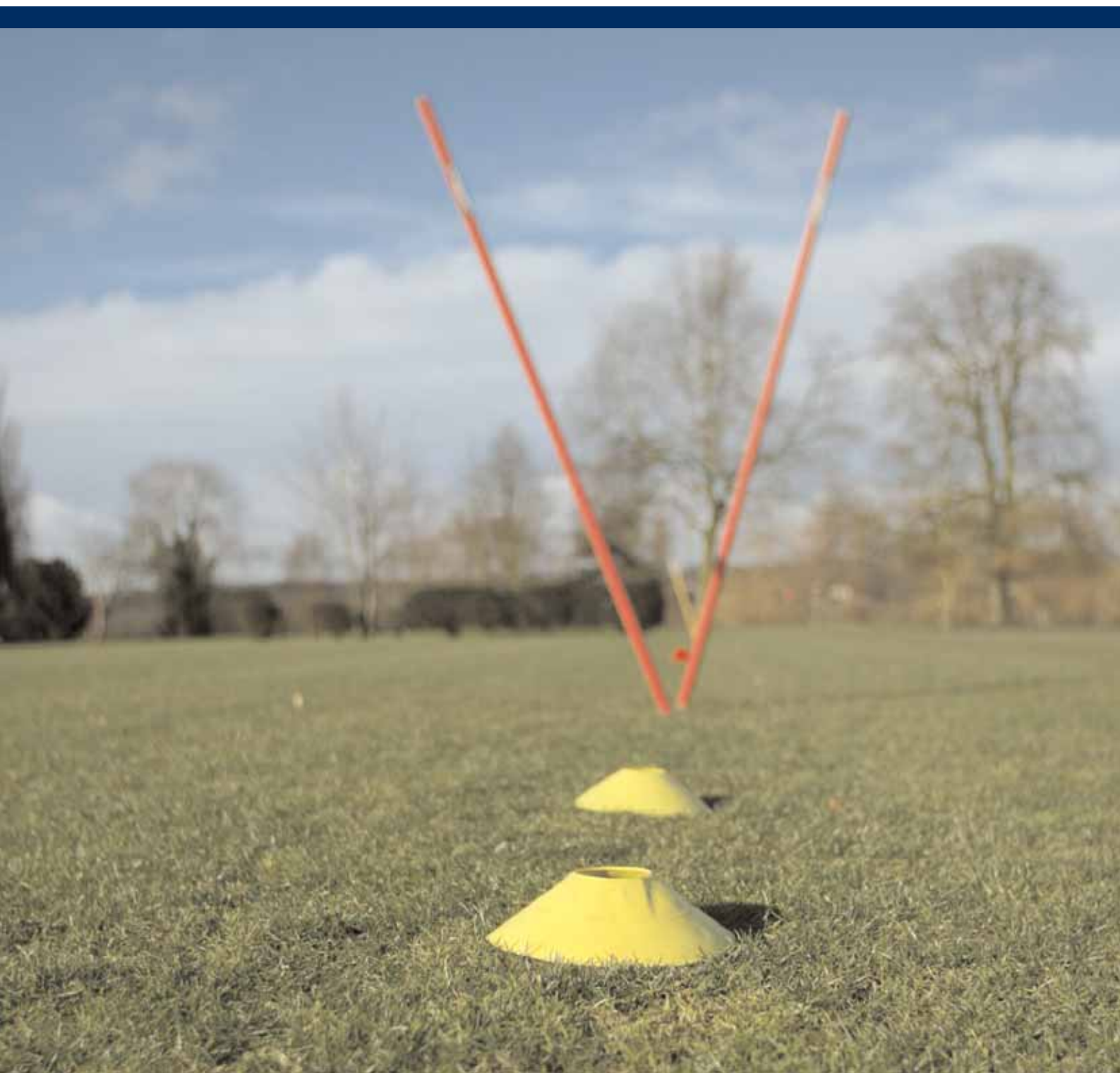


The FA

Guidance Notes for Members Clubs/Unincorporated Entities



January 2006



Introduction

The Financial Advisory Unit has received a number of queries from football clubs in relation to the liability of members of football clubs. We have therefore put together this list of Frequently Asked Questions ("FAQ").

