



# THE CLIMBERS' CLUB

## INCORPORATION

***Motion: This EGM mandates the Committee to take the required steps to incorporate The Climbers' Club as a Company Limited by Guarantee.***

**Extraordinary General Meeting  
to be held via Zoom  
Monday 26<sup>th</sup> June 2023 at 7pm**

## Introduction to Incorporation

Below is a brief introduction to Incorporation and why the Committee believes The Climbers' Club should adopt it. Following this is a detailed explanation on Incorporation and looks at the options we have considered.

### Definition of Incorporation

Incorporation is the process by which a new or existing business registers as a limited company. A company is a legal entity with a separate identity from those who own or run it.

### The Current Situation

The Climbers' Club is currently an Unincorporated Association which has several significant disadvantages:

1. Because the club has no legal identity individual members can be liable if the club is sued or prosecuted, which means that their house and savings are vulnerable.
2. The club cannot own property. Our huts are currently held in trust by the NatWest Bank.
3. The club currently cannot enter into contracts. At the moment, officers have to sign contracts on our behalf eg Paul Drew, Treasurer, has personally signed contracts for electricity for 8 huts in March 2023 to the value of 25K annually.

### Company Limited by Guarantee

The Committee propose that we become a Company Limited by Guarantee.

This would give us a clear legal identity and would mean that:

1. The liability of each individual member would be limited to £1 which protects members' homes and savings from legal action.
2. The club owns property in its own name.
3. Contracts are entered into by the club, not by individual officers.
4. The club would have to submit Annual Returns, but this could be done at the same time as tax returns.

### Case Study

A neighbour of Andy Kitchen's worked as a solicitor for a major law firm in London and Leeds.

Around 25 years ago he won a case for a client who had life changing injuries in a hang-gliding accident. After the court case he told his client

that the hang-gliding club was an Unincorporated Association and was insured for 1 million pounds. He pointed out that the client's injuries were worth 3 to 4 million pounds, but if they pursued this, members of the club would lose their homes and savings. His client decided that the insurance money would cover his needs.

If the hang-gliding club had been a Company Limited by Guarantee their members would have been protected against the claim and their houses and savings would have been safe.

### **What Happens Next?**

Providing the EGM gives approval the Committee will:

- Write Articles of Association to replace the club rules. They will be very similar to our current rules and subject to approval by the membership
- Get assurances from HMRC that the club will not have to pay Capital Gains Tax or stamp duty on the transfer of property because this is a 'Company Reconstruction' and not done to make money.
- Hold EGMs to wind up the 'old' organisation and create a 'new' one.

### **Club Culture**

The FRCC and the Rucksack Club have both incorporated and their members feel that the change in their club's legal structure has not affected the ethos of their clubs. The values of love of the outdoors and comradeship have not been affected by changes in their legal structure. We think that CC members will not notice a change in the ethos of the club.

### **Further Reading**

Below is a second document discussing Incorporation in more detail. In addition, the Working Group sought advice from a specialist Solicitor as part of their investigations and this can be accessed via the following link:

[https://www.climbers-club.co.uk/downloads/Incorporation\\_Options\\_solicitor\\_letter.pdf](https://www.climbers-club.co.uk/downloads/Incorporation_Options_solicitor_letter.pdf)

Further information can be found on the Sports Council website: <https://www.sportenglandclubmatters.com/governance/getting-the-right-structure/club-structures-article/> Also on the English Rugby Union website: <https://www.englishrugby.com/participation/running-your-club/legal-and-administration/incorporation>

# Detailed Information on Incorporation

## 1. Introduction

At the AGM in 2022, Motion 8 c) was passed “The Committee seeks a mandate from the members to investigate the first steps towards becoming an incorporated society”. An Incorporation Working Group was created, and this group presented their investigations, together with a recommendation, to the Committee and at the 2023 AGM. This paper provides the outcome of the investigation for consideration and discussion by members and provides a recommendation for the appropriate structure, a Company Limited by Guarantee.

In order to investigate incorporation and provide a recommendation, the working group has taken legal guidance from Weightmans, a leading UK law firm. The detailed report produced by Weightmans is available at:

[https://www.climbers-club.co.uk/downloads/Incorporation\\_Options\\_solicitor\\_letter.pdf](https://www.climbers-club.co.uk/downloads/Incorporation_Options_solicitor_letter.pdf)

## 2. Current Situation

The club is an “Unincorporated Association”. This is an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit, although from a tax perspective, HMRC treats the club as a Company, and we are registered for and pay both VAT and Corporation Tax.

