

**13 December 2022**

**PRIVATE AND CONFIDENTIAL – FOR MEMBERS OF THE CONNAUGHT CLUB ONLY**

**THE CONNAUGHT CLUB INCORPORATION PROJECT – MEMBER FAQs**

**These FAQs are produced subsequent to the member consultation meetings and related documents discussed. When reading these FAQs please refer to the PowerPoint document setting out the current and proposed legal structure: “Incorporation - Current and Proposed Legal Structure and Governance”**

**1. Why initiate the incorporation project?**

The Club is following the advice of Sport England, the LTA, Bowls England and England Squash that all Clubs review their legal structure and consider incorporation to limit member personal liabilities and manage risks. The Club’s legal and accounting and tax advisors also recommend incorporation. The Management Committee is unanimous in recommending incorporation to the membership.

Incorporation will protect the Club members from the personal financial and liability risks that arise from currently existing as an unincorporated association.

The change to an incorporated association in the form of a Company Limited by Guarantee (“CLG”) together with the proposals to update the Connaught Trust Deed, establish a trading subsidiary, update the articles of association of Barn Hoppett Limited and the governing documents of the Club, will provide more robust governance arrangements to ensure the longer-term security, stability and viability of the Club for the future.

*Information note: The CLG legal format was introduced in the Companies Act 2014 to manage the personal risks arising for members and officers within clubs and other membership organisations. A quick search of Companies House shows that scores if not hundreds of tennis, bowls and other sports clubs have already incorporated. Local examples include Woodford Golf Club, Billericay LTC, Chandos LTC, Chigwell Golf Club, Chigwell LTC and The Grove, Chelmsford.*

**2. What does the incorporation project involve?**

This is the first time that the Club has undertaken an in-depth strategic review of its legal structure since Barn Hoppett Limited was established in 1920 and the Connaught Trust Deed was established in 1946. The Club has a carefully constructed and complex structure which has served it well in the past. However, significant legal, tax, accounting and other regulatory developments have occurred in recent years. Risks have changed including in relation to health and safety, employment, equality, personal data, public and personal liability and governance. The size and scale of potential claims and regulatory fines has also increased. The Management Committee has taken the time needed to obtain professional advice and consider the options in the best interests of the Club and its members. The Club is grateful to the members who have helped progress this important project in their own personal free time. Members are invited to make a decision and vote at the upcoming AGM to be held on 22 January 2023. If incorporation is approved by the members, the intention is to transfer the assets and undertakings of the Club to an incorporated association on 30 September 2023, that being the Club’s

financial year end. The accounting advice is that the transfer should only occur after HMRC CASC<sup>1</sup> approval has been confirmed.

**3. At the AGM held in January 2022 members were informed that a SGM would be held during the year?**

At the time of the AGM the Management Committee hoped that it would be possible to hold a member vote on incorporation by calling a SGM in Summer 2022. The tax and accounting advice, and legal advice on the trust, took more time to deliver and work through than anticipated. The Management Committee did not have enough information to consult with members and call a SGM in the Summer. The Management Committee also noted the accounting advice that any transfer should take place at financial year end and after obtaining HMRC CASC approval, and therefore 30 September 2023 would be the realistic target for the transfer of business to an incorporated association. The member vote is now scheduled for the AGM to be held on 22 January 2022 and draft resolutions are being prepared.

**4. What is the main change and benefit of incorporation for me as a member?**

The Club will still be known as The Connaught Club and continue to exist and operate as it does now but with substantial additional benefits.

The main change is that in future you will pay your membership subscriptions and fees to incorporated association called "The Connaught Club Limited". All sports and events will continue to run as before.

The main benefit for you as a member is that your personal liability for any debts and liabilities that cannot be met from Club funds will be limited to £1. At present this liability is unlimited. The legal advice gives examples of where members of sports clubs have suffered personal financial liability, including the collapse of a small spectator stand and nuisance claims from persons neighbouring a motor club. Other examples provided where members can be held personally liable include employment claims, unfair dismissal or discrimination, wrongful actions in law such as inappropriate and/or offensive communications and physical assaults, fraud and failures in safeguarding, where the Club has insufficient funds to meet the claim.

