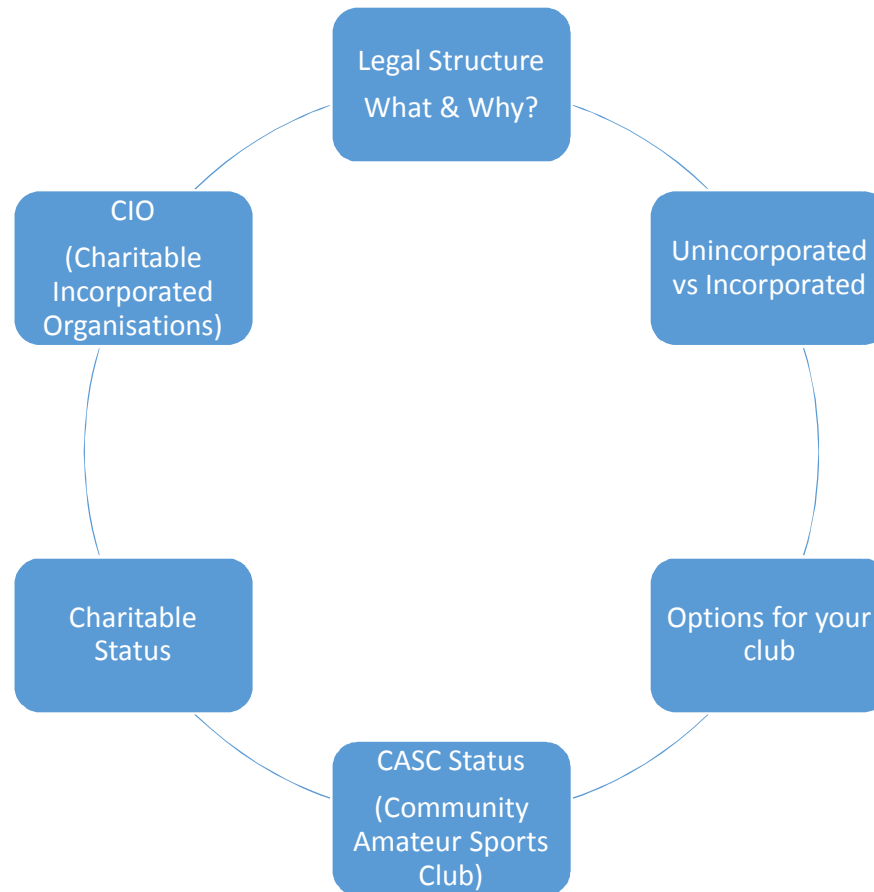


Organisation Structures

What we will cover?



Legal structure

- “ Unincorporated association
- “ Industrial & Provident Society
- “ Company limited by shares
- “ Community Interest Company (CIC)
- “ Company limited by guarantee

Legal structure

1. The level of protection for those involved in the Club
2. Club's governance arrangements
3. Tax
4. Matters to other people your Club interacts with

Unincorporated vs incorporated

	Unincorporated	Incorporated
Separate legal entity	✘	✓
Contracts	In name of a member	In name of the Club
Limited liability	✘	✓

Recent case law – Davies v Barnes Webster & Sons Ltd 2011

Mr David Davies was President and a Management Committee member for Romford and Gidea Park Rugby Football Club, an unincorporated association. As President he possessed the Club's land and buildings under a trust deed.

In 2008 there was a special meeting of the Club at which the members, including Mr Davies, voted to instruct builders to undertake the clubhouse redevelopment. Mr John Smith, the Club's Treasurer, signed the building contract and Mr Davies witnessed the signing. The contract between the parties was for the sum of £954,878; however there was also provision in the contract for "variations". This clause allowed the builders to recover any additional costs incurred by them when undertaking the redevelopment.

At the end of the development there were "variations" to the tune of £147,000. The builders subsequently issued a statutory demand calling on Mr Davies to meet the outstanding amount. Mr Davies applied for the statutory demand to be set aside and argued that he could not be liable for the debt as he had not signed nor read the terms of the contract.

It was held by the court, that there was an intention by the Management Committee to create a binding contract and that it had delegated authority to sign the contract to Mr Smith. Accordingly, Mr Davies as part of the Management Committee and trustee of the Club's land and property, was liable for the debt outstanding in respect of the clubhouse redevelopment.