These FAQ are meant as guidance only and are not intended to be a comprehensive list of all issues which a football club may face and should not be relied upon to cover specific situations. If you have any specific queries, you should seek independent legal advice.

This guidance applies only to unincorporated football clubs. If your football club has been incorporated, e.g. as a company (whether limited by shares or by guarantee) or an industrial and provident society, then the guidance set out in these FAQs is not applicable to your football club and its members.

Guidance Notes for Members Clubs/Unincorporated Entities

1. What is the legal definition of a club?

There is no legal definition of a 'Club' under English Law. This is because a club does not have a set legal form and can be established in a number of different ways (eg limited companies, industrial and provident societies, unincorporated associations).

Most amateur football clubs are likely to be unincorporated associations and are likely to be members clubs – ie a club the members of which change from season to season.

This type of football club does not have any legal existence or personality separate from that of its individual members and as such a club cannot in its own name (e.g. Anytown FC):

- start legal action;
- borrow money;
- enter into contracts; or
- hold property.

2. Where can I find the laws and rules relating to football clubs?

There is no specific Act of Parliament regulating unincorporated clubs. Most "club law" derives from decisions of the Court relating to particular clubs. The starting point for working out what a particular football club can or cannot do (and the extent of the club members' liability) is the rules of that club (the "Club Rules"), whether or not they are written down.

In addition, if a football club is also a Community Amateur Sports Club its rules must satisfy the requirements laid down by the Finance Act 2002 (see HM Revenue & Customs Guidance at www.hmrc.gov.uk/casc/casc_guidance.htm).

The Club Rules constitute a contract between each member of the football club and all the other members. A member is affected by and entitled to the benefit of the Club Rules as such exist at the time when he/she joins and as amended or modified by any alteration duly approved thereafter while he/she remains a member.

A football club is not legally obliged to have a set of written Club Rules; however we would strongly recommend that all football clubs adopt written Club Rules as:

- the law relating to unincorporated associations varies depending upon the provisions of a particular club's rules; it is not codified (i.e. there is no equivalent of the Companies Act);
- it is better to rely on clear Club Rules which have been agreed by the members rather than the general law;
- if the Club Rules are not set down in writing there are likely to be disputes as to their content; and
- carefully drafted rules can go some way to protect officers and members of a football club from personal liability.

Some years ago The FA, in response to many requests, drew up a list of suggested Club Rules for newly-formed football clubs. These can be found in The FA Handbook. The use of the rules is not mandatory and it is likely that the majority of Club Rules are not in this form.

The answer to any question regarding liability of members will depend on the interpretation of the particular Club Rules

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3. What does membership mean?

Membership of a football club is usually dependent on payment of a subscription fee (collected on a regular basis); members are entitled to expect that everything needed by the football club will be funded from the club's existing funds (which may include donations and legacies in addition to the subscriptions). Clubs are normally run on a cash basis and therefore if further resources are required to run the football club, the club may need to call a meeting of the members of the football club to raise the finance. Alternatively, the Club may be able to borrow money if the Club Rules so provide. Very occasionally, the Club Rules will permit the club to pledge the credit of the members.

The Club Rules are a contract between each of the members and therefore each member must act in accordance with the provisions of the Club Rules. For instance all meetings required by the Club Rules must be held in accordance with the Club Rules. Any failure to do so would be a breach of contract, in relation to which any member could bring a breach of contract claim against the member(s) who has (have) not complied with the relevant provisions (e.g. the management committee).

4. Liability in contract

A football club can only enter into contracts by a person or persons acting on its behalf. Unincorporated football clubs usually appoint a management committee to manage the affairs of the football club and as such the members of the management committee will usually execute contracts on behalf of the football club. It is important that such contracts make clear that the persons signing are signing on behalf of the club. The Club Rules may give the management committee the authority to enter into such contracts but that authority should not extend to committing monies beyond the club's funds.

Whether or not a contract binds a football club and whether or not an individual, the management committee and/or all the members are liable for any breaches of a contract will depend on the interpretation of the Club Rules and the general principles of the law of agency.

