

# RUGBY FOOTBALL UNION

## Detailed guidance for clubs wishing to register as a charity

### 1. Registering as a charity

- 1.1 If your club registers as a charity it must realise that this step is irreversible. Once assets are committed for charitable purposes they cannot be transferred to a non-charity unless this is for full market value. This means that if in the future the members of your club no longer wished it to be a charity they would have to buy the assets from the charity for the full market value. The charity would then have to distribute the funds raised for charitable purposes. It is therefore important to read this guidance carefully.

#### *Conversion to a Charity*

- 1.2 If your club is not a CASC it could convert to a charity if it is set up as:
- 1.2.1 a company limited by guarantee by amending the constitution and registering with the Charity Commission (provided it has a minimum turnover of £5,000 per annum). Further information is provided [here](#).
- 1.2.2 a community benefit society by amending the rules. If the community benefit society has a turnover of more than £100,000 per annum it must register with the Charity Commission. Community benefit societies with a turnover of less than £100,000 per annum are currently classed as exempt charities and cannot register with the Charity Commission. Instead, HMRC will register the club as eligible for charitable tax reliefs. It is likely that in time all charitable community benefit societies will have to register with the Charity Commission if their turnover is more than £5,000 per annum.
- 1.2.3 an unincorporated association (that does not wish to incorporate); by amending the constitution and registering with the Charity Commission (provided it has a minimum turnover of £5,000 per annum). Please read the guide on [incorporation](#) as it is strongly recommended that unincorporated clubs incorporate as either a company, a co-operative society or a CIO (see below).
- 1.3 An alternative now available for clubs wishing to incorporate and to achieve charitable status is to register as a charitable incorporated organisation (**CIO**). The CIO is a new corporate structure specifically designed for charities and the process of incorporation is similar to that described below. You can read more about CIOs [here](#).
- 1.4 If your club is currently registered as a CASC it cannot change its constitution and re-register as a charity. Instead you will need to set up a new charitable club and transfer the assets and undertaking across. This can be achieved without tax cost.

#### *Criteria for registration*

- 1.5 The Charity Commission has a strict view about what types of community clubs will qualify for charitable status and this is followed by HMRC when registering exempt charitable community benefit societies (see paragraph 1.2.2 above). This is set out in their Guidance Note RR11, (<http://www.charitycommission.gov.uk/publications/rr11.asp>) which is currently under review. However, as it stands the club must comply with the following:
- 1.5.1 Open membership, i.e.:
- Facilities have to be open to all;

- First come must be first served if there is a waiting list;
- Membership must be affordable;
- There must be no test of skills for admission.

#### 1.5.2 Coaching:

- May be given if available for all levels of skills and can assist the better players provided this is not to the detriment of the others.

#### 1.5.3 Competition and team structure:

A charitable sports club:

- Can run competitive teams, leagues and ladders;
- Can allocate facilities to allow competitive teams to train, play etc;
- Must always bear in mind that the club is promoting community participation and therefore gives equal treatment to less skilful and less competitive players.

#### 1.5.4 Playing and non-playing:

- A charitable sports club cannot have a separate group of social members as such (see below).
- The bar must be run through a separate trading company (unless turnover from the bar is the lower of £50,000 or 25% of turnover).

#### 1.5.5 Amateur:

- Players must not be paid by the charity but expenses can be reimbursed;
- Player-coaches can be paid to coach.

See below about the possibility of players in the first XV receiving payments from the charity's wholly owned trading subsidiary. Players would however remain members of the charitable club.

#### 1.5.6 Have an appropriate constitution:

- For example, a charitable sports club cannot make distributions to members and surplus assets on winding up must go to another charity.

The RFU has prepared a template [Articles of Association](#) (based on a model approved by the Charity Commission) for a charitable rugby club.

### ***Running a Bar***

- 1.6 If your club has a bar, this will need to be run through a separate wholly owned trading subsidiary unless the turnover is the lower of 25% of the club's turnover or £50,000. This is because charities can only undertake non-charitable trading that does not further their objects if it falls within a tax exemption (see below for more details about setting up a trading subsidiary). Otherwise it will pay tax on the bar profits.