## 3. What does “Unincorporated Association” mean?

A club of this type is an organised group of individuals with a common interest, e.g. mountaineering and rock-climbing. The club will have a name and constitution. The constitution is a set of rules which governs the relations between members and sets out the rights and obligations of membership. The rules will cover a range of matters including membership, subscriptions, election of officers, changes to the rules and matters relating to the club hut if the club has one. The members enter into a contract with each other based on these rules and they may be changed with their agreement.

An “Unincorporated Association” has no separate legal identity of its own which means that it cannot enter into a contract, own property, hire employees or be sued or prosecuted. Any contracts with other organisations, for example hotels, printers, or builders, will be the

responsibility of the individual member who establishes them, typically one of the Club Officers. However, the club's constitution contains a clause undertaking to indemnify the officers and any member acting with the consent of the committee, for expenses, costs, claims and debts which they may properly incur in the performance of their duties.

Legal title to their property must be vested in trustees, in the case of the CC currently NatWest Bank (but changing to Ludlow Trust Company). The trustees are duty bound to protect the title to the property.

This means that each and every member shares in whatever risks the club takes. If the club runs into debt or in the event of bankruptcy, its creditors can legally claim on the assets of individual club members. If the club were to be prosecuted or sued following an incident and it is not covered by insurance (which typically has limits), it could affect all the members. No distinction would be made in law between richer or poorer members. Liability would fall equally on each person who was a member of the club.

#### **4. What are the advantages of Incorporation?**

The primary benefit of Incorporation is that the liability of the members is limited; this means that they have a capped liability for the debts, losses or legal claims of the business. In the case of a Company Limited by Guarantee, members' liability is typically limited £1.

As a corporation, the club also has its own legal identity and can own property and enter contracts on its own behalf, rather than via Trustees or Club Officers / Members.

#### **5. What are the disadvantages of Incorporation?**

The main disadvantage is that there are some additional regulatory requirements, in particular:

- Register with Companies House
- Appoint directors
- File annual returns and annual accounts, which means the Club's annual accounts can be seen by the public

However in practice, the CC already has to file annual Corporation Tax returns and Company House returns can be done at the same time so

the additional items are relatively minor. There is also a risk that the ethos of the Club is changed via incorporation (but see 'other clubs' below).

## **6. Incorporation - What options are open to the club?**

The club could "incorporate" by becoming either a "Company Limited by Guarantee", "Company Limited by Shares" or a "Community Interest Company" or could become an incorporated Society, either a "Co-operative Society" or "Community Benefit Society".

## **7. What is a Company Limited by Guarantee?**

Companies limited by guarantee are private limited companies where the liability of members is limited. A guarantee company does not have shares but has members who are guarantors instead of shareholders. The members of the company do not own the company but are the decision makers for the company. Limitation of liability takes the form of a guarantee from its members to pay a nominal sum in the event of the company being wound up while they are a member or within one year of their ceasing to be a member. The amount of money that is guaranteed will typically be £1 and will be stated within the constitution of the company (the Memorandum & Articles of Association). Company registration is with Companies House.

## **8. Why form a Company Limited by Guarantee?**

Guarantee companies are useful for non-profit organisations, such as clubs, that require corporate status. This means that its profits are not distributed to its members but are retained to be used for the purposes of the guarantee company. Where an organisation enters into contracts it may need the benefit of limited liability to protect the Committee and its members, who may be involved on a voluntary basis. The following are examples of these contracts:

- Employment contracts
- Purchasing or leasing land, buildings or property,
- Contracting with service or product providers.

A guarantee company provides a clear legal identity. This provides the ability for the company to own property in its own name and a democratic structure where its participants are required to adhere to the strict laws and regulations governing limited companies generally. The BMC is a CLG and it is the route the Lancashire Caving and Climbing Club (LCCC) are following.

## **9. What are the differences between a company that is limited by guarantee (CLG), a company that is limited by shares, and a Community Interest Company (CIC)**

A **Company Limited by Guarantee (CLG)** is typically run on a not-for-profit (non-profit) basis and this means that the profits of the company cannot be distributed to the members through dividends and that the members do not have any claim upon the assets of the company. The members of the company appoint Directors, (in the case of the CC, the Club Officers), who are given the responsibility for creating and implementing policies for the company. The Directors also enjoy limited liability, provided that they have not acted negligently, or fraudulently, and have not allowed the guarantee company to continue trading when it was insolvent (this is known as "wrongful trading").