- **Individual:** If an individual member acts without authority he will be personally liable on any contract he/she enters into for the full amount due in relation to that contract. Such member would not be entitled to any indemnity from the football club funds or any contribution from the other members.
- **Management Committee:** If the committee authorises the contract the members of the committee will each be jointly and severally liable for the full amount due in relation to that contract (subject to a right of contribution from the other members of the management committee). The Club Rules may provide for the members of the management committee to be indemnified out of the funds of the football club; however to the extent that there is any shortfall the members will be personally liable for the shortfall.
- **Members:** All the members will only be liable if they either authorised or ratified the contract at a general meeting or the Club Rules give authority to the management committee or other person to enter into the contract. Unless it is expressly provided otherwise by the Club Rules the fact that the members give a management committee the authority to conduct the affairs of the football club does not necessarily mean that the management committee has authority to contract on behalf of all the members and make all the members liable for amounts due pursuant to the contract beyond the assets of the club. If the Club Rules do provide that all the members of a Club are liable, they will be entitled to an indemnity out of the funds of the football club; however to the extent that there is any shortfall each member will be personally liable for the shortfall (although each member will be able to seek a contribution from the other members to the extent that he/she has paid more than his/her proper share). If the members are liable they will each be liable on an equal basis.

Any third party seeking to bring a claim against the club for breach of contract would need to identify the individual or individuals whom it alleges to be directly responsible for the breach (eg members of the management committee) or with whom the contract was made. A claim would be brought against those individuals on behalf of the club.

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5. Liability in respect of property

A football club will usually appoint trustees to hold property; in such instances the trustees have legal title to the property. The trustees do not have any right to claim contributions from the members of the club in relation to liabilities incurred by them as legal owners of the property unless this is provided for in the Club Rules. The trustees are however entitled to be indemnified out of the property vested in them as trustees (i.e. they can sell the property to meet any claims).

It is worth noting that each time a trustee dies or retires it is necessary for the property to be transferred to new trustees and any procedure for appointing new trustees contained in the rules followed in respect of a new trustee.

6. Liability in tort (a wrong or injury on which a civil claim is based)

A claim can be brought by an outsider against the members of the management committee (or other members) on behalf of the club in respect of liability in tort (e.g. occupiers liability or negligence liability) resulting from the occupation of premises or the club's activities. If any such claim is successful the persons named on the claim form will be personally liable to pay any damages. The Club Rules may afford such persons an indemnity from club funds in respect of any liability suffered. If the Club Rules do not contain an indemnity provision, the members of the club should be asked to approve such an indemnity.

For example, if a non-member is injured due to the poor state of a football club's premises it has been held by the Court that the all the members are liable as 'occupiers' of the property. It is for this reason that a club should carry public liability insurance.

A more difficult area is the liability of the club in tort towards its members since the member cannot (as a general principle) sue himself (the club). Therefore if a member is injured due to the state of the football club's property it has been held that they are not able to bring a claim (as essentially this would involve bringing a claim against themselves as an occupier). Trespassers therefore enjoy more protection than members in this respect! However, personal accident insurance for the benefit of members may be helpful here.

However, one member (or indeed the management committee) may in certain circumstances owe a duty of care to the other members because of the special responsibilities undertaken by that member or because of his/her special knowledge (for example if he/she has been informed of a danger and has not warned the other members). Additionally where a person has a dual role being a member and for example an employee the fact that he is a member does not preclude him suing the members in his capacity as an employee (eg for unfair dismissal).

If a member is injured as a result of negligence on the part of an employee of the club, it has been held that responsibility lies with the officer or management committee who appointed that employee. This is subject to any provision to the contrary in the Club Rules – although liability for death or personal injury caused by negligence cannot be excluded.

The management committee of the club should make sure that the appropriate insurance is arranged to cover the management committee and the club members against such claims. As football carries a risk of injury you may wish to suggest that the members have their own personal accident insurance policies.

Members can be liable to each other individually in tort for example for injury caused by their own individual negligence (as opposed to by the club).

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7. Liability as Employer

The football club may employ people and in this regard the Club must comply with employment law. As with tortious liability, members of the management committee are likely to be sued on behalf of the club should a claim in respect of a person's employment arise. Should such a situation arise in your club, you should take legal advice.

8. Relevant provisions to include in Club Rules / steps to take to protect the Committee

As you will appreciate from the guidance above, a football club has a wide discretion as to the provisions that may be included in its Club Rules and this will have a substantial impact on which, if any, members of the football club are liable in any particular instance. Additionally actions taken in relation to third parties may impact upon whether and which members are liable in a particular instance. We would recommend that you consider the following issues.