### ***Social Membership***

- 1.7 The focus of a charitable club must be on promoting community participation and not providing social facilities.
- 1.8 A charitable club can have non-playing members if they fall into one of the following categories:
  - 1.8.1 Volunteers and helpers who assist with running the club;
  - 1.8.2 Supporters who help the club raise funds and provide a pool from which the volunteers are drawn;
  - 1.8.3 Parents of junior members;
  - 1.8.4 People who still wish to be associated with the club but for reasons of age or ill health are no longer able to play.
- 1.9 In practice this means that all non-playing members other than the categories specifically mentioned above must be associate (i.e. non-voting) members of the trading subsidiary and not members of the charitable club.

Hence only those who play and/or volunteer (or, in the case of parents of junior members, represent those who play) can be members of the charitable club. The Charity Commission recognises that those who continue to wish to be associated with the club but for reasons of age or ill health are no longer able to play can also be members of a charitable club. Those who do not fall within these categories have to be associate (non-voting) members of the trading subsidiary. The club will have to have a system whereby it keeps records of those who had volunteered, and only renewed membership if say the individual had volunteered for the club in the previous year.

## **2. Advantages of registering as a charity rather than a CASC**

- 2.1 Charities which are formally recognised as charities for tax purposes by HMRC enjoy more extensive tax reliefs than CASCs. The additional reliefs include:
  - Exemption from Corporation Tax on all profits derived from a trade in fulfilling its charitable purposes.
  - In practice profits from non-charitable trading will not be taxed if a trading subsidiary is used (see below).
  - Exemption from Corporation Tax on profits not derived from fulfilling its charitable purposes on the lower of 25% of turnover or £50,000.
  - Companies can make gifts to the club under GiftAid as well as individuals.
  - Individuals and companies can obtain tax relief for gifts to the club of land and quoted shares.
  - Charities are exempt from paying Stamp Duty Land Tax on property purchased for charitable activities.
  - Charities benefit from VAT reliefs e.g. exemption in relation to fund raising events and zero rating of the construction cost of new sports buildings.

- For a comparison of CASC and charity status see [here](#).

### **3. Disadvantages of registering as a charity include:**

- 3.1 A charity is regulated by the Charity Commission (unless it is exempt- see paragraph 1.2.2) and must submit accounts and annual reports to them. The Charity Commission has wide powers to investigate and intervene in the running of the club if it believes it is not acting in accordance with its charitable purposes.
- 3.2 Charities are also limited in the activities that they can undertake. In particular, some types of fundraising and commercial sponsorship will be classed as non-charitable trading. These would need to be run through a wholly owned trading subsidiary unless they fell within one of the tax exemptions available.
- 3.3 Charities have to comply with specific legal requirements, for example when disposing of property. More details can be found on the Charity Commission website at <http://www.charity-commission.gov.uk/publications/cc28.asp>
- 3.4 The membership structure of the club might have to change (see paragraphs 1.6-1.8)

### **4. Trustee Benefits**

- 4.1 The management committee, directors or board that are responsible for the running of the club will be charity trustees. The general rule is that trustees must not benefit from the charity, unless the benefit is sanctioned by the charity's constitution, statute or the Charity Commission.
- 4.2 A charity's constitution will ordinarily limit the benefits which trustees and people connected to them can receive from the charity. This includes benefits received from the trading subsidiary. The RFU precedent allows trustees to receive the following benefits (this list is not complete):
  - Reimbursement of expenses
  - The ordinary benefits of membership of the club
  - Payment for goods or services provided to the club by a trustee provided they are not employees and provided they do not participate in the decision.
  - Payment for goods or services to a connected party (including via a contract of employment) provided the trustee concerned does not participate in the decision.

Crucially the constitution limits this to ensure that at least half of the trustees do not receive payments for goods or services themselves or via a connected party.

- 4.3 The Charity Commission would also expect that where a trustee/connected party benefits it is clear that the charity has ensured that the services are necessary for the charity and are on the best terms possible for the charity.

This means, for example, that if one of the trustees has a son who is paid to coach the first team, there will need to be evidence that this job was properly advertised, that the conflicted trustee did not participate in this decision and that no more than half the trustees are being paid for services (either themselves or via connected parties).