A **Company Limited by Shares** has shares and is owned by its shareholders, who have certain rights. They are typically set up on a for-profit basis. The shareholders appoint Directors who run the company on their behalf.

A **Community Interest Company (CIC)** is similar to other limited companies, either by Guarantee or by Shares but is designed for social enterprises that want to use their profits and assets the public good. As such it reinvests its surpluses to achieve its social objectives. This requires additional registration and annual reporting.

## **10. What are a Community Benefit Society and Co-operative Society?**

A club may incorporate itself by registering under the Co-operative and Community Benefits Societies Act 2014 as either a Community Benefit Society (CBS) or Co-operative Society. Registration is with the Financial Conduct Authority (FCA). Registration converts a club into a corporate body with limited liability similar to becoming a Company Limited by Guarantee. A CBS must "carry on a business, industry or trade" that is "being, or intended to be, conducted for the benefit of the community"; a Co-operative society must be able to show that it is a bona fide cooperative society providing services or amenities for its members. Societies must be non-profit making and distribute their surplus for either the benefit of the community (CBS) or members (Co-operative Society). The share capital is limited to a nominal amount for example £1, and in effect the share is a 'membership ticket'. Voting is on the basis of one member one vote.

*Note prior to 2014, the Industrial and Provident Societies Act 1965, covered societies and the rules were different. A number of clubs (FRCC, Rucksack Club and MAM) became Mutual Societies under this act and have since converted to become a Registered Society under the Co-operative and Community Benefits Societies Act 2014, however, this status is only available to existing societies ("grandfathered"). It is our understanding that FRCC at least, choose this route to avoid SDLT (Stamp Duty) and CGT (Capital Gains Tax).*

## **11. Tax Implications**

The Committee has taken legal advice from Weightmans (solicitors) regarding tax implications of incorporation. In summary, as long as the process qualifies as a "company reconstruction", the club will not be liable for either Capital Gains Tax (CGT) or SDLT (Stamp Duty and its equivalents in Wales and Scotland). Therefore, there is no tax bill for the process of incorporation or transferring the huts and financial assets to a new company. We will obtain tax clearance from HMRC confirming this before incorporation.

If we incorporate as a CLG, our tax status regarding VAT and Corporation Tax will remain unchanged. We pay VAT on hut fees (20%) and guidebook sales (0%) and corporation tax on non-mutual trading profits, i.e. hut fees and guidebook sales from non-members.

The tax position is less certain with regard to a CBS, and we may be liable for Corporation Tax on all our profit including income from members.

## **12. Insurance**

The club is affiliated to the British Mountaineering Council (BMC) and has insurance through the BMC via Howdens as brokers. The details of club insurance are provided at:

<https://www.howdengroup.com/uk-en/british-mountaineering-council/clubs>

In summary this policy is a combined liability cover for injury, financial loss or damage to property and includes:

- Legal liability following negligence, nuisance or trespass. (£15m)



- Public Liability where the club or a club member are liable for injury or damage to other persons or their property (£15m)
- Professional Indemnity (£10m) – injury following advice by an individual or club member (not an instructor).
- Directors and Officers cover (£10m) – for decisions made by club committees.
- Employees Liability (£10m) - accidental bodily injury to an employee or volunteer arising out of them working on behalf of your club
- Libel & Slander – liability following something you might have said or written down (including website, emails etc.).
- Abuse – liability incurred by a club as a failure of their duty of care.

The BMC club insurance is applicable to affiliated clubs whether they are incorporated or unincorporated. In practise this means that if the club was sued for any reason, we would be able to claim on the BMC club insurance policy but this has drawbacks:

- There is a limit of indemnity the insurers will accept (£10m or £15m in most cases) and any settlement of a claim above the limit would fall on the club and its members.
- The insurer may refuse a claim, as with most policies there is a list of exclusions.

The club pays an annual affiliation fee to the BMC, currently ~£40k and club insurance is included as part of the affiliation. The cost to the BMC of the club and individual insurance policy through Howdens is ~£375k covering 75,000 members or £5 per member. It has proved challenging and time consuming for the BMC to get insurance underwriters to quote for the insurance, as it is specialised insurance, but the actual numbers of BMC members is relatively small by underwriter standards. In theory, it would be possible to directly obtain a club specific insurance policy rather than going via the BMC. However, in practise, the club is not large enough to be able to effectively negotiate a cost effective insurance policy and chances are we would struggle to get any quotes and if we did, they are likely to be more than the BMC affiliation.

