

AMATEUR SWIMMING ASSOCIATION (“A.S.A.”)

**RECOMMENDED
CLUB CONSTITUTION GUIDANCE NOTES
FOR
COMMUNITY AMATEUR SPORTS CLUBS (“C.A.S.C.s”)**

INTRODUCTION

These Guidance Notes are designed to be read in conjunction with the Recommended Model Constitution for Clubs wishing to become a Community Amateur Sports Club ("C.A.S.C.").

They are applicable to unincorporated C.A.C.S.s and are entirely unsuitable for clubs otherwise formed (for example, limited by guarantee or shares).

If, after informed consideration, your Club decides to pursue the process to become a C.A.S.C., any existing constitution will have to be formally amended in order to comply with the requirements upon C.A.S.C.S..

Drafting Note

The Recommended Model Club Constitution (and all accompanying guidance) makes reference throughout to “he/she”. This is in order to recognise the equal contributions of both genders to Club affairs, and to further the A.S.A.’s commitment to Equality and Diversity. While Clubs are strongly commended to adopt this stylistic approach in their own Constitution, it is recognised that the traditional approach to drafting is to use a generic reference to “he”/ “his” throughout. Should Clubs elect to adopt this traditional approach to drafting instead, it is imperative that they also make it clear that the term does not exclusively denote males. To that end, Clubs may wish to consider inserting the following clause:

20. Interpretation

20.1 Through out this Constitution words denoting the masculine gender include the feminine gender and vice versa.

Explanatory Notes

The purpose of a Club's constitution is to identify the Club and set out the relationship between its members. The Rules govern the entire operation of the Club and confer powers on the Club Committee.

It is important therefore that the constitution is clearly drafted and reflects all aspects of the Club's practices so that the Rules contained in the constitution can be complied with easily. Indeed, it must be stressed that the Rules, as amended from time to time, must be complied with at all times.

Community Amateur Swimming Clubs (C.A.S.C.s)

As a result of the Finance Act 2002, many local amateur sports clubs are able to qualify as C.A.S.C.s). To be eligible to be a C.A.S.C.:

- **A Club must be formally constituted** (ie have a formal constitution)
- **Be open to the whole community**
A Club is "open to the whole community" if the membership of the Club is open to all without discrimination; the Club's facilities are available to members without discrimination; and any fees are set at a level that does not pose a significant obstacle to membership or use of the Club's facilities.
- **Be organised on an amateur basis**
A Club is "organised on an amateur basis" if it is non-profit making, it provides for members and their guests only the ordinary benefits of an amateur sports club; and its governing document requires any net assets on the dissolution of the Club to be applied for approved sporting or charitable purposes.
- **Have as its main purpose providing facilities for and promoting participation in one or more eligible sports** (ie a sport recognised by the Sports Council, of which swimming, water polo and diving all are).

The benefits of being a CASC are principally financial. As such, C.A.S.C. status is particularly beneficial to those Clubs currently paying high rates (or would be if discretionary relief was withdrawn); or if they are likely to receive donations ie gifts from either members or non-members; or if it is likely to have significant capital gains.

A Club needs to go through a registration process before it can enjoy the benefits of membership. HM Revenue and Customs (H.M.R.C.) has a helpful website, to which Clubs may wish to refer regarding how to register as a C.A.S.C. (www.hmrc.gov.uk). Also, the www.cascinfo.co.uk website is a very valuable reference resource.

It should however be noted that there is **no** provision in the legislation for a Club to de-register. In other words, once a C.A.S.C., always a C.A.S.C.. As a result, before applying to be a C.A.S.C., members need to be in agreement that what they **really** want is to maintain the Club for the continuing use of the community. That said, any Club registered under this scheme must at all times be aware of the obligations upon it, otherwise H.M.R.C. may de-register its status as a C.A.S.C.

In order for a Club to be successfully registered as a C.A.S.C. with H.M.R.C., it must comply with certain prescribed criteria. The purpose of the A.S.A. Model C.A.S.C. Constitution (and these supporting Guidance Notes) is to ensure that all the required elements for C.A.S.C. status are present for Clubs wishing to register. It should be noted however that the Model C.A.S.C. Constitution and therefore these supporting Guidance Notes only apply to unincorporated C.A.S.C.s; they are not suitable for limited companies (either by share or guarantee) nor proprietary commercial clubs.