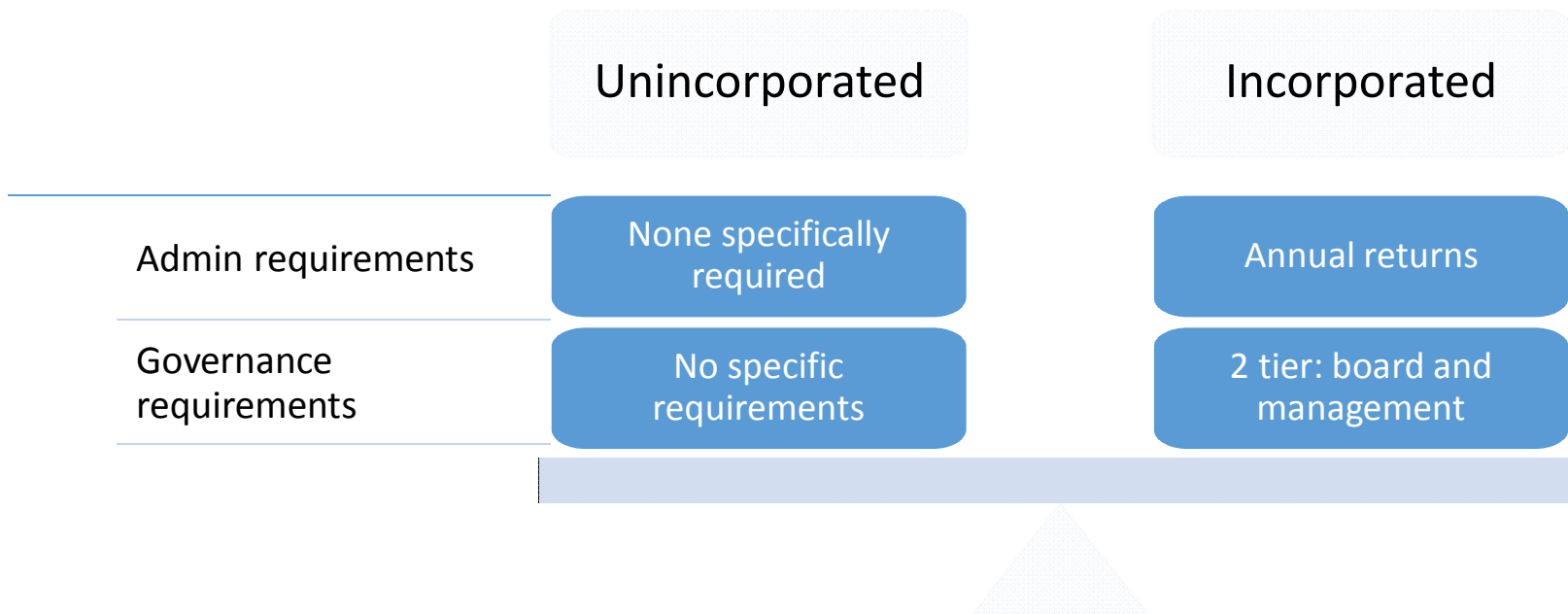
Prior to entering into the contract the Club had adopted a revised constitution that had been intended to provide the Management Committee with more financial protection, however, the opposite was in fact the case in that it prevented the Management Committee seeking redress from the wider membership!

Key points to consider

There are some ways that a committee member can minimise the risks when entering into contracts and other obligations on behalf of an association:-

- “ check what the constitution says about liability and whether any indemnity has been given – but an indemnity is only of value if there are funds available to meet an indemnity claim;
- “ ensure you have authority to enter the contract under the rules of the association, and that you have been authorised to do so by the committee – that does not exclude personal liability but ensures that all committee members are liable;
- “ check whether the risk is insured; and
- “ ensure that the contract specifically excludes the personal liability of the committee members and the association’s members.

Unincorporated vs incorporated



Can a director be relieved of liability?

A director of a company cannot be exempted from liability in connection with any negligence, default, breach of duty or breach of trust in relation to the company.

A director cannot be indemnified by the company against those liabilities unless the indemnity meets specific statutory criteria.