A further key benefit for members is that the incorporated association will be able to enter into contracts in its own name and any legal claims will be made against the incorporated association, not individual members. Where Committee Members enter into contracts on behalf of the Club as an unincorporated association, which is the case presently, the individual Committee Member is legally open to personal liability if the Club has insufficient funds to pay its contractual obligations. The removal of this financial risk will also make it more attractive for members to volunteer to act as Committee Members and Directors and help oversee and run the Club in the future.

The Club has a fine history of prudent financial management, thanks to the generosity of members who have contributed financially, and given up their personal time to volunteer for the Club on an unpaid basis and steward its management and upkeep. However, given recent events such as the Covid pandemic, destruction of the airdome by storm Eunice, major drains maintenance and repair works,

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<sup>1</sup> Community Amateur Sports Club

and the current energy and cost of living crisis, it is not a far stretch to imagine that a series of unforeseen catastrophes or claims could occur within the space of a few months or years and potentially lead to a situation where the Club ran out of money and had debts and contracts outstanding that the individual members could be held liable for.

Incorporation will not affect the VAT status of membership subscriptions. Sports memberships are exempt from VAT.

#### **5. Does the Club have insurance?**

Yes. The Club maintains comprehensive insurance policies (covering all Sports Sections, employer liability, public liability, Directors & Officers liability, buildings and contents and cyber) provided by the official brokers to the LTA Howdens, and Hiscox insurers.

There could be reasons why the insurance fails to pay out. Not all events are insurable and financial limits apply. Notable exclusions from the Club's policies which are industry standard include wrongful and deliberate and dishonest acts including fraud. A new standard exclusion introduced by insurers this year is storm damage to non-permanent structures such as the new airdome, the Bowls changing rooms inc. toilet, Bowls storage sheds and the gym.

Insurance is only a second line of defence. It does not replace prudent management and oversight as the first line of defence in managing the risks that could give rise to a claim.

*Information note: The LTA venue insurance package includes Public Liability £60,000,000, Employers' Liability £10,000,000, Professional Indemnity £10,000,000 and Directors & Officers Liability £1,000,000.*

#### **6. How will the land and buildings used by the Club be protected?**

The current arrangements will be tightened and enhanced.

The land and buildings will continue to be owned by Barn Hoppett Limited and the shares in Barn Hoppett Limited will continue be held by The Connaught Trust for and on behalf of the Club and its members.

There will be a new lease agreement between Barn Hoppett Limited and The Connaught Club Limited for the use of the land and buildings, also covering matters such as insurance and responsibilities for maintenance and upkeep. The lease will also enable the Club to demonstrate security of tenure to funders or other organisations if needed. Legal and tax advice will be taken on the contents and term (or length) of the lease agreement.

The preservation of the land for the use of amateur sports (including the legacy to Fields in Trust) will be conserved through the legal documents and governing framework for each of The Connaught Club Limited, Barn Hoppett Limited and the Connaught Trust Deed. The existing powers and authorities that

regulate the sale of the assets and effects of the Club shall not change<sup>2</sup>, and the Club Rules pertinent to protecting the land and the charitable legacy will be mirrored in the articles of association for the incorporated association and updated articles of association for Barn Hoppett Limited.

The Club's governing framework is designed to put a brake on, and prevent, the possible sale of the Club's assets and land. These controls will be mirrored and tightened in the new structure. Summary:

- The land title is registered at the Land Registry in the ownership of Barn Hoppett Limited (application submitted waiting to be processed)
- The Club Officers and Management Committee members have no authority or powers to sell the land
- To make a motion to Barn Hoppett Limited to sell the land the Management Committee would have to pass a resolution at which no less than 7 members are present and voted
- The Trustees of the Connaught Trust hold the shares in Barn Hoppett Limited on behalf of the Club
- The Trustees are governed by the Connaught Trust Deed. They may not sell or transfer the shares to any other person except in accordance with the terms of the Trust Deed. These terms provide that if the Club decides to close, after satisfying any debts, the trustees shall hold the shares (and therefore the land) in trust for Fields in Trust or a similar charity
- Club Rule 18.3 provides that property within the Club's control can only be realised, after satisfying any debts, for the benefit of any of the national sports associations for use in community related initiatives, to another CASC for tennis, squash or bowls, or to a registered charity.

