



# **Club Status**

## **Club Guidelines**

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## **Club Status**

### **1. Introduction**

This document is for Club Officers. It examines the advantages and disadvantages of different types of club status:

- Ordinary climbing club (this is known as) unincorporated association
- Company limited by guarantee
- Community amateur sports club (CASC)
- Charity
- Industrial and provident mutual society

These guidelines should not be regarded as definitive. They are intended to raise awareness amongst clubs about issues to consider and thus help club officers think about what kind of legal status is most appropriate for their club. There are many differences between clubs which will affect what kind of status best suits them. Some considerations when thinking about club status:

- Does your club own assets, especially climbing hut(s)?
- Are your club officers in the position of signing contracts or making undertakings on behalf of the club?

### **2. Unincorporated Association**

Most mountaineering and hill walking clubs are unincorporated associations. One effect of this is that they have no legal personality of their own, unlike companies limited by shares or guarantee (or partnerships in Scotland, but not in England & Wales). In the case of unincorporated clubs which have huts, this is the reason why title to the huts can not be held in the name of the club, but rather has to be held in the names of individual members who will act as hut trustees. It is also the case that contracts can't be entered into by unincorporated clubs. They can only be signed by individual members on behalf of a club and in law that person is then liable for the contract; not the club on whose behalf the contract was signed.

Similarly, in the case of a liability claim, an unincorporated body can not be sued, so, in practice, the claimant would address a claim to a limited number of individuals. For example, in the case of a claim involving an accident at a hut, as the claim can only be addressed to individuals, it might be addressed to the hut warden and/or officers and/or committee members and/or trustees, even though some or all of these people may not have been involved in any act of negligence. In the exceptionally unlikely events of the claim not being met by the insurance, or the insurance being insufficient to meet the claim, settlement may fall as an equal share on all club members.

In these days of increased litigation some clubs have sought to incorporate themselves in some way so that the club itself can enter into contracts or be the author or object of a legal action.

It may well be that clubs which do not have huts and do not have to enter into complex contracts will consider that unincorporated association suits their needs

and that the combination of good safety policies plus the Civil Liability protection offered by the BMC provides reassurance. Members of a committee, hut wardens and club members who are sued individually because this is the only way in which the club can be sued, are covered by free Civil Liability protection as part of their affiliation to the BMC.

### **3. Other types of club status**

For clubs that want to provide additional protection for their officers and members, especially if they operate several huts or frequently find themselves entering into legal contracts for any reason, there are five options, see sections a to e below:

#### **a. Extra Insurance**

The insurance cover limit, at time of writing, is £10,000,000 which has been recommended by BMC brokers Perkins Slade who monitor insurance claim settlements and awards.

One option for clubs who feel that they need it is to obtain extra insurance. This option provides extra financial protection, rather than limiting liability.

Further protection in the form of specialist Professional Risks, Management Risks, Social Welfare Risks and Property / Liability Risks can be purchased from insurance brokers.

#### **b. Company Limited by Guarantee**

Clubs may incorporate themselves by registering as a company limited by guarantee. A company limited by guarantee has no share capital. The members guarantee that in the event of the company going into liquidation as a result of a claim which isn't met by the insurance they will each contribute a specified amount, say £5. Thus, their liability is limited to £5.

It is important to bear in mind that it is only the members whose liability is limited. The company's liability is unlimited. So, for example, in the case of a liability claim which was not met by the insurance cover, or was greater than the insurance cover (currently a £10,000,000 limit) all the club's assets, such as a club hut if owned by the club, are available to meet the debts (but no member would be liable for, in this case, more than £5, to meet any further shortfall.)

The costs involved may vary according to the administrative complexities of the club. Individuals can carry out the registration themselves or have this carried out by an intermediary such as an accountant.

For clubs which own huts, the main disadvantage with this route can be that, in transferring ownership of their hut to the newly formed company, there can be a prohibitively sizeable stamp-duty land tax and capital gains tax bill. This will vary according to the number of huts the club owns and the value of its property or properties. Valuations can give clubs an indication of this.

### **c. Charitable Status**

A new Charities Act was published in 2006 with provisions which could benefit climbing clubs in terms of providing a legal entity which could enter into contracts (and which could be sued as an entity in the case of a claim of liability).

There is potential for some tax benefits and this route provides some protection, including limiting the liability of officers and members.

There are other considerations:

The club must have a charitable objective and its ethos and rules of membership must be acceptable to The Charities Commission.