## **5. Getting the relationship with the trading company right**

- 5.1 As discussed above, if your club runs a bar, wishes possibly to pay some players (see below) accepts sponsorship or undertakes any other non-charitable trading that does not fall into a tax exemption then it will need to set up a wholly owned trading subsidiary. It is important to get this right as a charity cannot cross-subsidise the trading subsidiary. This means that:
- 5.1.1 The club must cross-charge for any services it provides to the trading company, for example, staff, use of facilities, administrative services such as payroll etc. In these circumstances the club should have a framework agreement governing how these charges are calculated. Usually, in these circumstances, the trading subsidiary is recharged at cost. It should be noted that there will be VAT to pay on this cross-charge unless a VAT group is set up. This is usually possible where the club is sole company law member of the trading subsidiary. However an unincorporated club cannot form a VAT group with its trading subsidiary.
- 5.1.2 If the charity is going to loan the trading subsidiary any start-up capital, this must be on an arm's-length basis. The charity must charge a commercial rate of interest and must take a floating charge over the assets of the trading subsidiary which is registered at Companies House.
- 5.1.3 The charity would have to charge the trading subsidiary a commercial rent or licence fee for use of its facilities. This income is tax free.
- 5.1.4 The trading subsidiary can then pay up any profits under Gift Aid, within 9 months of its year end, thereby not paying tax on them. Alternatively, if it needs to retain some profits for working capital it can do so and pay tax on these.
- 5.1.5 The charity would have to license the trading company to use its name and logo and the trading subsidiary would need to pay a royalty for this. This is usually structured as a tax exempt annual payment and is dealt with in the cost sharing agreement mentioned above. However, note that it is important to have this licence fee in place because otherwise donations from the trading company to the charity could be challenged as taxable payments for use of the name and logo.
- 5.1.6 The charity receives 80% mandatory, and may get a further 20% discretionary, rates relief on property used wholly or mainly for charitable purposes. If any areas were exclusively used by the trading company these might lose rates relief. Also, the charity would need to demonstrate that 51% of the usage of shared facilities by the charity (for community rugby).
- 5.1.7 If the social members were not going to be members of the club, but associate members of the trading subsidiary, you will need to check the terms of the club's alcohol licence to ensure this doesn't cause any difficulties.
- 5.2 You would need to ensure that the trading subsidiary uses its own separate headed notepaper and actually undertakes the activities of say running the first team (if any of the players are paid) and the bar. For example, the trading subsidiary would need its own bank account and payments/expenses relating to the activities it is running would need to be invoiced by the trading company and come out of its bank account. This requires those running the club to understand the nuances of the structure.

## **6. Possible payment of players**

- 6.1 Charitable clubs can only support and fund amateur sport where players are unpaid.

6.2 It may however be possible for some clubs to reward first team members via their wholly owned trading subsidiary if they can demonstrate on a commercial basis that these payments will benefit the club and help it to promote community participation in rugby. This might be the case where the club can show that paying the first team players a small amount to continue to play for the club will increase the clubs revenue from gate receipts, sponsorship and bar income. It is important that any decision is carefully considered and the reasons accurately recorded in the minutes, to demonstrate that the focus of the decision making process was on participation and not on the success of the first team. The policy should also be reviewed regularly to ensure that payment continues to be justifiable.

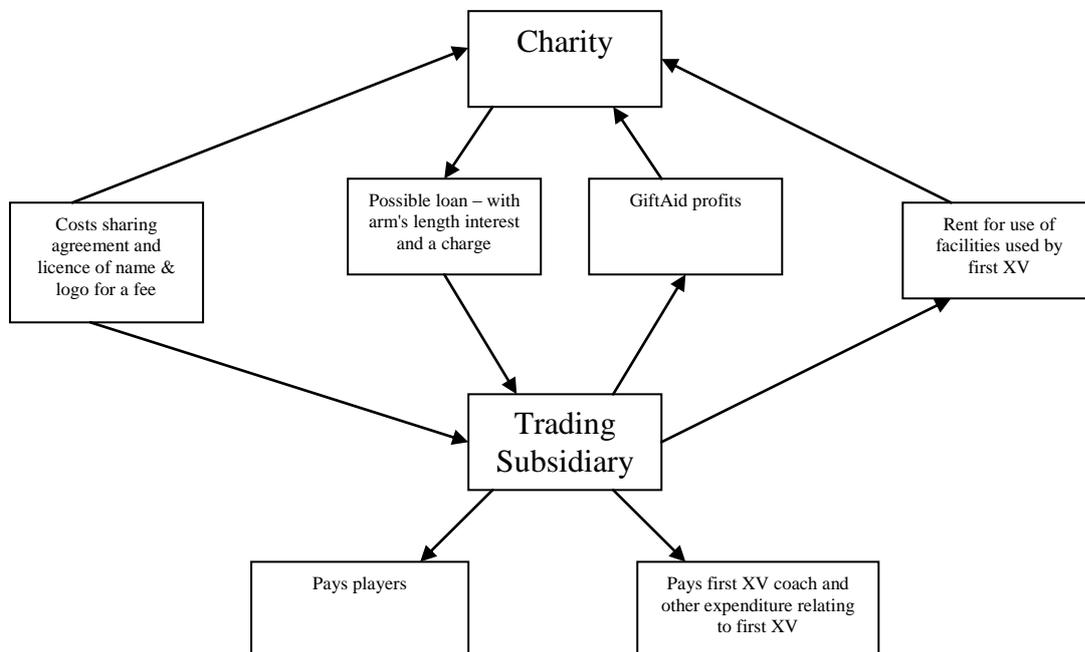
6.3 If some or all of the first XV are paid by the trading subsidiary, this will mean that:

6.3.1 The subsidiary should pay the charitable club a market rent for any areas of the club's premises used exclusively for the first XV, this means rate relief will not be available on these areas;

6.3.2 The subsidiary must pay for the costs associated with the first XV, for example:

- Coaching;
- Use of shared facilities (at a market rent);
- Pitch improvements required to assist the first XV to rise through the leagues;
- First XV travel expenses.

6.4 The following diagram illustrates the structure:



6.5 The Charity Commission has indicated that it will consider such payment of players on a case by case basis.

## 7. Sponsorship

- 7.1 Sponsorship covers a number of activities. A charitable club will need to be aware of these issues. Tax treatment of payments received by a charitable club under a sponsorship arrangement will depend on the nature of the arrangements. Just because a sponsor derives publicity or public relations benefits from payments to a charitable club does not automatically mean that payments by the sponsor are trading income in the hands of the charitable club.
- 7.2 If the charitable club does not provide services in return for the payment, sponsorship payments will normally be treated as a charitable donation, rather than trading income. Even if the business sponsor takes steps to publicise or exploit the affinity with the charitable club, this will not change the treatment of the payments unless the charitable club also publicises the sponsorship itself.
- 7.3 If the charitable club provides some services in return for the sponsorship payments, this still may mean that the payments can be treated as a donation. Provided that references to the sponsor amount to no more than an acknowledgment of the sponsor's contributions they would not cause the payments to be regarded as trading income. However, reference to a sponsor which amount to advertisements will cause the payments to be treated as trading income. HMRC will regard a reference to a sponsor as an advertisement if it incorporates any of the following:
- large and prominent displays of the sponsor's logo;
  - large and prominent displays of the sponsor's corporate colours; or
  - a description of the sponsor's products or services.
- 7.4 On the other hand, if a project organised by a charitable club is sponsored by a well-known company and an acknowledgment of the support of this company is in the form of its name and logo inserted in the corner of a project report, this would not be considered to be advertising. However, if the name and logo are substantially widely displayed throughout the report, this might be considered to be advertising in return for the sponsorship payment.
- 7.5 If a charitable club licenses its logo in return for payment by a business as an endorsement for one or more of the business' products or services, the payments are likely to be trading income of the charitable club. However, provided the payments are structured as annual payments, then they can be used by the charitable club, tax free. This is a technical area and specialist professional advice is always necessary as the devil lies in the detail and each case depends on its facts.
- 7.6 Where a club receives sponsorship income which would otherwise be taxable it should consider whether the sponsorship arrangements should be made through its trading subsidiary. This will be particularly important where the sponsorship is linked to the players, for example shirt sponsorship of the first XV who are paid through the subsidiary.
- 7.7 In some circumstances third parties may make payments to individual players so as to sponsor those individual players. If this is done, such a payment or relationship must be entirely separate from the charitable club. In addition, the charitable club must ensure that the third party/sponsor receives no advertising or other benefits from the charitable club in return for any support provided by it to individual players.

**8. Steps to be taken to achieve incorporation**

Further information on the steps to be taken to achieve incorporation as either a [charitable company limited by guarantee](#) or [CIO](#) is available.

**9. Further advice**

This publication is a general summary. It should not replace legal advice tailored to your club's specific circumstances. Please note the importance of seeking legal and tax advice when deciding how best to use the template documents for incorporation.

Guidance prepared by Farrer & Co LLP, incorporating guidance previously prepared by Bates, Wells and Braithwaite LLP