Even if the Club wanted or needed to sell the land to satisfy its debts, Foskett's solicitors has advised that it has limited developmental value as anything other than an amateur sports or recreation facility. The Club is located on an "island" surrounded on all sides by Epping Forest and access to the Club is via a wayleave agreement with the Corporation of the City of London which owns and manages Epping Forest. The forest areas around the Club are officially designated as areas of special scientific interest by the City of London Corporation.

#### **7. Why is a Company Limited by Guarantee with CASC status the recommended choice of legal status for incorporation and tax status?**

A Company Limited by Guarantee (CLG) is a relatively new type of legal entity established specifically for clubs and other not-for-profit organisations to limit member liability. A CLG is very similar to a regular limited company. However, it has no shareholder capital and member liability is limited to £1 each if the company becomes insolvent.

A similar legal structure for charities that limits trustee liability has also been established called a "Charitable Incorporated Organisation". This was not considered suitable for Connaught as the Club is not a charity.

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<sup>2</sup> Rule 3.3 requires a Management Committee resolution approved at a meeting at which at least 7 of the 9 voting members are present and vote

CASC status is hugely important to the Club because it provides exemptions from Corporation Tax, 80% relief on business rates and the ability to claim gift aid. The HMRC tax regimes for CASCs and charities offer very similar benefits. The main difference is that some grant givers can only give funds to registered charities. The National Lottery, local authorities, Sport England, the LTA and other sports bodies who provide grants to the Club and sporting associations are not restricted.

HMRC Rules will require the incorporated association to submit a new application for CASC status. It is not possible to transfer the Club's existing CASC status.

To reserve the name and prevent anyone else from claiming it, "The Connaught Club Limited" name has been reserved at Companies House.

The legal structure of a limited company such as Barn Hoppett Limited is not suitable for an association of members. The existence of Barn Hoppett Limited as separate owner of the land and buildings provides protection in case the Club goes bankrupt.

The legal advice and tax and accounting advice also covered the possible simplification of the Club structure and consolidation of the land ownership into a single CLG. The structure proposed which transfers Club operations to a CLG, retains the ownership of the land and buildings by Barn Hoppett Limited and the Connaught Trust, is considered to provide a more robust and secure structure for the Club and the land on which it is situated, albeit requiring more administration. This also reflects the wishes of the members.

#### **8. How will the incorporated association and the Club be managed?**

The Club's governance structure will stay largely as it is but will be strengthened by the addition of a Board of Directors for the incorporated association. The incorporated association will have at least five Directors who will be appointed by the Management Committee. These are expected to include the Club Secretary and the Club Treasurer (who will continue to be elected by members at the AGM) and the Management Committee Chair (who the Management Committee appoints from amongst its elected Sports Representatives).

The Directors will have collective overall responsibility for the new company and for making its strategic and operational decisions. This includes ensuring that the company complies with its Articles of Association, meets its statutory obligations in line with the Companies Act and submits all required financial returns and filings to Companies House. The Directors will also be responsible for complying with their general duties as Directors under the Companies Act e.g., to act in good faith and promote the success of the company. The Directors will set out what aspects of their functions are delegated to the Management Committee and Club Officers, who will continue to run the Club on a day to day basis as they do now, albeit reporting to the Directors.

The Club will still hold a members' AGM when the Club Officers will be elected. At the relevant Sports AGM, each Sports Section will continue to elect members to be their representatives on the Sports Committees and each Sports Committee will continue to elect 3 representatives each to the Management Committee. The Management Committee will continue with 9 voting Sports Section Representatives as before. The Directors and Club Officers will attend Management Committee meetings and have the right to attend Section Committee meetings.

Members having an interest in becoming a Director of the incorporated association are encouraged to put themselves up for election and are invited to contact Steve Francis for further information. It is intended that modern governance standards will be implemented so that the maximum number of years a member can serve as a Director or Trustee will be 9 years. The aim is to encourage new members to volunteer for Officer and Committee roles and bring fresh ideas.