The club must submit annual accounts to The Charities Commission and club funds need to be managed in a way which complies with Charities Commission rules, which are extensive.

See <http://www.charity-commission.gov.uk/supportingcharities/default.asp>

### **d. Industrial and Provident Mutual Society (IPMS)**

An industrial and provident society is an organisation conducting an industry, business or trade, either as a co-operative or for the benefit of the community, and is registered under the Industrial and Provident Societies Act 1965.

Co-operative societies are run for the mutual benefit of their members, with any surplus usually being ploughed back into the organisation to provide better services and facilities.

Just like a company limited by guarantee, this type of entity can provide the protection and reassurance of limited liability for all members and officers. The club exists as a separate entity and contracts can be entered into in the name of the club (rather than club members). In the event of a claim against the club, individual members need not be named (unless there has been gross negligence by an individual or individuals).

For clubs which own assets in the form of huts, one major benefit is that there are not the stamp-duty or capital gains tax costs involved in transferring ownership.

IPMSs are overseen by, and must be registered with, The Financial Services Authority. Information can be found by following [http://www.fsa.gov.uk/Pages/Doing/small\\_firms/MSR/Societies/index.shtml](http://www.fsa.gov.uk/Pages/Doing/small_firms/MSR/Societies/index.shtml) (or, if the link is changed by the FSA, by entering "Industrial & Provident Societies" into the search facility on [www.fsa.gov.uk](http://www.fsa.gov.uk) )

There is a fee for registration, plus an annual fee and the rules of the club must be acceptable to the FSA. (Note that all rule changes, including minor, day-to-day ones, need to be adopted at the club's AGM and submitted to the FSA, so clubs considering this route should consider re-writing their rules, changing some to "byelaws" and creating a rule which allows modification of bye-laws, for example by the club committee, as these do not require time-consuming submission to the FSA). There can also be associated costs in making rule changes as these need

to be accompanied by a declaration which is made in front of a commissioner for oaths, notary public, justice of the peace or a solicitor.

Management structures and organisation of the club do not need to change. Membership of the club can remain open, subject to agreed restrictions.

There are counter-balancing considerations, including the cost of registration (£950 in 2008) and the annual fee, the duty to keep proper accounts and submit these annually to the FSA and the considerable care required (or legal advice) in re-writing constitutions to ensure that the club's rule's fit FSA requirements in the present and into the future.

Furthermore, in order to de-register, the club needs to be wound up, though this is less likely a scenario for larger, established clubs for whom this may be a financially viable option.

A number of clubs which have taken this route have been highly complimentary of the helpfulness of the FSA staff in exploring and following this route, but it is not without costs. Its suitability may depend on whether or not the benefits are worth it to your club.

#### **e. Community Amateur Sports Club (CASC)**

The BMC Huts Group has produced an informative document about the advantages and disadvantages of this type of status and this document can be found here

[http://www.thebmc.co.uk/bmcNews/media/u\\_content/File/clubs\\_huts/huts/factsheets/hut\\_Factsheet1.pdf](http://www.thebmc.co.uk/bmcNews/media/u_content/File/clubs_huts/huts/factsheets/hut_Factsheet1.pdf)

There are some tax advantages for clubs, but the process of registration as a CASC is irreversible (except for expulsion – with potential tax penalties).

CASCs do not provide the advantage of limiting liability for members and officers.

See <http://www.hmrc.gov.uk/CASC/index.htm> which includes a CASC info website detailing model constitutions etc.

#### **4. Summary**

Which status is best for your club? The answer is “It depends”.

To try to help illustrate, here is a true example:

A BMC member is a committee member of 4 different BMC-affiliated organisations.

The first is a large, guide book-producing club with 7 huts. The management matters of the club are of such a complexity that the club felt that the costs involved in converting to an IPMS were worthwhile.

The second is a professional association, which does not own huts, but provides its qualified members with a group professional indemnity insurance policy and is moving towards on-line payment capabilities for its members on its website. The

personal financial guarantees required of its treasurer just for this last development are one of several reasons that the association is, at time of writing, investigating the company limited by guarantee route.

The third and fourth are small (20+) and small/medium (60+) clubs which remain unincorporated associations. Both have safety policies in place and both are protected by the BMC Civil Liability policy; a state of affairs which is entirely comfortable for the committee member involved.

## **5. Further Information**

**Hut Guidelines** <http://www.thebmc.co.uk/Feature.aspx?id=1373>

- Civil Liability Insurance document
- Community Amateur Sports Clubs document
- Hut Trustees document