

ECB CLUBMARK GUIDANCE NOTE FOR CRICKET CLUBS

THE ECB CLUBMARK MODEL CLUB CONSTITUTION

Background

1. ECB Clubmark has a model Clubmark constitution for accredited cricket clubs. This note sets out issues for clubs to consider before adopting the model as well as information about the model itself.
2. Further guidance for cricket clubs that are part of a wider multi-sport club can be found in *Guidance Note for Multi-Sport Clubs – ECB Clubmark*.
3. Please note, the information contained in this guidance note and the appendices referred to below are intended to provide initial guidance only. The ECB and ECB Clubmark do not provide legal advice to clubs as each club is different and different circumstances will apply. It is always recommended that clubs take their own legal advice tailored to the specifics of their situation.

Initial Considerations

4. There are a number of preliminary questions for clubs to consider:
 - a. Is it appropriate for us to be an unincorporated association or would the club be better set up as a company limited by guarantee? See appendix 1 for more details.
 - b. Should we register as a Community Amateur Sports Club (CASC) with HMRC? See appendix 2 for more details.
 - c. Should we register as a charity with the Charity Commission? See appendix 3 for more details.
5. Note that there is no requirement for clubs to register as either a CASC or a charity, these are just options to consider.

What form of club is this model constitution suitable for?

6. This is a model constitution for a club set up as an unincorporated association. It includes optional wording for the club to use if you are registered or wish to register as a CASC with HMRC. If your club opts to set up as a company limited by guarantee then the contents of this model might be useful when tailoring the company's constitution for your needs. This model constitution needs amendment if the club is to register as a charity.
7. The model constitution is drafted to be user-friendly and includes footnotes to assist.

A club must reference the following requirements in its constitution:

- Adoption and implementation of the ECB 'Safe Hands - Cricket's Policy for Safeguarding Children'. (ECB Clubmark criterion 1.1)
- Appointment of a Club Welfare Officer who is required to report to the club Management Committee or equivalent. (ECB Clubmark criterion 1.2)
- Adoption of the ECB Club Inclusion & Diversity Policy (ECB Clubmark criterion 3.1)
- An open membership policy without any proposer / seconder process (ECB Clubmark

criterion 3.5)

- A recognised disciplinary process for members (ECB Clubmark criterion 3.5)
- A recognised dissolution procedure (ECB Clubmark criterion 3.5)
- Provision for juniors to be individual members of the club (ECB Clubmark criterion 3.6)
- A specific and equitable pricing policy for club members, including junior members. (Criterion 4.3)

Further points to note are:

- a. **Membership** is dealt with at clause 5 of the model constitution. It is a requirement of both Clubmark and CASC status that clubs are open to all without discrimination. This means:
 - i. No playing trials for membership;
 - ii. No proposer and seconder process;
 - iii. If there is a waiting list because membership is oversubscribed then people are admitted on a first come first served basis;
 - iv. According to HMRC's current guidance all juniors must be able to vote at general meetings. This means that either all junior members must be able to vote or if junior membership is non-voting then any junior wishing to vote must be given the option of joining as a full voting member instead. The model constitution is drafted so that any junior wishing to vote would have to join as a full member instead.
 - v. Fees should be set at a level that is not a bar to community participation.
- b. **Licensing** – the model includes optional wording for clubs that wish to apply for a Club Premises Certificate, which is the more common form of licence for clubs to hold.
- c. **Property Trustees** – if the club is an unincorporated association it cannot itself hold property. Clause 11 states that property may be held by trustees on behalf of the club, who act at the direction of the Committee. If your club holds property in a different way, for example by using a holding company, then this clause may not be required. It is important that when trustees change, the ownership of the property at the Land Registry is updated. Property Trustees should also sign a simple declaration of trust to record that they hold the property on trust for the club. Clubs should take their own legal advice on how their property is held.
- d. **Meetings** – to ensure that the club is not challenged, it is important that meetings are held in accordance with the terms of the constitution. If your current practice differs from what is suggested then this may be acceptable, but the procedures detailed in your constitution must be appropriate and applied in practice.
- e. **Amending the Constitution** – note that once the constitution is adopted then further amendments can be made either at the Annual General Meeting (AGM) or at any time throughout the year by calling an Extraordinary General Meeting (EGM). If the Club is registered as a CASC, you need to ensure that you do not amend the key parts of the Constitution required for continued registration as a CASC.

Steps to adopt the model constitution

For all clubs:

- a. Read the model carefully. Where there are squared brackets this means that either the wording is optional or there is information you need to insert.
- b. You may wish to tailor the constitution to meet your needs. The footnotes set out what wording is compulsory for CASC or Clubmark.
- c. The footnotes are there to provide guidance on completing the constitution and should be removed from the final version, as should all squared brackets.

