

This guide is designed to provide clubs with information concerning the advantages and disadvantages of becoming a charity.

## 1. What are the advantages of charitable status?

### Grant Funding

- 1.1 Some grant funders, particularly grant making foundations prefer to support charities. This is not the case for all funders but charitable status may increase the options available to you when applying for financial support.

### Tax Breaks

- 1.2 One of the most significant advantages of charitable status is the range of tax exemptions and reliefs available to charities. Here is a brief outline of the tax breaks that are available.

Type of Tax	Detail
Corporation and Income Tax	<p>Not for profit organisations generally pay corporation tax on their trading surpluses. But there are some significant exemptions for charities, including:</p> <ul style="list-style-type: none"> <li>- An exemption from tax on income from investments.</li> <li>- An exemption from tax on interest on deposits.</li> <li>- An exemption from tax on rent.</li> <li>- An exemption from tax on the profits from so-called “<i>primary purpose</i>” trading. This is essentially trading activity which directly furthers the charity’s purposes for example this could be charges for boating tuition.</li> <li>- A special exemption from tax on the profits from fundraising events, subject to some restrictions – broadly speaking this applies if there are no more than 15 one-off fundraising events of the same type in the same location in one year and provided such events do not entail more than two nights’ accommodation.</li> <li>- A small scale exemption from tax on the profits of non-primary purpose trading activity, which essentially applies where the turnover from that activity is less than £5,000, or represents less than</li> </ul>

	a quarter of the charity's annual incoming resources, up to a maximum of £50,000.
<b>Gift Aid and similar reliefs</b>	<p>Charities are eligible to take advantage of the Gift Aid regime on donations received from UK taxpayers.</p> <p>Where an individual who is a UK taxpayer makes a donation under Gift Aid, the charity may recover any basic rate tax already paid by the donor on the donated sum. <b>So if a donor gives £10, the charity can recover an additional £2.50 from HMRC.</b> Higher and additional rate tax payers may be entitled to further relief on the donation, claimed in their own tax returns. [Note Gift Aid cannot be claimed on membership subscriptions, only on donations.]</p> <p>If a company makes a donation to a charity the company will not pay tax on the donated sum.</p> <p>Tax relief is also available on other gifts to charity, including gifts of certain land and shares. There are also tax reliefs for investors making qualifying loans to charities.</p> <p>The Gift Aid Small Donations Scheme allows charities with a good record of Gift Aid reclaim to claim top-up payments from HMRC on small cash donations that they receive: restrictions apply.</p>
<b>Inheritance Tax</b>	When an individual makes a gift, whether during their <b>lifetime or on their death</b> , there can be inheritance tax consequences, but gifts to charity are generally exempt from inheritance tax.
Capital Gains	Charities do not pay tax on capital gains. Donations by individuals to charities are free from capital gains tax.
<b>Rate Relief</b>	Charities which occupy premises wholly or mainly for charitable purposes are <b>entitled to 80% relief</b> from business rates, and the local authority has discretion to grant relief on the remaining 20%.
Social Investment Tax Relief	Charities and some other social enterprises are eligible for tax relief on certain types of investment and investors also receive tax relief. Restrictions apply.
Stamp Duty Land Tax	Charities are eligible for certain reliefs from stamp duty land tax when they buy land.

1.3 Charitable tax reliefs and exemptions are subject to various conditions. For example, many of the tax breaks will only be available if the charity is registered with HMRC.

- 1.4 The information in this table is necessarily general. Tax is a complicated area and advice should be taken on your specific circumstances. There are also more detailed guidance notes on [www.gov.uk/government/organisations/hm-revenue-customs](http://www.gov.uk/government/organisations/hm-revenue-customs)

## 2. What are the potential disadvantages of charitable status?

- 2.1 These are the features of charitable status that are sometimes seen as disadvantages, although some of them can be regarded as distinct advantages.

### Exclusively charitable purposes for the public benefit

- 2.2 Charities must be established for **exclusively charitable purposes for the public benefit**. This means that a club wishing to become a charity will be limited in the activities it carries out.

### Exclusively charitable purposes

- 2.3 A charity is established in order to further one or more purposes – known as ‘objects’. All of a charity’s purposes must be regarded as charitable, and the law is strict about which purposes are regarded as charitable and therefore one of the disadvantages is that a club’s purposes must comply with this narrower remit.

- 2.4 Amateur sports clubs commonly have the following purpose: *“the promotion of community participation in healthy recreation by providing facilities for playing particular sports”*. Additionally, it is possible that other charitable purposes/objects may also apply depending on the club’s specific activities. For instance, some clubs may also include charitable objects around promoting education, relief of disabilities or promoting recreation. Such objects are suitable if the clubhouse is used for community activity in the similar way to a village hall.