[The Model C.A.S.C. Constitution has been approved by H.M.R.C.. Using this constitution will help the Club to achieve C.A.S.C. status; however, the Club's application will still have to be considered in full by H.M.R.C. and care must be taken when making any variations/additions as they could fall outside the C.A.S.C. requirements.]

To register as a C.A.S.C. a Club must apply to the H.M.R.C. Sports Club Unit on the required Application Form. The Application Form should be supported by the following documents:

- A copy of the proposed C.A.S.C.'s governing document – (ie constitution);
- A copy of the proposed C.A.S.C.'s latest accounts
- A copy of any prospectus, member's handbook, rule book etc

The H.M.R.C. will let the Club know when the Club is registered and inform the Club of the date from which its registration takes effect.

Legal Status

A "members Club" does not have a legal existence as an entity i.e.: separate from its members. The Club can therefore neither sue nor be sued in its own name but only through its Officers. It is important to appreciate that in legal terms there is a risk to the Officers and, strictly speaking, the members that they may be sued for the Club's debts, or damages for personal injuries and other claims if not adequately covered by insurance. Included within this Guidance Note are recommendations with regard to Club insurances.

Please do note, that the Model C.A.S.C. Constitution does contain appropriate indemnity clauses which, if adopted by a Club, will cover Committee Members liabilities **provided those liabilities are incurred whilst acting entirely within the Club Rules and A.S.A. Rules regulations and policy**. The importance of adopting an indemnity clause and for members to then act in accordance with the Rules and guidance issued by the A.S.A. cannot be underestimated. To do otherwise, means a member will not qualify for the full benefit of the A.S.A. insurance cover provided with A.S.A. membership.

In addition the members of a Club have duties and liabilities to each other. The source of these duties and liabilities is principally the Constitution or rules of the Club. These rules are treated by the law as a contract between the members.

Clubs are under the control of the members themselves and it is the members that must see that the rules are observed. It is important that a full and up to date list of members is kept at all times and that a Club has a clear policy in relation to matters such as the admission and expulsion of members. The day-to-day administration of a Club is usually delegated to the control of Club Officers and a Committee. The Committee in turn may have the power to delegate to sub-committees.

It is however most important to appreciate that if anything were to go wrong the Club Committee, Officers and even the members may be personally liable and for that reason it is strongly recommended that Clubs adopt a comprehensive set of rules to minimise the prospect of claims arising due to disputes with individual members. Furthermore, it is recommended that insurance cover be sought to cover liabilities of

members/Officers towards outsiders. Affiliation to Region includes comprehensive insurance which covers all aspects under civil liability, including member to member cover. However, it must be borne in mind that insurance cover may not extend to fines and penalties imposed under criminal law (e.g. as a result of a prosecution by the Health & Safety Executive).

The Rules of the Club constitute a Contract between the members. It is most important that new members are provided with a copy of the current rules and by-laws of the Club when they are accepted into membership. Any failure to do this may present the Club with problems in subsequently seeking to rely upon the conditions of the "contract" comprised within the rules, for instance where the Club becomes involved in a dispute with the member concerned. In this situation the Club may experience difficulty in enforcing the Contract because the conditions were not drawn to the attention of the member at the time they were admitted. Similarly, any amended rules must be communicated to the wider membership and it is recommended that this be undertaken by individual notification rather than simply placing a notice on a Club notice board.

There are legal limits placed upon the ability of "minors" (persons under the age of 18 years) to enter into contracts. Whilst younger members may be given "rights" e.g. voting this is different to being able to enforce "responsibilities" (e.g. a contract). For this reason it is recommended that an acknowledgement from the young person's parent or guardian be taken. This is referenced at the end of the Constitution and could appear on the Club membership form.

Name

It is important that the Constitution set out the full name of the Club to identify it. It is useful to state its year of formation, to establish identity if another Club has used the same name in the past.

Objects

This part of the constitutions sets out the objects for which the Club is established and empowers it to carry out these objects. For a C.A.S.C., the main purpose of the Club must be to provide facilities for; and promote participation in one or more eligible sport.