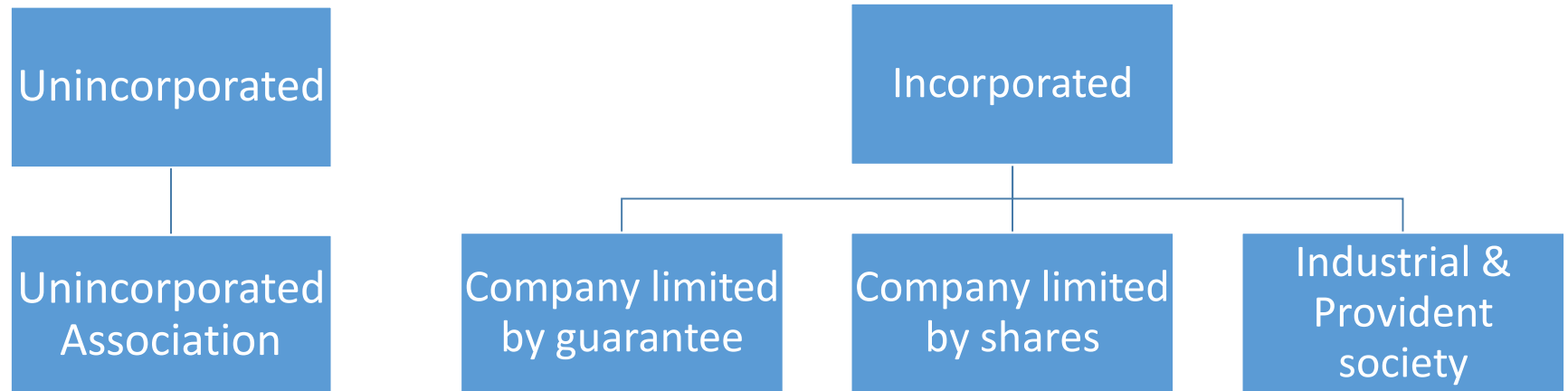
Unincorporated vs incorporated

Summary

Greater freedom
of operation but
increased
personal risk

Greater
administrative
burden, protects
members
financially

Legal structure options



Unincorporated Association

- “ Common, relatively informal structure
- “ Committee bound by the rules they set
- “ Flexibility
- “ Less administration – no requirement to submit annual returns/accounts

Unincorporated Association

Unlikely to be suitable if you will be or are:

- “ Employing staff
- “ Applying for finance – loans or grants
- “ Entering into contracts
- “ Taking on a lease
- “ Buying buildings

Any situation with large financial risk

Unincorporated Association Might be suitable if you are:

- “ Small, local club
- “ Don't own assets (property etc.)
- “ Provide services mainly for members
- “ Not involved in a high risk sport
- “ Protected through 3rd party insurance

Limited Company



Limited by
Guarantee



Limited by Shares

“ Both must legally have:

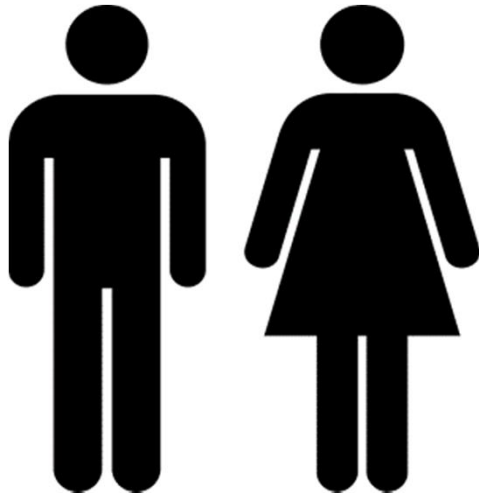
“ Two tier governance

“ Governed by Memorandum & Articles of Association

Limited by Guarantee

Owned by the members

Liability is limited to an agreed amount – usually £1



Limited by Shares

Owned by the shareholders	Shareholders can profit from the club as dividends can be paid
May cause problems where members own most of the shares – can control club	Not usually used for sports clubs