### **13. Legal Liability**

The current situation is that the club is an “Unincorporated Association” so has no legal identity and cannot be sued. In the event of an incident leading to a claim it is likely that a member(s) of the club would be sued personally, most probably committee members, who can be found on the club website. Whoever is being sued would then need to make a claim against the BMC club insurance policy, and in the event that this does not cover the full settlement, would make a claim against club assets (cash, huts etc) or other members. There is no limit of the liability and it falls equally on every member of the club.

If the club incorporates as a CLG, the situation is different, as the club can be sued. In this case the club could make a claim on the BMC club insurance directly and any amount not covered by insurance would be met by club assets (cash, huts etc) and then finally the limited liability offered by members (typically £1).

The limited liability is one of the key advantages of incorporation as a CLG, it ensures that the personal assets of our members cannot be impacted by anything undertaken by the club.

### **14. Recommendation**

The Company Limited by Guarantee (CLG) is the simplest structure that provides the benefits of incorporation for a not-for-profit club such as ours. This is the structure that the BMC and LCCC have chosen.

A Company Limited by Shares is not appropriate for a not-for-profit club, and a CIC requires more administration, does not provide any benefit to the club nor fits with the ethos of the club, which is to work for the benefit of its members as opposed to the wider community.

While other clubs (FRCC, MAM and Rucksack Club) have gone down the route of becoming a Society, these registrations pre-dated the act of 2014, registering as a society involves more work in registering and ongoing annual reporting and does not provide any benefits to the club.

The recommended structure is for the club to incorporate as a not for profit Company Limited by Guarantee, known as “The Climbers’ Club Ltd.”. The members of the company shall be the members of The Climbers’ Club and all the assets of the club will transfer to the new company.

## **15. This sounds complicated, what are the advantages?**

Incorporating the club as a Company Limited by Guarantee provides protection for the members and officers.

It provides the Club with a legal identity so it can own its own property and sign contracts on its own behalf.

## **16. What is required to achieve the above?**

- a. Gain approval of the members at an EGM.
- b. The Committee will need to draw up Memorandum and Articles of Association for the new company essentially replicating the current Club Rules and seek approval from the membership. In addition, the Committee will need to draw up a set of Regulations covering those aspects of the club operation and management not set out in the Articles and replicating the current Regulations.
- c. Obtain HMRC clearance that this is a "company reconstruction".
- d. Register the new company at Companies House.
- e. Hold a Company EGM to adopt the articles and appoint directors who are likely to be the current Officers of the Club and who will continue to manage the Club as part of the Committee.
- f. Hold a Club EGM to approve the transfer of assets and approve winding-up the club.
- g. Arrange all the transfer of assets, huts, bank accounts etc
- h. Wind-up The Climbers' Club and launch the Climbers' Club Ltd.

## **17. How long will this all take?**

The target would be to complete this work over the next 12 months, with the new company, "The Climbers' Club Ltd.", in operation by 1<sup>st</sup> January 2024, but transfer of assets still ongoing in 2024.

## **18. Other Clubs**

The Committee has contacted various other clubs (FRCC, MAM, LCCC, Rucksack) who have incorporated to both understand what they did and what the long term impacts have been. In particular we asked whether the ethos of the club changed and the feedback was that as far as members were concerned it made no difference at all to the running of the clubs.

### **Fell and Rock Climbing Club (FRCC)**

FRCC converted to a Mutual Society back in 2008. This was initiated by an incident a few years prior where someone fell out of a bunk in a Fell and Rock hut and broke their shoulder. The FRCC was sued, not by the

injured person, but by his employer or their insurance company as he was unable to work. This illustrates the fact that we live in an increasingly litigious age where clubs could be liable for what most of us would consider unfortunate accidents.

Since 2008 the FRCC says it has had no interference from the FCA. At last year's CC AGM a FRCC member said that he had not noticed any difference in the atmosphere and ethos of the club.

### Rucksack Club

The Rucksack Club became a Mutual Society in 2011. They were covered by BMC insurance for £15 million, but were concerned in case the insurance cap was exceeded or the underwriters refused to cover the claim. They were very positive about the way mutualisation had not affected their club ethos, saying;

*"What are not shown, in such a necessarily legalistic exposition, are the bonds of friendship between members that ensures that what appears to be a formidable bureaucracy, in fact holds the purpose of promoting the skills of mountaineering and climbing among a group of enthusiasts with surprising ease and to the huge enjoyment of those involved."*

### **Incorporation Working Group**

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Additional input from Brian Griffiths

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