- 2.5 Some organisations will have no difficulty in showing that they are established for charitable purposes – for others this may be more problematic. Charity Commission guidance states that for a sports organisation to be charitable typically the sport must be capable of: improving physical health and fitness; and the club must have an open membership and facilities that are genuinely available to anyone who wishes to take advantage of them (the latter is discussed under the ‘Public Benefit’ heading below).

- 2.6 To satisfy the health and fitness aspect, the organisation would need to demonstrate that it makes the participant healthier, such as by improving stamina, strength or suppleness. The Charity Commission appear to have accepted that sailing is a healthy sport as there are a number of recreational boating sports charities on the register, some of which refer to the promotion of *“advancement of the physical health and fitness of participants”* or to *“promote community participation in healthy recreation by providing facilities for sailing”*.

- 2.7 Once a charity has been established (and registered), the Charity Commission usually needs to approve any changes to its charitable purposes, For example in the case of a Charitable Company you must get the prior consent of the Commission to change the charitable purpose and certain other amendments where they relate to benefits received by trustees and winding-up provisions. The rules are different depending on the legal form and there is guidance about this on the Commission’s website [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)

## Public Benefit

- 2.8 Clubs will also need to satisfy the public benefit criteria. All charities must have purposes which are for the public benefit. A charity's trustees (the people responsible for its overall management) must run their charity for the public benefit.
- 2.9 Public benefit essentially means something that is clearly beneficial to everyone, or some section of the community. There is a great deal of guidance about what public benefit means on the Charity Commission's website, which covers when it is and is not acceptable to limit who benefits from a charity in any way. Charity trustees have to have regard to that guidance.
- 2.10 In the context of sport, the public benefit test requires that a sports club has **open membership** (no blackballing for example) and **open access to facilities**. Depending on how your club currently operates, this may require changes to your current practises.
- 2.11 The Charity Commission does acknowledge that a club's facilities can be limited and that **health and safety issues might make certain restrictions reasonable**. For example, to the extent the use of certain boating facilities genuinely **require a certain level of skill to be able to use them safely**, it seems reasonable to propose that use of those facilities would be restricted to those who have developed the necessary skills. However the Charity Commission might then wish to see a **meaningful opportunity for people to develop those skills where they might initially be lacking**. To the extent the facilities are oversubscribed, waiting lists are appropriate provided they are run on a fair first come, first served system.
- 2.12 It is also vital that **membership is affordable** to satisfy the requirement that it allows community participation. The Charity Commission has found that a tennis club with annual subscription fees of £339 was too high (despite certain concessions) and failed the public benefit test. However the club was able to satisfy the Charity Commission in the end by proposing alternative fee arrangement.<sup>1</sup> for those on low incomes and also providing one tennis court free of charge for use at all times by members of the public. The Charity Commission may make it very difficult for a club to register if it has subscription fees over this amount. Clubs with higher subscriptions (even if less than £339 per annum) will be required to offer discounted membership rates to those on low incomes or who are unemployed or possibly to allow significant public access free of charge. Clubs will therefore need to look at their membership fees to assess how affordable they are. Higher fees can be justified more easily if there are other ways people can participate e.g. pay as you go opportunities at a reasonable cost.
- 2.13 Part of the affordability criteria also means that the clothing and equipment needed for the sport is affordable. Where they are expensive, it will be important for a club to demonstrate that they can provide the equipment and facilities or at least subsidise the cost to participants. The Charity Commission's guidance actually makes reference to ocean yachting clubs in this context. This is positive in the sense that it appears to be an acceptance that such clubs can be charitable, but also makes it clear that the equipment, such as the boats and associated safety equipment, will need to be made available for free or at an affordable level. Given that recreational

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<sup>1</sup> See The Radlett Lawn Tennis and Squash Club: A public benefit assessment report by the Charity Commission (<http://forms.charitycommission.gov.uk/media/93779/assessradlett.pdf>)

boating clubs often require expensive equipment, it is likely that this is something certain clubs will need to carefully consider to ensure there are club owned boats that members can use at an affordable price.

- 2.14 Clubs cannot have admissions tests based on skill, although they can have different teams within competitive structures provided this does not materially reduce the ability of non-competitive players to participate properly. Similarly, where there is coaching, the club has to be able to demonstrate that it benefits people of all different skill levels. In some circumstances it may be appropriate for the higher skilled participants to receive coaching provided that they pass on what they have learnt to the lesser skilled participants. The appropriate arrangement will of course vary from club to club based on the available resources and participant numbers.
- 2.15 It may be reasonable to not specifically cater for certain groups of the community, such as the elderly, if the sport is not suitable. Clearly there would need to be objective grounds for justifying this on a case by case basis.
- 2.16 To the extent the boating activities in question can be dangerous, the Charity Commission will also need to be satisfied that the club in question is taking appropriate steps to ensure the safety of participants. This is likely to be particularly relevant for a number of recreational boating clubs. For instance, the Charity Commission may want to understand what first aid training is expected, what water safety equipment is available, and anything else that is particularly relevant such as appropriate safety information on appropriate weather conditions or tidal patterns.