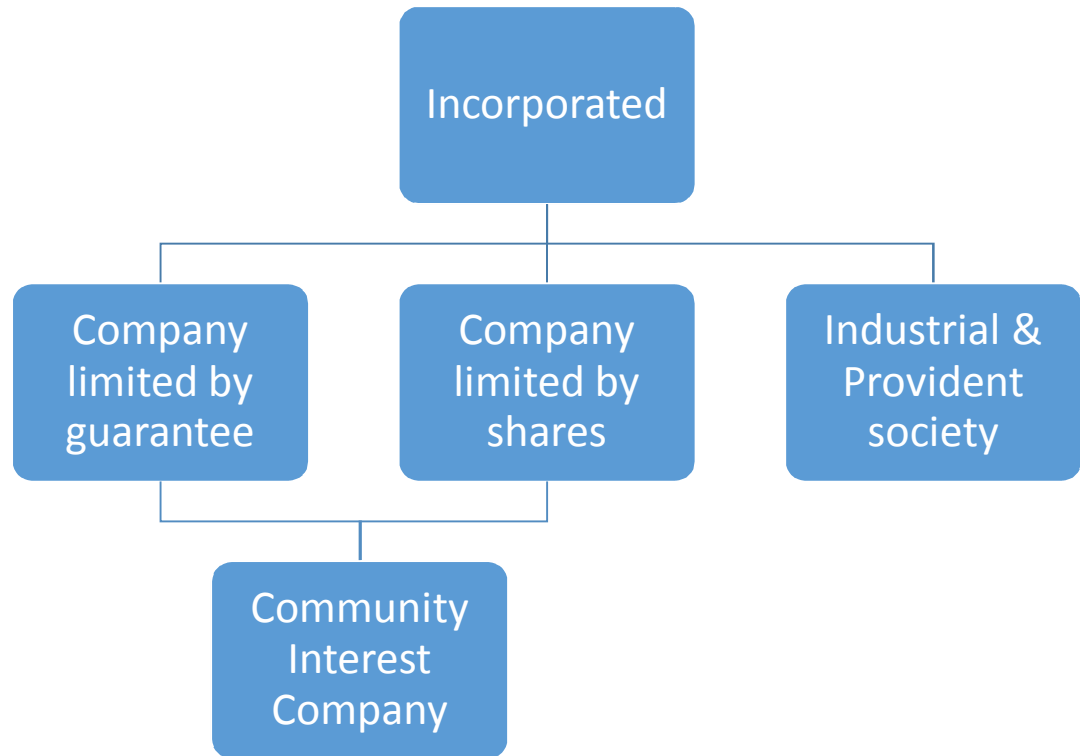
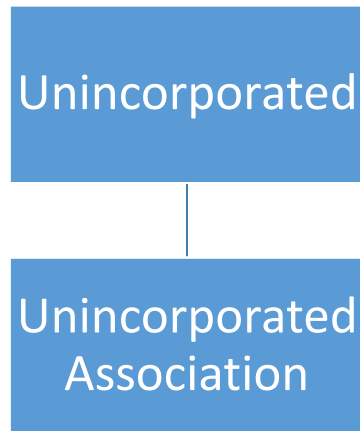
Considering incorporation?

1. Who are your current committee members?
2. What's your governance like?
3. What liabilities is your club currently exposed to?
4. Cost
5. Tax
6. Audit – it may sound boring but it could cost you...

Extract from LMC constitution:

One auditor shall be appointed at the Annual General Meeting and shall receive the accounts not less than two weeks before the following Annual General Meeting.

Legal structure options



Industrial & Provident Society

Key Features

“ Not for profit

“ Apply to and supervised by the Financial Conduct Authority (FCA)

There are two types of Industrial & Provident Society

Co-operative	Community Benefits Society
Business of co-operative run for the mutual benefit of members only	Benefits the wider community and non-members
Can distribute profits to members – but restrictions mean they are normally reinvested	Profits must be used to further the objects of the Society – usually charitable in nature
Should normally be open membership	Assets can't be distributed to members on dissolution

Community Interest Company

A CIC is a limited company with special additional features

Key Features

- “ Exist to benefit the community
- “ They can make a profit

Set up with Companies House

- “ Include a “community interest statement”
- “ Create an “asset lock”
- “ Approval from CIC regulator