It is not necessary for the Club to carry out every single object (if there is more than one) all of the time, but the Club must not carry out objects for which it is not authorised by this Rule. It is therefore imperative that the Rule is drafted as widely as sufficiently wide. Indeed, if the Club carried out an activity which it was not empowered to do, whoever had authorised that activity may find himself/herself personally liable if the Club suffered a loss as a result. This may be the Club Committee as a whole or an individual if the Club Committee had not authorised that individual.

To assist Clubs, the Model C.A.S.C. Constitution sets out the suggested objects which every Club should have.

The provisions in the Model C.A.S.C. Constitution are the bare minimum and there may be other objects which your Club currently has which need to be adopted. If appropriate, Clubs may wish to include a "sweep-up" Rule, enabling the Club Committee to do anything in pursuance of the objects set out in the preceding sub-rules.

For clarification, the Club does not have to own the facilities for participating in eligible sport. A Club that regularly hires at a Local authority leisure centre to enable members to participate would be providing facilities. The H.M.R.C. has given the explicit example that a swimming club that regularly hires pools to hold lessons and training sessions would be likely to qualify.

Membership

This part of the constitution is important because it establishes who the members of the Club are and who are therefore bound by its Rules. It is also important because it establishes the link between the members, the Club, the Region and the A.S.A..

This Rule must set out clearly who the members of the Club are. You may have different categories of membership but these different categories of membership need to be clearly set out in this Rule.

All members of the Club (whatever category they fall into) should agree to be bound by and comply with its Rules. For C.A.S.C.s, all full members must have equal voting rights.

The Rule regarding membership also needs to state how somebody or an organisation can become a member. Any qualifications required for membership need to be set out in this Rule. It is important that the Club Committee has the discretion to admit members.

As stated above, a Club wishing to claim C.A.S.C. status must have an open membership (i.e. be open to anyone). No discrimination is permitted. Discrimination includes indirect discrimination and is widely understood. It includes discrimination on grounds of ethnicity, nationality, sexual orientation, religion or beliefs; or discrimination on grounds of sex, age or disability, except as a necessary consequence of the requirements of a particular sport. Some Clubs may not want to have an open membership (i.e. those for swimmers who have reached a certain standard). If this is the case they will not be able to be C.A.S.C. registered.

Indeed, the number of members may only be limited by virtue of limited facilities, although it may have different classes of membership.

The above does not prevent a Club from having different classes of membership depending on the age of the member; whether the member is a student; whether the member is waged or unwaged; whether the member is a playing or non-playing member; how far from the Club the member lives; or any restrictions on the days or times when the member has access to the Club's facilities.

Temporary Members

Clubs may find it helpful to offer temporary or probationary memberships for a period not exceeding three weeks as a stepping-stone to full membership for families/individuals new to the sport. This may also be appropriate for visitors to the area who wish to take part in the club's activities for a limited period. There is clearly a place in the sport for temporary membership. The benefit to the Club of taking on temporary members is that such individuals are thereby liable to follow the Club rules, become subject to the jurisdiction of the A.S.A. (in particular the A.S.A. Child Safeguarding Policies) and are covered by the A.S.A. Insurance available to Club members.

However temporary members whilst in this capacity have no right to compete in A.S.A./A.S.A. Regional competitions. Clubs are obliged to notify their Region of temporary memberships on their Annual Membership Return. Any failure to do so may jeopardise the A.S.A. Insurance Policy for all Clubs the premium for which is based upon the overall membership throughout the sport

Membership Fees

The main source of finance for any Club will be its members' subscriptions. There should be a clear rule

either setting out the amount of the subscription or, preferably, delegating the setting of annual fees to the Committee. There is no objection to different rates of subscription for different types of members e.g.: reduced rates for young swimmers, officials, helpers etc.

However, to be a C.A.S.C., the costs of membership must be affordable so that the fees are set at a level that does not pose a significant obstacle to membership or use of the Club's facilities.