## **Regulation and registration**

- 2.17 All charities governed by the law of England and Wales are regulated by the Commission. The Charity Commission has considerable regulatory powers to investigate and scrutinise the actions of a charity and its trustees.
- 2.18 Most charities need to register with the Charity Commission. However charities with an annual income of £5,000 or less are not required to register (unless the charity is a charitable incorporated organisation known as a CIO: CIOs must register with the Commission regardless of their income).
- 2.19 Registration with the Charity Commission adds an administrative burden. In the first place, the charity must apply to register with the Charity Commission, which involves giving information about its activities. Registration can be time-consuming and the Charity Commission are likely to ask for lots of information about the club to ensure it is for the public benefit. Once registered, a charity will need to file certain information with the Commission, and make certain disclosures to the public about its status. The requirements vary depending on the size of the charity. In most cases this is a relatively minor burden. It is worth noting that the Charity Commission has wide powers to investigate the Club's activities.
- 2.20 While some regard registration with the Charity Commission as burdensome, it can be beneficial. Registered charities are given a registered charity number which is proof of their charitable status: this can help when dealing with the general public and funders.
- 2.21 Information on registered charities is freely available on the Charity Commission's website.

2.22 For charities set up or operating in Scotland or Northern Ireland there is different legalisation and a different charity regulator. In summary, recreational boating clubs established in Scotland or Northern Ireland need to register:

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2.23.1 with the Scottish charity regulator Scotland OSCR ([www.oscr.org.uk](http://www.oscr.org.uk)) if they are: established under the law of Scotland; managed or controlled wholly within Scotland; occupy any land or premises in Scotland; or carry out activities in any office, shop or similar premises in Scotland; and

2.23.2 with the Charity Commission of Northern Ireland ( [www.charitycommissionni.org.uk](http://www.charitycommissionni.org.uk) ) if they are: an organisation that has exclusively charitable purposes (which are largely the same as those in England and Wales); and governed by the laws of Northern Ireland such as if it was established in Northern Ireland or a company registered in Northern Ireland. Note that CCNI is fairly new and at the time of writing is registering charities in stages.

2.24 If a charity is registered in England and Wales but operates in Northern Ireland or Scotland, it may need to register with the relevant local regulator as well.

2.25 OSCR and CCNI operate on broadly similar lines to the Commission in England and Wales. However the legislation is not identical and specific advice should be sought if a charity operates in Scotland and Northern Ireland and wishes to ascertain whether it needs to register.

### **Trustees cannot usually be paid**

2.26 Charity law is very strict about the benefits which trustees are able to receive from their charity; in a club the management committee are usually the trustees:

2.26.1 there is generally no difficulty paying trustees for reasonable out of pocket expenses;

2.26.2 many charity constitutions allow their trustees to be paid for particular services which trustees perform for their charity, for example if a trustee were to design a charity's website and be paid for it. However, there are strict rules around the procedures which must be followed, in order to be sure that it is in the charity's best interests to pay the trustee; and

2.26.3 charities cannot usually pay their trustees for *being a trustee*: there needs to be a special provision in the charity's constitution, agreed to by the Charity Commission, to allow this.

2.27 It is also unusual for paid staff of the charity to serve as trustees: again this is something which needs to be authorised in the charity's constitution, and the Commission will need to be satisfied. This can be a disadvantage: if the founder of a charity wants to serve as a trustee and do paid work for the charity, it may not be straightforward. These rules often prevent not only trustees, but also individuals and organisations with close connections to trustees, such as close family members, from being paid by the charity.

2.28 There are also strict rules about how to deal with potential conflicts of interest between a trustee and their charity, which are explained in more detail below.

### **Duties of Charity Trustees**

2.29 Charity trustees are subject to a range of duties under charity law, the most important of which is to advance their charity's purposes. These include running their charity properly, acting reasonably and prudently, protecting the charity's assets and acting in the charity's interests at all times. More detail is available in the BWB publication Duties of Charity Trustees which is available for free on the website.<sup>2</sup>

2.30 If charity trustees are found to be in breach of these duties, there is a risk of personal liability for any resulting loss caused to the charity.

### **Not for profit**

2.31 As you will appreciate, a charity is a not-for-profit organisation. This means that while it is perfectly acceptable for the charity to make money (for example by fundraising, or legitimate trading activity), any profit must be used for the charity's purposes and cannot be paid out to its members. Neither can the members receive any distributions if the charity ever ceases to exist.