For new clubs:

Those wishing to form the Club should adopt the constitution at an initial meeting convened for the purpose.

For existing clubs:

You will need to follow the procedure for amending your constitution as set out in your current constitution.

Appendix 1

Unincorporated association or company limited by guarantee

The model Clubmark constitution is for an unincorporated association.

a. Unincorporated Association

Many cricket clubs are already set up as unincorporated associations and this has the advantage of being a simple and flexible form.

Other advantages of being an unincorporated association include:

- i. The club need not comply with company law and is not regulated by Companies House;
- ii. There is no requirement to update Companies House when committee members change or to submit accounts.
- iii. The club has more flexibility to set out in its constitution its own procedures for organising and holding meetings. Clubs set up as a company must follow statutory procedures, for example, allowing members to appoint a proxy is compulsory.

b. Company Limited by Guarantee

The advantages of the club being a company limited by guarantee include:

- i. In general, any liability the club incurs will be limited to the club's assets, if

it is a company. With an unincorporated association, the committee and members could potentially be responsible for liabilities the club incurs if the club does not have sufficient funds to meet these liabilities or if they are not covered by insurance.

To give an example, where a club is sued for unfair dismissal by an employee and is ordered to make a payment to the former employee, if the club is a company and it had insufficient funds to meet the payment the employee would not be able to make a claim against the members of the management committee personally. In the case of an unincorporated association the committee and the members could be personally liable to meet any shortfall.

ii. As a company, the club can hold property in its own right and there is no need for land to be held by holding trustees or a holding company on the club's behalf.

c. If you do not wish to register the club as a company it is especially important to ensure that the club has sufficient and adequate insurance in place. Where the club is entering into contracts you should also seek to limit liability, for example by including a clause in the contract stating that the liability of the club is limited to the assets held by or for the club.

d. Clubs set up as unincorporated associations that wish to incorporate as a company need to set up a company and transfer assets across. Legal advice is advisable to ensure that this proceeds smoothly and no tax is incurred on transfer.

Appendix 2

Registering as a CASC

Clubs should consider whether they wish to register with the Inland Revenue as a Community Amateur Sports Club. The model constitution includes wording that must be adopted if a club wishes to register as a CASC.

a. The advantages of registering as a CASC include:

- i. Various tax reliefs for the Club including 80% mandatory and the potential for a further 20% discretionary rates relief.
- ii. Various tax reliefs for donors including gift aid on donations from individuals (but not subscriptions) and inheritance tax relief.

b. The disadvantages of registering as a CASC include:

- i. The requirement to register with HMRC and the need for ongoing compliance with CASC requirements;
- ii. A CASC cannot pay players to play. Players can only be paid to coach or for providing other services to the club. Some clubs see this as a disadvantage.
- iii. A club cannot de-register as a CASC and may face a tax charge if they

cease to comply with CASC requirements.

- c. More information can be found at: www.cascinfo.co.uk

http://www.hmrc.gov.uk/casc/casc_guidance.htm

www.ecb.co.uk/development/facilities-funding/saving-money-and-managing-resources

Appendix 3

Registering as a Charity

As an alternative to registering as a CASC, clubs can instead register as a charity.

- a. The advantages of registering as a charity include:

- i. More extensive tax reliefs than those available to clubs registered as CASCs. Like CASCs, charities enjoy 80% mandatory and the potential for a further 20% discretionary rates relief and gift aid on donations (but not subscriptions). In addition, further tax benefits include a full exemption from stamp duty land tax. Charitable clubs may also be eligible for certain VAT reliefs such as no VAT on new cricket buildings if certain conditions are met.
- ii. Potentially wider access to funding from other charities.

- b. The disadvantages of registering as a charity include:

- i. Registration and regulation by the Charity Commission and HMRC.
- ii. Compliance with public benefit requirements means that those in poverty must not be excluded from the opportunity to benefit so clubs must consider subsidised fees and bursaries.
- iii. Charitable clubs usually have to run their bar activity through a separate wholly owned trading subsidiary and cannot have purely social members.
- iv. As with CASCs, charitable clubs can't pay players to play but can potentially pay them for other services.

Further guidance on registering as a charity is available on the Charity Commission website www.charitycommission.gov.uk. See guidance note RR11 in particular. General guidance on the difference between registering as a CASC and a charity is available at: www.bwbllp.com/Files/Publications/CASCs%20and%20Charitable%20Sports%20Clubs.pdf

Please note: The information in this guidance note and the model constitution is provided on a general basis. Legal advice should be taken for specific situations.

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