Community Interest Company

The Community Interest Test

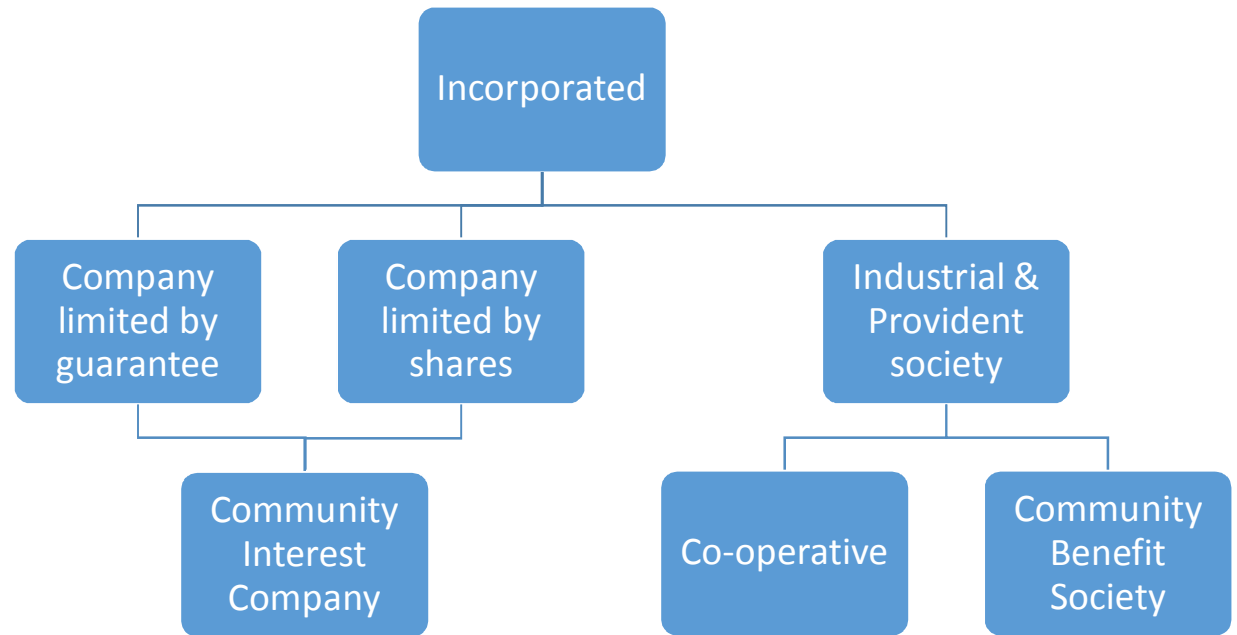
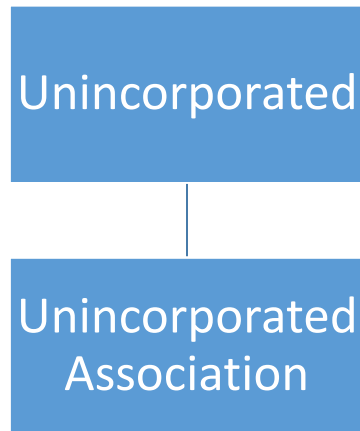
- “ Assessed by a “community interest statement” – describes social purpose
- “ Conducting activities for community benefit, not private advantage

Asset Lock

1. Assets are used for the benefit of the community
2. Profit will be primarily used to benefit the community
3. Protects assets for the community’s future benefit

Caution – added administrative burden – filing Community Interest Report, regulation by CIC regulator

Legal structure options



Community Amateur Sports Clubs

Provides a range of financial benefits

Apply to HMRC for CASC status

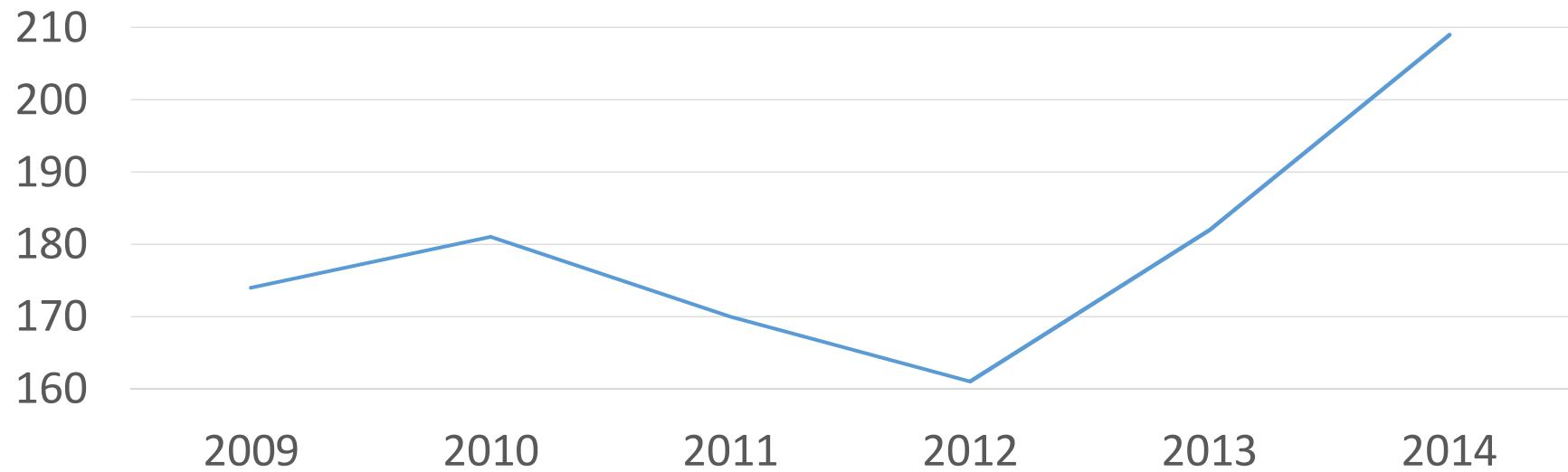
CASC Rules changed and HMRC have issued new “plain English” guidance

