

BDFPA – Legal Status

Club Structures

1. Unincorporated associations
2. Company limited by shares
3. Company limited by guarantee

The BDFPA is an unincorporated association.

Unincorporated associations

An unincorporated association is a group of people who have come together for a reason other than to make a profit and who are bound together by a set of rules. When establishing a sports club or other non-profit organisation the unincorporated association is commonly the structure used as it does not cost anything to set up, there is no requirement to register it and it can be operated informally and with maximum flexibility. This is all very well whilst the organisation is small but as membership grows the informality may become an issue.

Unincorporated associations do not have a legal identity so the individual members are personally responsible for any debts and contractual obligations. However, where the club/association are governed by a committee then members of that committee could be held liable, as in the case of *Davies v Barnes Webster & Sons*.

This case involved a rugby club operating as an unincorporated association with a governing body called the management committee, including a president and a treasurer. The treasurer signed a contract with a building firm (Barnes Webster & Sons) for works of a fixed sum plus additional work agreed during the contract. The president, Mr Davies, witnessed the signature. The club paid the fixed sum but did not pay £147,000 for agreed additional works. The builders served a statutory demand on the president personally. Where a statutory demand is not satisfied the creditor (Barnes Webster & Son) is entitled to make the debtor (Mr Davies) bankrupt. Mr Davies applied to have the statutory demand set aside on the basis that he was not personally liable for the debt.

The court held (on appeal) that he was liable to pay. Liability is determined by who had authority to act. Members of the governing body are personally liable for any contract entered into on the club's behalf if they have the authority under the clubs rules to enter into it and the club fails to pay. In the absence of evidence to the contrary, the court inferred that the treasurer had been acting on the committee's authority, so all members were potentially liable.

Furthermore, the committee members were "jointly and severally" liable meaning the plaintiff could start proceedings against any one of them. It would then be up to that committee member to recover their share from the other committee members. The implication of this, put bluntly, is that the more wealth a committee member has the more risk they carry.

Although the case outlined above involves an external contractual obligation, there is also potentially a risk from within the organisation itself.

Case law has established a contractual relationship between the members of an unincorporated association, with the terms of the contract being the constitution and the consideration for entering into the contract being the member's subscription. As with any contract, the parties to the contract, i.e. the members, have the right to enforce the contract terms, i.e. the rules and procedures as set out in the constitution.

Company limited by shares

This is the structure favoured by professional or semi-professional clubs. The club is owned by the shareholders and, dependant on the company's Articles of Association, shares can be bought and sold making it easy for investors to invest in the club and to receive dividends. Disadvantages of this structure are in management of the shares and in control of the club.

This structure is unlikely to be suitable for BDFPA.

Company limited by guarantee

A company limited by guarantee is primarily for non-profit organisations that require a legal identity and this structure is commonly utilised by clubs. The company is a private company owned by the members who each guarantee to contribute a nominal amount in the event of a shortfall arising should the company be wound up. This nominal amount is usually £1 but can be any amount. The company's owners (the members) do not receive a dividend or any other return.

A company limited by guarantee is a separate legal entity from its owners and is responsible for its own debts. The personal finances of the company's guarantors are protected and they are only responsible for the company's debts up to the amount of their guarantee.

A company limited by guarantee must have at least one director, although most clubs will have several. The directors may be given some other title, such as management committee or national council. It doesn't matter what they are called, if they are in day to day control of the company then the law will treat them as directors of that company.

A company limited by guarantee is subject to company law provisions relating to general meetings, resolutions, record keeping, filing returns etc. The directors' collective powers of management are set out in the company's articles of association and the directors are required to act with due care and diligence for the benefit of the company.

This structure is potentially suitable for BDFPA.

Additional Operating Formats

Once the structure of a club has been determined there are various other operating scenarios:

- i. Charity
- ii. Community Interest Company (CIC)
- iii. Community Amateur Sports Club (CASC)

Charity

Obtaining charitable status for an organisation is distinct from the legal entity under which it operates. A charity may be an unincorporated association, a company limited by guarantee, a trust or a charitable incorporated organisation.

A charity must be registered with the Charity Commission. For registration to be accepted the entity must have a charitable purpose(s) for the public benefit. Whilst an amateur sport can be a charitable purpose and improving health and fitness considered a benefit, it must be for the general public or for a significant section of the public. It is difficult to see how a specific sports club would benefit the general public.

Charities enjoy favourable tax reliefs but the duties of trustees can be onerous and there is more red tape than simply being a limited company.

Charitable status is unlikely to be applicable to BDFPA.

Community Interest Company (CIC)

The CIC structure was introduced in 2005 for social enterprise companies. They are limited companies with the primary purpose to provide a benefit to the community they serve. It is difficult to see how a specific sports club would benefit a wide enough community.

CICs are regulated by the Office of the Regulator of Community Interest Companies. Each year a CIC must submit a return explaining exactly how they have benefitted the community, but on the whole there is less red tape than for a charity.

CICs are unlikely to be applicable to BDFPA.

Community Amateur Sports Club (CASC)

The CASC scheme was introduced in April 2002 as an option for sports clubs to register with HMRC to receive 'charity type' tax reliefs provided the club meets certain qualifying conditions.