Once a person is accepted to membership they are obliged to pay their subscription and any other financial obligation such as coaching and squad fees until they resign. A member who has not paid their subscription or other monies owed can be sued. If a member resigns or is expelled they can still be sued for any arrears of subscription. It should be noted that A.S.A. Constitutional Law provides that an individual who owes an outstanding sum to a former Club cannot join another A.S.A. Club, attempt to join or remain a member of another affiliated Club. The dispute must be settled first.

Clubs should also be aware of issues of social inclusion. The Club should consider having the ability for the Officers of the Club to have the discretion in exceptional circumstances to remit all or part of the fees.

As a general rule no person has a right to become a member of a Club. The Club Committee, or whoever is responsible for admission can refuse to admit any person to membership and indeed can provide in the Club rules that they are not required to give any reasons for their decision. It is important that any power of refusal is clearly set out in the Club rules to avoid any suggestion that any person who meets certain criteria is eligible for membership.

Parents who are not members in their own right are not entitled to vote on behalf of their children. This can be resolved by including the membership of one parent or carer in the membership of every member under 16 years. This requires the payment by the Club of both membership fees to the A.S.A. and to the Region.

Fee Collection

The A.S.A. fee is payable between January and March each year. Clubs which have not paid by 31st March will be suspended. Many Regions and Counties have chosen to adopt the single fee collection system whereby the fee for the Region and County is collected alongside the A.S.A. fee. In December each year Clubs will receive a list of their current members to enable them to reconcile their own records. Clubs may wish to set a membership year of either January to December or July to June based on the following rationale: January to December will enable clubs to renew the individual members before the end of March, collecting the A.S.A. fee (and where appropriate County and Regional fee) alongside the Club fee. July to June will enable Clubs to provide information to the A.S.A. on members who have renewed the previous July and can either collect the A.S.A. fee from the members in July and hold it or take a further payment from members in January. The July to June period may assist Clubs who hold their annual general meeting in the summer period.

Expulsion

Where a Club is a C.A.S.C., it will need to be careful in ensuring that its open membership is not prejudiced by its use of this power (i.e. there should always be good grounds for expulsion and the due process must be followed). Thus, whenever a Club exercises any power given in respect of the above it must act in good faith, comply strictly with its own rules and Judicial Rules 150 – 155 (inclusive) and satisfy the rules of natural justice.

See **Annex 3**.

Clubs must note that failure to renew an existing member's membership will be treated as an expulsion from the Club by a Judicial Tribunal, if the member has completed the required renewal forms. The expulsion of a member cannot take place by a Club's failure to process a renewal application (there is a precedent in law in the case of *McKinnis v Onslow Cain*). In such circumstances a Judicial Tribunal will have regard as to whether the procedure outlined in Judicial Rules 150 – 155 have been adhered to by the Club.

Clubs can refuse or revoke membership on non-discriminatory grounds where the membership or continued membership of the person concerned would be likely to be contrary to the best interests of the sport or the good conduct and interests of the Club.

Club Organisation

Committee

The arrangements for the day-to-day management of its affairs is a matter for individual Clubs to decide. The management of the affairs of a Club is usually delegated to an elected Committee. Because a Committee's powers are delegated from the membership all Committee members must agree unless the rules provide for a majority of members to determine issues. Provided the Committee acts within the powers granted to it, it is up to the members of the Committee to determine their own methods and procedures. However, there is one important limitation on a Committee powers: the powers of the Committee are powers to be exercised in the interests of the Club as a whole and not in the interests of any particular section of the Committee.

A Club will normally appoint officers such as a Chairman, Secretary and Treasurer. The roles that these officers perform are described below. To avoid any perception of conflict of interest and to assist in succession planning it is desirable that the Officers should not be members of the same family. Where this is not possible at least one of the Officers should not be related to the other Officers and signatories to payments and orders should not all be members of the same family

It may be desirable to have the Club Coach or instructor attend the committee meetings, but it should be borne in mind that they may have personal interests in Club affairs. The terms of employment must be clearly laid down and understood.

Where the Club Committee are involved in making a decision, any individual participating in that decision making process and who has an interest in the outcome, must declare that interest and take no further part in deciding the outcome. For example, it would not be appropriate for a Club Coach to decide on the terms and conditions of their own contract of employment with a Club.

