back into the organisation for its benefit.

The rules and formalities of the IPS are more flexible and simpler than for companies but any departure from the rules can result in a more time consuming and expensive process.

The Financial Services Authority (FSA) is the registering authority for societies which register under the Industrial and Provident Societies Act 1965 (as amended by subsequent Acts). An IPS must register with the FSA and lodge various documents and returns with it in a similar way to which a company has to file returns to Companies House.

Detailed guidance on IPSs and the RFU's model rules are available on **rfu.com/community** 

## REGISTERING AS A COMMUNITY AMATEUR SPORTS CLUB (CASC)

However your club is constituted, whether as a company limited by guarantee or as an IPS, it is able to gain financial benefits by registering as a Community Amateur Sports Club.

The Finance Act 2002 introduced tax reliefs for clubs qualifying as Community Amateur Sports Clubs. In addition, CASCs are eliqible for mandatory rate relief.

With 279 rugby clubs registered as CASCs, the approximate saving to the game was £1.1m per annum, or £4000 per registered club.

If your club is considering becoming a CASC it may be worth contacting either the RFU or a club in your area, which has already registered, for feedback. You can not, however, register as a CASC if you pay players, although some clubs may have a separate professional and amateur section. Members of a club may be paid for their services as a groundsman, bar steward etc but payment for playing for a club is prohibited.

CASC status will be of particular benefit to clubs currently paying high rates (or those that would do so if discretionary rate relief was withdrawn). It is ideal for any club likely to have significant capital gains, for example by selling an existing property to relocate. It is also particularly effective in allowing clubs to claim Gift Aid on donations or sponsorship. At present membership subscriptions do not, however, qualify for this.

Clubs seeking to register as CASCs need to consider the restrictions which will be imposed on them, including provisions which ensure that CASCs do not de-register their status and can not distribute surplus monies to members if winding the club up.



Many amateur sports clubs will be able to register as CASCs without making any changes to the way they operate or are structured. You may want to see whether your club is likely to be successful in applying for registration by answering the following five questions.

- I. Is membership of the club open to the whole community?
- 2. Are all the club's facilities available to members without discrimination?
- 3. Does the club's constitution prevent profits of the club being distributed amongst its members (i.e. any profits must go back into the club)?
- 4. Does the club provide facilities for and encourage participation in eligible sports?
- 5. Does the club's constitution provide that on dissolution of the club, any net assets are to be applied for approved sporting or charitable purposes?

If you can answer yes to all five questions it is likely that you will be able to register as a CASC without making any changes. In some cases you may need to make some small changes to the way the club is organised. But registering as a CASC is incredibly simple and only requires filling in two forms.

HM Revenue & Customs has a very helpful website on CASCs and how to register as (please see www.hmrc.gov.uk/casc). Detailed guidance on CASC status is also included in guidance at rfu/community

This note and other information is made available by the RFU in good faith but the RFU is unable to give legal advice. All clubs and their members are strongly advised to seek independent professional advice on their particular circumstances.