

Questions & answers.

Members are invited to ask questions via any of the usual communication channels. Identities will be confidential only the question and answer will be published.

Question

Legal Status

Are not being a Corporate Body and not making formal contracts advantages or drawbacks?

Answer

Potentially both, hence it appears on both sides of the table on page 2 of the Club Governance document.

As an Unincorporated Association, the Club cannot effect legal action for unfulfilled contracts because it does not have the legal capacity to contract. This would be considered a disadvantage. A recent example is where the hire company contracted to provide the portable toilets for the Bedford Harriers cross country at Sharnbrook failed to provide them. Had the Club suffered losses of either, or both, reputation and financially, the Club would have been unable to pursue litigation for damages. The only option would be for the individual, contracting on behalf of the Club, to effect litigation in their own name.

Similarly, the Club may face litigation from an aggrieved party; perhaps in the event that a race that the Club had organised were subsequently found to be short or over distance (where liability insurance would not extend.) In this instance, it would be difficult for the aggrieved party to effect the litigation since the Club has no legal capacity to contract and therefore redress would have to be sought against individual members, an unlikely scenario. This could be considered an advantage.

Question

Legal status

Is the ability to sue/not sue just for debts or does it go wider than that?

Answer

It goes wider than that; litigation can extend to actions for slander, negligence, duty of care, fraud, criminal acts, misrepresentation, passing off, plagiarism, copyright infringement; and doubtless there are others.

Question

Legal status

We mention EGMs, but we only have SGMs in our rules. Is there a precedence, or are they the same thing?

Answer

They are the same thing, where EGM is mentioned in the Club Governance document this should read SGM.

Question

Corporation Tax

Our accounts are audited at the end of each calendar year - should our auditors have picked up the need to pay Corporation Tax?

Answer

The Club accounts are audited at the end of each year however the audit is to check that the ledgers balance and that there are no discrepancies and it is not intended or expected to meet the more exacting statutory auditing requirements.

Question

Corporation Tax

What/why are we registering with Companies House? Can we do this ahead of the SGM?

Answer

Following consultations with a local accounting company during July and September 2015 the Club wrote to HM Revenue & Customs in November 2015 outlining the Club's concerns in respect of Corporation Tax liability. HM Revenue & Customs responded in December 2015 advising the Club to register with Companies House enclosing a form IN01 for the registration of a company. The form was duly completed and submitted to Companies House even though the form did not appear appropriate for the Club's circumstances as an Unincorporated Association. The registration was subsequently rejected by Companies House as was expected.

As per section one of the Club Governance document changing the Club's status from an Unincorporated Association to a Company Limited by Guarantee, (registered as such with Companies House) will not only amend the Member's potential personal liability from unlimited to limited to £1 per member but will also allow the Club to meet its obligations to be able to pay Corporation tax. It appears that there is no mechanism for registering with Companies House as an Unincorporated Association. The Club's legal status cannot be changed without the Membership agreement. Therefore, we cannot register in advance of the SGM.

Question

Corporation tax

Is the VAT threshold the same as for Corporation Tax?

Answer

No, the VAT threshold and Corporation Tax threshold are different and they are entirely different taxes.

Briefly, the currently threshold for registering for VAT is £83,000.00 based on annual turnover for trading companies. There is no threshold for Corporation Tax, tax is due on all profits for trading companies subject to various exemptions and reliefs.

Question

Corporation tax

Summary in the case law citation only relates to Membership, not to non-members activities; VAT Notice 701/45 seems to indicate that social membership of a club (for example) is not exempt

Answer

The case law has been quoted as part of the advice the Club received, but without further information it cannot be certain of the degree of relevance. For example, it is not known if the club concerned was already an eligible body.

The Club does not currently offer social membership and neither does the proposed new Club Constitution plan to offer social membership. A member may choose not to take up the full rights available to them, but those rights are available to all members.

For tax purposes, where the Club has junior members that do not have a vote, they are considered full members when calculating full membership.

Question

Corporation tax

Are we not yet liable for the CT from calendar year 2015?

