

# Legal Considerations for Unincorporated Associations

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## Introduction

In light of recent developments in case law, this briefing note outlines some of the legal considerations for unincorporated associations when addressing issues of liability and operational restrictions. It also suggests the use of alternative business structures to minimise potential risks of personal liability, particularly for the management committee members.

Unincorporated associations take a variety of forms. Essentially, any group of people who come together with a common purpose (not directed towards profits), and who take steps between themselves to formalise their relationships, have formed an unincorporated association. A significant proportion of unincorporated associations are private members' clubs such as golf clubs, tennis clubs, and other sports organisations.

Unincorporated associations are straightforward to establish. They are governed entirely by their constitutions and need account only to their own members. There is no need to register the existence of an unincorporated association, and no need to produce or publish any form of financial accounts (other than where the association is a charity, or to the extent needed to comply with tax law requirements). Historically, this form of association has afforded huge flexibility. Groups and clubs have been formed to undertake many kinds of activities, entirely free to organise and regulate themselves as they see fit. Recently, however, a number of claims for damages against unincorporated associations have thrown a sharp focus upon the personal liability of members involved in these associations.

## Personal risk

Unlike companies and other corporate bodies, unincorporated associations have no separate legal identity. This means that an association:

- is unable to enter into a contract in its own name;
- cannot itself be liable for crimes committed in its name;
- cannot itself be liable for any harm caused to a third party; and

- is unable to hold title to land or buildings in its own name.

This means that the association's office-bearers and other members of the management committee (and in exceptional circumstances the wider membership) are likely to be personally liable for actions taken in the association's name. This is of particular concern to club secretaries or treasurers, who often enter into substantial contracts on behalf of their association. Many will be unaware that by signing on the association's behalf they may have become personally liable for fulfilment of the contract, and that therefore their own personal assets could be at risk.

Similarly, association members can be held liable for damages claims from third parties. Also, in a recent case, the treasurer and chairman of a golf club were prosecuted personally by the Environment Agency, following environmental breaches committed by their club. In serious cases, such prosecutions carry the risk of substantial fines, and even prison sentences, for the individuals involved.

## Company limited by guarantee

In light of these potential risks for members, you may wish to consider incorporating your association as a company limited by guarantee. Such a company would have its own legal personality, which means that it would enter into contracts in its own right, be capable of holding title to land and buildings, and would itself be liable for injury or damage caused to third parties. Any employment law claim would lie against the company, as employer. Also, in the event of criminal prosecution, companies are liable for their own fines.

Members of the association would normally become members of the company limited by guarantee. Unlike companies limited by shares – the best known form of company – members do not subscribe for shares in the company. Rather, they provide the company with a guarantee (through the terms of a clause contained in the constitution of the company) to make a contribution if the company is wound up. Typically, this is a nominal sum of money, such as £1 each.

The use of a company limited by guarantee therefore provides an effective means of minimising the liability of the members against any number of potential claims. It is particularly useful if your association has, or intends to:

- take on employees;
- apply for grants, or raise loan finance;
- enter into contracts which are of a long-term nature or involve significant financial outlays or risks; or
- take on a lease or buy property.

Your association will have a management committee, and it may have a relatively informal constitution. In a company limited by guarantee, the constitution of your unincorporated association would be set out in documents (available for public inspection through Companies House) called the memorandum and articles of association. The additional formality within the memorandum and articles - combined with the detailed framework laid down by the Companies Acts - helps to minimise the disputes and misunderstandings on constitutional issues and decision-making procedures which emerge from time to time within many unincorporated associations.

### Charitable status

If an unincorporated association has charitable aims, and those objects are for the public benefit, it may be appropriate to take the opportunity to apply to the Office of the Scottish Charity Regulator (OSCR) for charitable status. Charitable status brings with it a number of advantages (additional to those which a sports club may enjoy through Community Amateur Sports Club status), but consideration also needs to be given to the additional legal and administrative requirements which would then apply under charity law.

Unincorporated associations may also have trading activities which - although contributing income to support the association's activities - are not carried on in direct furtherance of the charitable aims. That may - depending on the level of turnover associated with those activities - raise complications in the context of an application for charitable status, although there are ways in which that can be addressed.

This briefing note sets out a summary of the law at the time of writing and is for information purposes only. It should not be regarded as legal advice but if you would like further information please contact:



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