- Providing in the Club Rules that specific members / the management committee has authority to enter into contracts.
- Specifying in the Club Rules that the members of the management committee (and any other member sued on behalf of the club) are entitled to an indemnity from the funds of the club in relation to any claim brought against such members as a result of the proper exercise of their duties.
- Clearly setting out in the Club Rules when meetings of the members must be held and the procedure for calling and holding such meetings.
- Clearly setting out in the Club Rules which matters require members' authority before they can be undertaken (eg borrowing money).
- Clearly setting out in the Club Rules whether or not it is intended the members are liable to contribute to liabilities incurred on behalf of the football club.
- Including an express clause in all contracts entered into on behalf of the football club limiting the liability of the football club to the amount of the funds of the football club and making sure that the signature clause in the contract makes clear that the contract is being entered on behalf of the football club.
- Taking out insurance in relation to potential claims (including public liability policy to insure against claims by non-members and officers insurance to protect the committee members).
- Limiting the possibility of tortious liability by erecting clearly worded notices at the Clubs premises and inserting exclusion clauses in appropriate places (e.g. on tickets).

9. What obligations do Clubs owe to the Inland Revenue?

Unincorporated clubs are taxed in the same way as companies. Please see The FA brochure on Corporation Tax available on TheFA.com and the Inland Revenue guidelines IR46 'Clubs, Societies and Voluntary Associations'.

10. What happens on dissolution of a Club?

Unless the Club Rules provide otherwise, the assets of a club belong to all the members for the time being in equal shares but the members do not have any transmissible interest and a share of the member is not capable of being realised while the club continues.

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The FA Rules (paragraph I(2)(d)) provide that where an unincorporated Club is wound up and there are surplus assets after the payment of the debts of the Club, the surplus assets shall be transferred only to a Club, Competition, Affiliated Association or The FA. This provision must be incorporated into Club Rules.

Additionally, in order to qualify as a Community Amateur Sports Club, the surplus must be distributed to a governing body (The FA), another Community Amateur Sport Club or a charity.

11. Can a Club be subject to insolvency proceedings?

An unincorporated club is not subject to winding up proceedings under the Insolvency Act 1986. Instead, a club can be wound up either voluntarily by resolution of the members or by order of the High Court.

If there is no express power to dissolve the club in the Club Rules, then unanimous consent of all members will be required to dissolve the club. In the event members do decide to dissolve the club, all existing liabilities of the club should be discharged.

The High Court has jurisdiction to wind up a club although it is unlikely to do so unless a clear majority of the members so wish or it is impractical for the club to continue.

12. Alternative structures

Clubs may wish to consider incorporation in some form. For example, as a company limited by either shares or a guarantee. A company is a separate legal entity and is able, in its own name (rather than in the name of members) to enter into contracts, employ people, own property as well as issue and defend legal proceedings.

A company's officers (its directors) are not themselves (generally) liable for the company's debts or liabilities provided they have in the circumstances acted reasonably or with the necessary authority.

The members of the company also benefit from limited liability. Whatever happens to the company, its shareholders (if it is a company limited by shares) are only liable to pay up the amount they agreed to pay for their shares (which is normally paid up when the shareholder subscribes for their shares) and its members (if it is a company limited by guarantee) are only liable, on a winding up of the company where there are insufficient assets to pay its debts, to pay up the amount they guaranteed to pay (usually £1).

There are of course some disadvantages of being a company. A company has to comply with the provisions of the Companies Act 1985 (in addition to its Memorandum and Articles of Association). A company is also required to file accounts, annual returns and other forms at Companies House on a regular basis and, depending on the size of the company, the accounts may also have to be audited.

Any Club considering incorporation must consider any restrictions on the ability to transfer freehold or leasehold property, employees, its membership of a football league and The FA and other assets (including contracts) and liabilities to a new company. Accordingly any Club contemplating such a transition would always be well advised to contact their legal/professional advisors and The FA to discuss the process of incorporation in detail.

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The Football Association
25 Soho Square
London W1D 4FA

Telephone
+44 (0)20 7745 4545
Facsimile
+44 (0)20 7745 4546

E-mail
info@TheFA.com
Visit
www.TheFA.com



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