It may be that a Club provides in its Constitution for male and female junior representatives on its Committee. Where these provisions apply, the Constitution should also state the process by which junior representatives are elected, their voting rights when attending Club Committee meetings and whether the Chairman is to have power to exclude them when issues relating to other young members/colleagues are being discussed.

Chairman

NB. Attention is drawn to the Good Club Guide to volunteer roles.

The Chairman is responsible for the overall running of the Club with the assistance of the Treasurer and Secretary during his period of office. The Chairman will usually be asked to report on the year's proceedings at the Annual General Meeting.

The Chairman's main duties are in relation to the conduct of Club meetings, both members meetings and Club Committee meetings. In that he/she has three functions:

- (i) To preserve order;
- (ii) To take care that the proceedings are conducted in a proper manner; and
- (iii) To ensure that the sense of the meeting is properly ascertained concerning any question which is properly before the meeting.

The Chairman must carry out these duties in good faith. This means, for example, the Chairman must not favour any particular section of a Committee or the membership but should exercise his/her powers impartially.

The Chairman should see that the business of the meeting runs smoothly. It is recommended that Clubs adopt Rules for Debate. An example set of rules is included as **Annex 1**. These are the Rules for Debate at A.S.A. Council. In particular regard needs to be given to the principles contained in the A.S.A./IOS Code of Ethics. In the event of disruption at meetings the Chairman should consider adjourning the meeting for calm to be restored.

The Chairman should not allow a meeting to commence or continue unless there is a quorum present. If the Rules are silent a quorum will be a majority of the members except for a Committee when it will be all the members of the Club Committee. Usually the Rules provide for a minimum number of members necessary for a quorum of a members or Club Committee meeting. In law, the minimum number is two, as a person cannot have a meeting with himself/herself! It is advisable to have a reasonable number as a quorum to prevent a small number of members controlling the Club. The recommended minimum number is five full adult members to include at least one of the Chairman, Secretary or Treasurer.

The two main methods of voting used at meetings of Clubs are a show of hands and a poll. Any member may demand a poll unless the rules provide otherwise. A poll is a precise method of ascertaining votes because each vote is recorded either on an individual voting slip or by signing a voting list. Sometimes, to ensure secrecy, particularly in the election of Officers a secret ballot may be used.

Secretary

The Secretary is usually responsible for the day-to-day running of the Club and normally deals with correspondence, collect subscriptions, keep a list of members and organise meetings but this can be delegated to other people who may serve on the Club Committee. Details of members may be kept on a computer but in retaining and using information (whether on computer or in manual records) the Secretary should have regard to the provisions of the data protection legislation. Consideration should also be given to holding members information in a secure manner to protect against theft e.g. of a laptop which holds all Club members contact details. Further information may be obtained from the Data Protection Registrar. Springfield House, Water Lane, Wilmslow, Cheshire, SK9 5AX (telephone 01625 545745).

The Secretary is also responsible for meeting any licensing requirements (e.g. if the Club wishes to organise a prize draw raffle). For Club Committee meetings the Secretary should prepare an agenda and send a copy together with any accompanying documents to each member of the Club Committee. At the meeting the Secretary should take notes and subsequently prepare minutes. It is recognised that certain

business discussed in Club Committee Meetings may be prejudicial to the Club (or other persons) if made public (e.g. contracts of employment of staff). Minutes of Club Committee meetings may be kept private but **ALL DECISIONS MUST BE MINUTED**. It is also recommended best practice for the Club Committee to issue periodic briefings to members of key decisions made and matters discussed.

The Secretary has a number of duties with regard to a general meeting. Before the meeting the Secretary must collect any resolutions which are to be proposed together with nominations for the election of Officers. The Secretary is responsible for giving notice of the meeting and preparing the agenda. On a practical level the Secretary needs to make sure there is a room available for the meeting, which may involve hiring facilities. The Secretary should appoint tellers whose job it is to count the votes where members vote on a show of hands.

Normally Club Committee Meetings are private to the Club Committee members and General Meetings private to the members of the Club entitled to attend and vote. It is however, at the discretion of the Chairman to allow non-Club members to attend although they would normally not have the right to speak. At the meeting the Secretary should ensure that the minutes of the last general meeting once approved by the membership are signed by the Chairman and then kept safely. Certain of these functions may be delegated to a Minutes Secretary if the Club rules allow. Minutes of members meetings must be widely publicised to the membership and must be retained for at least 6 years.