So what’s stopping you...

CASC *Fear Factor*

Rule 1: be open to the whole community

LMC Membership



CASC *Fear Factor*

Rule 2: has a governing document that requires any net assets on the dissolution of the club to be applied for approved sporting or charitable purposes

Extract from LMC constitution 2003

In the event of dissolution, the balance of the funds shall pass to the John Muir Trust or another mountaineering associated charity as decided at a General Meeting or by the remaining officers of the club.

CASC Benefits

Both **property and non-property owning clubs can significantly benefit** from the scheme.

The key benefits of CASC registration include:

- “ **80% mandatory business rate relief.** Local authorities can offer up to 100% relief to clubs at their discretion.
- “ The ability to raise funds from individuals under **Gift Aid**. A registered CASC can reclaim up to **£25 in tax for every £100 donated**, though at the moment this does not apply to all types of donations.
- “ The ability to raise funds from companies under **Corporate Gift Aid**. Previously such donations would have been treated as sponsorship/advertising income and subject to Corporation Tax.
- “ CASCs are **exempt from Corporation Tax** on profits derived from trading activities if their trading income is **under £50,000 pa.**
- “ Profits derived from **property income** are also exempt for CASCs if gross property income is **under £30,000 pa.**
- “ CASCs whose income does not exceed these thresholds will no longer be required to complete an annual Corporation Tax return.
- “ CASCs are **exempt from Corporation Tax** on interest received.
- “ CASCs are **exempt from Corporation Tax** on chargeable gains from asset sales.

Sports clubs – tax status

To put this into context sports clubs who are not CASCs should be registered with HMRC for Corporation Tax and would be expected to complete a tax return annually, unless their tax liability was at or below the de minimis limit of £100, in which case returns would be done on a five year cycle.

Sports clubs are liable to Corporation Tax at 20% on:

- “ Interest received
- “ Trading/property profits derived from trading with non-members
- “ Chargeable gains from the sale of assets such as land or buildings

Property owning clubs, who are not CASCs, would be entitled to small business rates relief (currently 100% to 31 March 2015) subject to meeting the necessary criteria.

Charitable Status

Why charitable status?

“ Similar benefits to CASC status – tax relief!

How do you get charitable status?

“ Apply to the Charity Commission

What are the requirements?

“ Exist for purposes that the law recognises as exclusively charitable

“ The advancement of amateur sport qualifies

Charitable Status

Advantages	Disadvantages
Tax advantages – provided money is used for charitable purposes, most income or gains are exempt from tax	All members of the club must be active playing amateur members (no one can be paid and anyone can join)
Access to charitable grants	Trustees (club management) cannot be paid (except reasonable expenses)
Public perception/interest	Complex financial rules and increased administrative burden
VAT relief on property construction, running costs and marketing expenses	Once a club has taken on charitable status it cannot change it – consider it carefully

Charitable Incorporated Organisations (CIO)

The best of both worlds?

An incorporated charity with the benefits of incorporation (separate legal identity & limited liability) and the benefits of a charity (tax advantages)

Only have to register with Charity Commission

Charitable Incorporated Organisations (CIO)

- “ Most suitable for small to medium sized clubs
- “ Similar to charitable company, but simpler to establish and run
- “ Apply and register with the Charity Commission
- “ You do not have to register with Companies House