Answer

Yes, we are. When the Club Governance document was first drafted in 2015 it took account of the data available to the end of 2014. Subsequently the document was amended to include the 2015 figures in the table on page 5 however the opening sentence in the Summary paragraph ought to have been amended to read The Club's current estimated Corporation Tax liability amounts to £19,658.64 as at the end of 2015.

Question

CASC

Would a trading body effectively gift aid all its surplus to the Club, and offset that gift aid against Corporation Tax?

Answer

Yes, a trading subsidiary 100% owned by the Club would gift aid its surpluses to the Club and offset that gift aid against Corporation Tax. Here is the relevant extract from the HMRC website. '2.23.5 Trading subsidiaries owned by CASCs may be able to benefit from corporate Gift Aid on donations made to the CASC. Donations made under [corporate Gift Aid](#) can reduce the profits chargeable to CT.'

Question

CASC

"Should the club exceed the £50,000 trading turnover limit ..." should be £100,000?

Answer

*Yes, quite correct - 'Should the Club exceed the £50,000 trading turnover limit the Club faces CASC Deregistration and may be asked to pay Corporation Tax and interest if applicable.' Should read 'exceed the £100,000 trading turnover limit'
The £50,000 trading turnover limit applies to the tax exemption available. The £100,000 trading turnover limit is the potential de-registration actuation point.*

Question

CASC

How do we prove that we have 50% participating membership?

Answer

*Whilst it is known that not all members participate in training or races, it can be demonstrated from data held for awards that in excess of 60% of members enter qualifying (for award purposes) races. Further analysis of website results would demonstrate a higher participation in racing from non-qualifying (in respect of awards) races and events.
It is likely that the Club also has members that coach and/or train but may not race, – there is no data for this; it would increase the administrative burden to produce, but it would be possible to introduce a signing-in method if it were deemed necessary to further demonstrate participation. Members who coach officiate etc. at races, but do not otherwise participate in training or racing can also be considered participating members for this purpose.
All this means that participating members are likely to be a very high percentage of the Club membership.*

Question

Constitution

Does this replace the rules? If not, which takes precedence (incidentally, we could do with updating the rules - we still refer to the AAA and WAAA!)?

Answer

It is intended that the proposed constitution replaces the existing 'Rules Of Bedford Harriers Athletic Club (Last amended 25th March 2015)' currently published on the Club website. The proposed constitution is intended to meet the requirements of CASC registration and provide a framework for the management of the Club whilst leaving the day to day management to the elected Committee.

Question

Constitution

Club committee - there are six Honorary Officers listed, not five.

Answer

The Club Governance document requires amendment to read six instead of five:- 'The day-to-day management of the Club shall be deputed to a Committee consisting of six Honorary Officers.'

Question

Constitution

Have we gone away from trying to get the committee minutes out to the membership ahead of the next meeting?

Answer

No. The current practice is, and has been for some considerable time, for the minutes of a Committee meeting to be circulated to the members of the Committee, prior to the next Committee meeting in order that the minutes from that first meeting can be agreed as a true and accurate record of the meeting, at the second meeting prior to publishing to the membership. E.g. Minutes from the July Committee meeting will be circulated to the Committee prior to the Committee meeting in August, agreed as a true and accurate record (or not) at the August Committee meeting and published to the membership following the August Committee meeting. The proposed Constitution maintains the current practice.

Question

Constitution

We say the committee has the power to make Club rules, but Club rules says this is done by AGM/SGM. If the committee changes the rules then the members need to be informed, as well as the rules being available.

Answer

The proposed Constitution does empower the Committee to make club rules and regulations; the relevant extract follows;

- (a) make Club Rules and regulations to allow for the day to day operation of the Club and its activities. Such Club Rules may not supersede or contradict provisions of this Constitution and must be available to Members.*

Assuming 'The current 'Rules Of Bedford Harriers Athletic Club (Last amended 25th March 2015)' are replaced by the proposed Constitution there will be no conflict between the rules made or adopted by the Committee and the proposed Constitution. Members will notice little change in the way the Club is managed.