One of the conditions relates to being an "eligible sport" – to be an eligible sport it must be listed by a National Sports Council, i.e. UK Sport, Sport England, Sport Scotland, the Sports Council of Wales and the Sports Council of Northern Ireland.

Powerlifting is not currently an eligible sport so this format is not available to BDFPA, even if we had need of 'tax reliefs'.

Tax Position of sports clubs generally

Whether a club is a limited company or an unincorporated association, if it trades and makes a profit then it will need to file a corporation tax return and may need to pay corporation tax. Sports clubs have no special corporation tax exemptions compared to a normal business.

Income from members such as subscriptions and competition entry fees where the club is not seeking to make a profit and any surplus is used for the benefit of members is generally exempt.

Profits arising from trading with members is also exempt, under the concept of mutual trading, i.e. that you cannot trade with yourself. The most common example of this type of activity is bar sales.

However, if income from non-members constitutes a trade, then it would be taxable, e.g. bar sales to non-members, entry fee for spectators.

Other income and gains that are usually taxable include investment income (e.g. bank interest), income from property (e.g. rentals), capital gains (e.g. sale of land or buildings).

Sponsorship – generally HMRC will argue that a club's sponsorship income is taxable whether received in cash or in kind e.g. sports equipment. It will be taxable if the club provides the sponsor with any appreciable benefits, including name on kit, billboards, advertising space and naming rights.

Tax Position of BDFPA

On the basis that the BDFPA does not seek to make a profit from any of its activities with members and any surplus it does generate is used for the benefit of its members, there should be no liability to corporation tax.

BDFPA does generate income from non-members when it hosts an international competition. However, trade requires an element of commerciality which is absent, so again there should be no liability to corporation tax.

Clothing sales could be made to non-members. However, the goods are priced to recover costs rather than make a profit. Whilst the absence of a profit does not preclude the activity from being a trade the element of commerciality is again absent.

Bank interest received – this would be taxable if BDFPA earned any income. Other income and gains are not applicable to BDFPA as they do not own any land or buildings.

With regard to sponsorship received by BDFPA towards a competition it could be argued that no real benefit is provided to the sponsor, e.g. sponsor donates the best lifter award, their donation is acknowledged when the prize is given out but that is it; sponsor provides t-shirts which includes their logo, but benefit of the advertising does not exceed cost of t-shirt.

Advantages and Disadvantages of incorporation (limited by guarantee)

Advantages	Disadvantages
Separate legal entity – the BDFPA would be able to enter into contracts and hold assets in its own name, and would be responsible for its own debts and any action against the association	Administration work to comply with the requirements of Companies Act 2006 <i>the company can be fined for failure to comply or late filing</i>
Limited liability – members are only liable for their guarantee if the company goes into insolvent liquidation	Potential risk for directors failing to meet their duties and responsibilities <i>directors can be subject to various penalties</i>
Limited liability – National Council are protected provided they have been compliant with company law requirements and acted with due care & diligence	Lack of privacy for individual board members (National Council) as personal details submitted to Companies House are available to the public (i.e. full name, DOB, home address)

Administrative Requirements of Companies Act 2006

As with any legislation, the Companies Act is rather wordy. The main administration requirements can be found in the following sections:

S18 – a company must have Articles of Association prescribing regulations for the company

S86 – have a registered office to which all communications can be addressed

S113 – keep a register of members

S162 – keep a register of directors

S355 – keep records of resolutions and meetings of members

S386 - keep adequate accounting records

S394 – prepare accounts each financial year

S441 – file accounts with Companies House

S854 – file an annual return with Companies House

Filing information with Companies House is really the only additional administrative chore beyond what BDFPA currently do or should be doing according to the current Constitution, and these days most of it can be done online. There are other Companies House filing requirements not specified above.

Normally the administrative tasks are carried out by the company secretary, who under the BDFPA structure would likely be the newly appointed treasurer. The term “company secretary” should not be confused with the current role of general secretary or any other secretary to whom the current constitution refers.

The current Constitution (amended as necessary) would become the Articles of Association and BDFPA already have an adequate register of members.

Duties of Directors

The general duties of directors are set out in sections 171-177, but are no more onerous than what BDFPA members would be expecting from their National Council at present. The general duties are:

1. Duty to act within powers
2. Duty to promote the success of the company
3. Duty to exercise independent judgment
4. Duty to exercise reasonable care, skill and diligence
5. Duty to avoid conflicts of interest
6. Duty not to accept benefits from third parties
7. Duty to declare interest in proposed transaction or arrangement

The standard of care, skill and diligence expected is that which any prudent person would take in respect of their own affairs. The extent of this duty can vary between directors, based on their individual knowledge and experience, e.g. a director who is an accountant by profession will be expected to exercise knowledge and skills and perform to a higher standard in relation to the company's finances than those directors who are not so qualified.

Rights of Members

The Companies Act 2006 provides for some general rights of members in relation to inspection of the members' register, removing a director from office, general meetings and receiving the accounts. More specific rights (and obligations) of members will be set out in the Articles of Association (constitution).

If the NC decides to form as a Company Limited by Guarantee there are a number of practical considerations which Sue Bethell and Manon Bradley will bring to the next Ballot and the next AGM.