Treasurer, Accounts and Taxation

The Honorary Treasurer is responsible for the financial accounting of the Club. The Treasurer is required to make regular reports at meetings of the Club as to the financial position and prospects of the Club.

The Treasurer is normally one of the signatories of the Club's bank account and, along with the other signatories must ensure that the money is applied solely for the purposes of the Club. It is recommended that dual signatories be required for ALL cheques. It is possible for big clubs to only require cheques above an agreed amount (e.g. £50) to require a second signature. A counter signatory must not be a member of or a close family of the Treasurer.

As a matter of practice the Treasurer is also responsible for the Club's taxation affairs, in particular VAT returns if the Club is registered for VAT. Subscriptions paid by members of a Club are normally exempt from VAT, but VAT registration may become necessary where income from the sale of swimming kit, etc exceeds the VAT registration limit.

Where Officers of a Club (or persons connected with them) exercise a commercial influence over the Club's affairs (for example, if they are in receipt of an administration or management fee, or a salary based on the Club's income or profits, or by leasing facilities to the club), VAT anti-avoidance legislation may result in members' subscriptions become subject to VAT at the standard rate. It is recommended that a Club potentially caught by these wide-ranging provisions should seek professional advice or contact their local VAT office.

Each Club must identify its financial year (Rule [14.5]) e.g. 1st March – 28th February. Any changes to the financial year must be approved by the members in a General Meeting.

The annual accounts of the Club shall be examined by an independent examining accountant. "Independent" for these purposes means a person who is not related to and preferably not a close personal acquaintance of the Treasurer or any member of the Club Committee. This process has in the past been referred to as an "audit". However, the word "audit" has legal implications which may require an extensive financial process. It is unlikely that most Clubs will wish to pay for this, and because of the complex

requirement, it is also unlikely that volunteers will be able to comply with the whole process at no cost. The recommended requirement is for clubs to have their accounts “examined” as described above.

Welfare Officer

The appointment by every Club of a Welfare Officer is a fundamental part of the safeguards set out in the A.S.A. Child Safeguarding guidelines. The following are recommended to assist Clubs based upon best practice in this vitally important area:

- The Welfare Officer is a person of appropriate skills and experience and perform no other role within the management or administration of the club. Training can be given.
- The Welfare Officer to be a member of the Club Committee (or alternatively to be invited to attend every meeting of the Club Committee and all Sub-Committees for particular disciplines). The Welfare Officer to make a Report to the Committee on any issues relating to child Safeguarding in consultation with the A.S.A. Independent Child Protection Officer/Department of Legal Affairs with regard to any particular reported concerns.
- The Welfare Officer should be independent (i.e. have no personal or business relationship with the Club coach, Club Secretary or Chairman). The thinking here is to avoid the difficulties that arise should an individual member wish to refer a concern to the Welfare Officer in circumstances where a person complained of (eg the Coach) is a relative of the Welfare Officer.

It is especially important to note the recent statutory changes, which are expected to create a cultural change to the effect that Child Safeguarding is a responsibility assigned to every individual. For Clubs this means a change of thinking from Safeguarding as being the Welfare Officer’s responsibility to a collective responsibility held by all adults in the Club environment.

A.S.A./IOS Code of Ethics

In particular any member wishing to make any direct overt-criticism of an Official or other member of the Club in a general meeting must advise the Chairman in good time to enable the Chairman to advise such person in advance of the meeting in order that he/she is able to prepare himself/herself for such criticism.

Furthermore, as a separate obligation on the Chairman of the meeting when an Official or member is the subject of criticism the Chairman must specifically afford such person the opportunity to respond to include if requested consideration of an adjournment to enable the person to collect his/her thoughts.

Any failure to follow these principles may give rise to a complaint to the A.S.A. Judicial System under the A.S.A./IOS Code of Ethics. It is not intended that the Code should be used to stifle democratic debate but ethical considerations and indeed common sense decency dictates that advance warning should be given to anyone who is to be the subject of criticism in a general meeting.