Question

Constitution

Would the accounts of the trading body (should we go down that route) also be presented to the AGM? Will they be audited?

Answer

Yes, audited accounts of any trading subsidiary of the Club would be presented to the AGM of the Club.

Question

Constitution

Who would be the trustees (of any trading subsidiary of the Club) and how would we elect them? Is this the same for any possible trading body?

Answer

The understanding is that any trading subsidiary of the Club would be wholly owned by the Club with the Club empowered to appoint the trading subsidiary's trustees through a provision in the trading subsidiary's articles of association. The Club would be the only shareholder. In practice it is envisaged that it would be difficult to separate the Club's managing Committee from the trustees of the trading subsidiary since the Club management Committee is ultimately responsible for the actions of any trading subsidiary and has a duty of care to the membership's interests.

This is not the same for any possible trading body. The common trading organisations are;

- i) A public limited company (PLC) is the legal designation of a limited liability company which has offered shares to the general public and has limited liability. A PLC's stock is offered to the general public and can be acquired by anyone, either privately, during an initial public offering or through trades on the stock market. A PLC is managed by a board of directors that is elected by the shareholders.*
- ii) A private company is a company with private ownership. As a result, it does not need to meet the Securities and Exchange Commission's (SEC) strict filing requirements for public companies. Private companies may issue stock and have shareholders, but their shares do not trade on public exchanges and are not issued through an initial public offering (IPO). In general, the shares of these businesses are less liquid and the values are difficult to determine.*

Question

I've read the attached documents and see that a CASC focuses on the participation of the community. Bedford Harriers have always been about the participation of all no matter their ability. Will this still be the case? Is community defined as being a running community or the community of Bedford? The two aren't exclusive but I was thinking, is the inclusivity going to continue?

Answer

The inclusivity will continue. It is a condition of CASC registration that a club must be open to the whole community as per the extract below from the HMRC website, Community Amateur Sports Clubs: detailed guidance notes. The definition of 'Community' is reproduced below and the link to the information is;

<https://www.gov.uk/government/publications/community-amateur-sports-clubs-detailed-guidance-notes/community-amateur-sports-clubs-detailed-guidance-notes#become-a-community-amateur-sports-club>

Open to the whole community

2.2.1 If your club wants to be registered as a CASC you must be able to demonstrate that you're open to the whole community.

2.2.2 To be open to the whole community a club must have:

- a membership that is open to all without discrimination
- facilities that are open to all members without discrimination
- fees that don't represent a significant obstacle to membership or use of its facilities

Question

can a 'what do the proposed changes mean to me as a member' document be created and circulated?

Answer

Individual club members will be largely unaffected by the proposed changes assuming the proposals are carried. Fees will not change; training and coaching sessions will remain as they and the Club's other activities will continue in the customary manner.

The principal change that individual members should be aware of is the movement of (potential) personal liability from 'unlimited' to 'limited' to £1 per member.

With little to be contained in a 'what do the proposed changes mean to me as a member' document there are no plans to publish such a document.

Question

- there has been a substantial surplus built up over time, can it be assumed this surplus is available to settle any potential tax liability?

Answer

Yes, the surpluses retained in the Club's funds are available to settle any potential tax liability.

Please see the Note Binding on page 6 where it is indicated that there is some uncertainty over the amounts the Club might be asked to pay.

Question

- how is the cumulative surplus managed and invested? Is there a plan for this to ensure the club and its members leverage the cumulative sum to support the long-term stability of the club?

Answer

The majority of cumulative surplus is held in an interest-bearing account although returns are poor due to the low interest rates available.

In respect of supporting the long-term stability of the club, as reported in the Committee minutes of September 2015, the Club's options are limited by the current Unincorporated status but can be addressed again subject to the proposals being carried.

Herewith the extract from the September 2015 minutes.

'A suggestion to seek financial advice the best way to invest the Harriers money in reserve account. RW has contacted Shane Fereday to discuss, however as the club is not recognised as a legal body / charity investment will have to be made individually, therefore need to look at club as a legal entity around Tax etc. Financial advice has been sought, however need to complete work around CASC first then revisit.'

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