### **The constraints of charitable status**

2.32 Charities are subject to a number of legal restrictions. These include:

#### **Restrictions on Trading including club bars**

2.32.1 restrictions on the level of trading activity – i.e. selling goods or services - which charities can carry out. For example:

- (a) charities may carry out any amount of so-called 'primary purpose trading', i.e. trading which contributes directly to one or more of the charity's purposes, such as the club selling safety equipment for sailing;
- (b) they may also carry out so-called ancillary trading alongside primary purpose trading activity, such as where the charitable sports club sells refreshments to children who are participating in paid coaching events. This exemption should be used with caution and on advice as restrictions apply; and
- (c) otherwise, charities may not usually trade, although there are some exceptions for example for certain fundraising events, and for trading which falls within defined "small scale" limits.

In the context of sports clubs, a common consideration is sponsorship. Commercial sponsorship would be classed as non-charitable trading and would need to be run through a trading subsidiary unless it falls within a tax exemption, such as the small scale trading exemption which allows a charity to undertake non-charitable trading without incurring tax provided the non-charitable trading income does not exceed 25% of the charity's incoming resources up to a maximum of £50,000;

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<sup>2</sup> <http://www.bwbllp.com/file/bwb-guide-to-duties-of-charity-trustees-pdf-1>

2.32.2 particularly relevant to a number of recreational boating clubs are the restrictions on the use of club bars (also discussed below in the context of social members). Unless the turnover of the bar is low and falls within the small scale trading exemption mentioned above i.e.£5,000, it will be necessary for it to set up a separate wholly owned trading subsidiary to run its bar and any other non-charitable activities. It is important that the relationship between the charity and trading subsidiary is structured correctly so that the charity's funds are not being used to subsidise the activities of the trading subsidiary. This means that any money loaned to the trading subsidiary must be secured by a legal charge over the trading subsidiary's assets and interest at a market rate must be paid on the loan. The charity would also need to have an agreement in place with the trading subsidiary detailing the charges it will make on an arms-length basis for:

- (a) use of any shared facilities or resources;
- (b) a licence of the club's name and logo; and
- (c) a licence to use any intellectual property or data owned by the club.

The trading subsidiary should not pay any tax as it is able to gift aid its profits to the charitable club.

### **Paying players/participants**

2.33 For charitable sports clubs, players/participants can't be paid for playing/competing, but a participant who also coaches or maintains the boats, for example, can be paid for this service by the charity. A participant's expenses can also be paid by the charity, provided that they are reasonable and proportionate.

### **Social members**

2.34 Social membership can be problematic as the Charity Commission currently only accepts non playing members that are volunteers or helpers. The Charity Commission would prefer social members to be associate (non-voting) members of the trading subsidiary that runs the bar. This is because the purpose of the club needs to be for the public benefit and not for the people making use of the facilities for socialising. The Charity Commission accepts that the club's members may include parents of junior members and people who still wish to be associated with the club but are unable to play for reasons of health or old age. The key is that the clubs aim must be to promote participation in boating sports and not provide social facilities.

### **Conflicts of interest**

2.35 As mentioned above, there are strict rules and guidelines on how charities deal with conflicts of interest between the charity and its trustees. The Charity Commission has played close attention to the need to comply with these rules in recent times, obviously making this an important issue for charities. These extend to:

2.35.1 ensuring that if a trustee, or someone with a connection to a trustee, is to benefit financially from the charity, proper procedures are followed; and



- 2.35.2 putting procedures in place to manage the situation where a trustee may have conflicting loyalties to the charity and another cause or organisation.

### **Other legal requirements**

2.36 Charities are also affected by a range of other rules, including for example:

- 2.36.1 how a charity should go about selling its land;
- 2.36.2 how to make arrangements with fundraisers; and
- 2.36.3 how to invest the charity's funds.

### **Once a charity, always a charity**

- 2.37 **Once a club is a charity, it cannot change its mind about its charitable status.** The club's assets will be always be charitable assets, which means that if the charity is ever wound up, they can only be used for the charity's purposes or passed on to another charity to use for similar purposes.
- 2.38 This will be a clear advantage for some, but a definite disadvantage, even disincentive, for others.

### **3. Final points to note**

- 3.1 This note does not discuss the different types of charitable entity that can be used when becoming a charity, such as companies limited by guarantee, Charitable Incorporate Organisation (CIOs) or charitable community benefit societies.
- 3.2 ~~If your club is registered as a community amateur sports club (CASC) with HMRC then it is not possible to register as a charity, until you have first either relinquished your CASC status (this is only likely to be possible during the grace period for CASCs to comply with the new CASC regulations up to April 2016), or form a new charity and transfer the assets across from the CASC to the new charity.~~

### **4. Conclusion**

Clubs need to consider carefully whether they are eligible to register as a charity and the pros and cons of doing so. **Charitable status has numerous tax advantages but also brings with it greater regulation and a duty on the trustees to prioritise public benefit.**

## **~~RYA Responsibility Statement:~~**

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