Under the A.S.A./IOS Code of Ethics Honorary Officials are entitled to expect the same respect and dignity of treatment as that to which employees are entitled. It follows from this that if an Official is not performing satisfactorily in their role the official is entitled to be told, and to be given an opportunity to respond to the criticism and the opportunity to improve. The Club may wish to consider establishing a mentoring system with senior figures(s) in the Club (possibly a Past President) offering guidance and support to Officials and also encouraging the development of new talent to ensure succession within the Club’s administration.

By-Laws

It may be more convenient for the detailed regulations for the operation of the Club's activities to be in the form of by laws. It is usual to leave the making of by laws to the Club Committee. The advantage of enabling the making of by laws by the Club Committee is that they can be altered in a normal committee meeting whereas an alteration to the rules of the Club normally requires a special majority in a general meeting. This is often appropriate for the membership categories and Club Championship conditions.

It is, however, recommended that the fundamental rights and responsibilities of the membership and duties and liabilities of officials are matters dealt with within the main Club rules and are not reduced to mere by laws.

Liability of Members/Officers

A member of a Club has a liability to pay his/her annual subscription and such other fees as are properly determined by the Club.

There is no general right of any Club Committee member or Officer to seek to obtain an indemnity from the membership for any losses or expenses suffered by them in the performance of their duties. However, an individual member or group of members may become liable for losses arising if a Court finds them to have been negligent. This will particularly be the case if an individual member is made specifically responsible for any particular aspect of the Club's activities.

Normally liability for contracts made with a Club depends upon who authorised the particular contract e.g. if a contract is authorised by the Club Committee then it is the Club Committee that is liable. Individual members must take care to ensure that the basis upon which they enter into any contract on behalf of the Club is clearly understood by the person with whom they are dealing to avoid the contract being treated as entirely personal to the member. A member may also incur personal liability if he/she exceeds any authority given to him/her by the Club.

In relation to any contract on which all members are liable any member who pays more than their proper share is entitled to recompense from the other members. Similarly, a Committee member may claim recompense from other members of the Committee in respect of a Committee liability. However, an individual member of a Club or Club Committee member who becomes liable on a contract personally is not entitled to an indemnity from the other members of the Club unless there is a rule to that effect. A very clear rule and procedures for giving authority to make contracts is desirable.

Insurance

Because of the legal position of Clubs as unincorporated associations and of the prospect of individual members and Committee members being personally liable to outsiders it is imperative that Clubs obtain comprehensive insurance cover. AFFILIATION TO THE APPROPRIATE A.S.A. REGION (and hence to the A.S.A.) PROVIDES THIS COVER TO ALL MEMBERS OF AFFILIATED CLUBS.

This insurance includes:

- 1 Civil Liability Insurance.(including member to member cover)
- 2 Employers Liability Insurance (a compulsory insurance where applicable). The Certificate of Insurance must be displayed at all places of work of the employee(s)

3 Personal Accident insurance

In addition Clubs are strongly recommended to purchase

Fidelity Insurance

Legal Expenses Insurance

For full details of scope of insurance cover provided by the A.S.A. and the addition insurances which are recommended and can be purchased as additional cover, see the enclosed document on A.S.A. Insurance.

Insurance cover will not extend to any activities excluded from the scope of A.S.A. Insurances. A list of current excluded activities appears on the A.S.A. website and further guidance can be obtained from the A.S.A. Regulatory Compliance Manager on 01509 632270.

If a Club has a legal problem with regard to an employee then guidance can be obtained from the legal services helpline operated by DAS insurers. Details of this service can be obtained from the A.S.A. Regulatory Compliance Manager.

If the advice of the DAS insurers is sought it is mandatory for the Club to comply with the advice given. Failure to do so may result in the A.S.A. insurance cover being declared not applicable to the Club/member.

Each club should maintain an Accident book. Books can be obtained from the A.S.A. Customer Services Department.

At the end of each year the membership renewals form will have a section in it, which each Club must complete. It will ask the Club to confirm if an accident has been recorded in the book or if it has not. The section must be completed. If it is not the Membership Department will be in contact to ensure an answer is given.

If an accident has been recorded, a photocopy of the year's entries must be taken and returned to the A.S.A. Membership Department with the renewals form. The copy will be passed to and kept by the A.S.A. Department of Legal Affairs for a period of 6 years (or longer in respect of a minor).

Finances

Application of Surplus Funds Rule

This rule is extremely important for VAT and corporation tax purposes and also if the Club is to be C.A.S.C. registered.

Clubs can in certain circumstances be exempted from having to charge VAT in relation to certain sports supplies (typically members' subscriptions and playing fees). It is important for the Club Committee to note that in order for the Club to benefit from the VAT exemption, a Club may not purchase certain goods or services (purchase of sports land, management/administration services relating to Club facilities or

goods/services) for more than the normal market price from an officer, shadow officer or connected person and it must be an eligible body which means that it must be non-profit making and not be subject to commercial influence.

To ensure a Club is not subject to commercial influence there are certain restrictions on payments to Officers. Briefly, an Officer (which in this context includes all committee members, trustees and "Officers" as defined in the Rules, and anyone connected with them) may not be paid a salary calculated by reference to the Club's gross profits or gross income. This does not prevent the payment of honoraria to officers so long as the amounts of the honoraria are not calculated by reference to gross profits or gross income.

It is important to note that claiming the exemption in relation to members' subscriptions and certain other members' payments such as playing fees does NOT exempt the Club from charging VAT altogether. Bar and other sales are still subject to VAT (unless the Club's income from taxable supplies is less than the VAT threshold applying to all businesses).

In addition, the ability to demonstrate that your Club cannot distribute its profits can be important for the purposes of obtaining rate relief and eligibility to receive Lottery funding and grants from other grant-making bodies.

Property

An unincorporated Association such as a members club itself has no capacity to hold property. Property always has to be held by some individual or individuals on behalf of an Association.

It is considered that in the majority of cases the simplest manner in which property may be held in accordance with the rules of the Club which contractually bind all the members. The property is normally vested in one or two persons, often referred to as custodians to hold on behalf of the members. This is the method of holding of property which is preferred by the English Courts. The advantages of this method of holding property is that some of the complexities of the law of trusts can be avoided. This method of holding property is also extremely flexible. The terms on which the property is held can be changed by simply altering the rules of the Club. The Custodians, who should not be less than two and not more than four, hold property other than cash at the bank, on behalf of the members of the Club.

Clubs who own their own premises or other significant assets may wish to seek their own particular legal advice as to the most appropriate manner of holding property in the light of their own particular circumstances. It is however recommended that the above method will be appropriate in the overwhelming majority of cases, although the ownership by a Club of significant assets provides a strong argument for giving further consideration to becoming a Club Limited by Guarantee (Company) or registering as a Charity.

Dissolution

If the Club is to register as a C.A.S.C., it must provide that any surplus on a winding up goes to either another registered C.A.S.C. for the sport, to the A.S.A. for use in community swimming (or other aquatic disciplines within its jurisdiction) or to a charity. Such a Club would also be entitled to claim the VAT exemption. This is a requirement of the C.A.S.C. legislation.

Succession Management

The future prosperity of any members club is dependent on encouraging the development of young talent in administration for the future benefit of the Club. However, no one should underestimate the tremendous

time commitment involved in the running of a Club. The author's view is clear: "if they are good enough they are young enough" What is really needed is a blend of ages and talents. Clubs may find that a mentoring system where younger members have the opportunity to "shadow" an experienced Official may help bring on the next generation of administrators to help ensure continuity for the Club.

Clubs are also encouraged to consider granting an automatic right of athlete participation at all levels in the Club, to include the Club Committee. The A.S.A. like many World governing bodies of sport has adopted this principle. There is athlete participation in the A.S.A. Board and all of its technical committees. By taking this step Clubs will hopefully encourage younger members to take a wider interest in the sport and the activities of the Club.

IMPORTANT NOTE: Where reference is made to any A.S.A. publication it is important to check that you are in possession of the current edition. The date of each publication appears on every page. Be especially careful if you only have a photocopy or extracts from a document, as something important may be missing or you might read something out of context.

For any further assistance please contact

Your regional head office details of which can be found on the A.S.A. website at www.britishswimming.org or whose telephone number can be obtained from the A.S.A. head office on 01509 618700.