*Information note: The Directors will not have a power of veto over the Management Committee, except where a Management Committee decision is unlawful, or in conflict with applicable rules and regulations. The Directors of The Connaught Club Limited will attend Management Committee meetings and advise the Management Committee on major decisions to help ensure compliance and avoid any unintended breaches of regulations, such as health and safety, where the Club has legal liability.*

#### **9. Why are updates needed to Barn Hoppett Limited?**

The proposed updates are legal and technical. The Articles of Association prepared in 1920 will be updated to align to the Club's current activities, governing framework and the Connaught Trust Deed. A new provision will be included that the Directors must be full adult members or life members of the Club. The new lease agreement with the Club will protect Barn Hoppett Limited from the expense of maintaining the land and the buildings as well as providing security of tenure to the Club. Members having an interest in becoming a Director of Barn Hoppett Limited are invited to contact David Joslin or Nick Whiddon.

#### **10. What is the status of land title registration?**

The Directors of Barn Hoppett Limited undertook diligence to check the Club's possible entitlement to a small parcel of land behind the bowling green. Foskett Marr Gadsby & Head Solicitors confirmed on 20 January 2022 that the land title registration application has been submitted. It is well known that the Land Registry process continues to be severely delayed following Covid.

#### **11. Why are updates needed to the Connaught Trust Deed?**

The proposed updates are legal and technical. The Connaught Trust Deed was created in 1946. The legal advice is that the legacy provisions in the current Trust Deed relating to Fields in Trust have expired. The Trust Deed will restate and revive those provisions important to the membership. The Connaught Trustees will continue to hold the shares in Barn Hoppett Limited in trust for the benefit of the Club and its members. However, if the Club ever wound up with assets available after paying off any debts, these assets will be distributed to Fields in Trust and if not, another charity established for similar purposes. New provisions will be included that the three Trustees shall be full adult members or life members of the Club who do not hold any other Director or Officer role for the Club.

#### **12. When will the Connaught Trustees change?**

Some members have questioned a previous decision of the AGM that the Officers holding the elected positions of President, Treasurer and Secretary shall be the Trustees of the Connaught Trust. The relevant Officers have offered to resign as Trustee. A resolution is being prepared for the AGM to be held on 22 January 2023 to specify that the Trustees shall not hold any other Director or Officer role for the Club. Members having an interest in acting as Trustee for the Connaught Trust are invited to contact Steve Francis or Graham Murray. The main role of the Trustee is to ensure that the terms of the Trust Deed are correctly carried out in the event that the Club decides to close down. The new trustees will be officially appointed when the Trust Deed is updated.

### **13. Does incorporation mean the Club will dissolve?**

The Club will carry on as before and the change in legal structure will be seamless to members. The Club name is preserved in “The Connaught Club Limited” and the Club can still call itself as “The Connaught Club”.

Once the incorporated association “The Connaught Club Limited” becomes the new operating company, the unincorporated association has no further role. The procedures in the constitutional rules will be followed to formally make a decision to close the unincorporated association once the bank accounts are clear and all HMRC tax, VAT payments and final filing requirements have been satisfied.

### **14. Why does the Club need a trading subsidiary?**

This is part of the structure recommended for Clubs operating as a HMRC approved CASC. The proposal will enable the Club to continue to benefit from the exemption from corporation tax on profits from non-member trading turnover above £50,000 per year.

The trading subsidiary will distribute 100% of its profits on the non-member income to the incorporated association by making a qualifying gift aid donation. The incorporated association will not be liable for corporation tax on the gifted profits.

The HMRC CASC Rules impose a maximum income limit of £100,000 earned from trading with non-members and rental income received from members and non-members. If the limit is breached the Club would lose its CASC status. If the turnover from trading with non-members were to exceed £50,000\*, the CASC would have to pay Corporation Tax on those profits.

The trading subsidiary will be a subsidiary of the incorporated association and set up as a limited liability company. The Directors of the trading subsidiary will report to the Directors of the incorporated association. The Directors will be appointed by the Management Committee.

This is needed to enable the Club to maximise its income from non-members, for example by holding open competitions and selling merchandise. The success of the Saturday morning children’s tennis groups (around £30,000 per year) plus other non-member and rental income brings the Club very close to the threshold.

\*Note financial limit applies to turnover not profit

### **15. Will incorporation cost the Club more money?**

The legal and accounting and tax advice, and establishment of the new Club structure that will last indefinitely is relatively modest and a one-off expense, compared to the value that incorporation will bring to the Club and its members.

The main increase in ongoing costs will be the administrative fees associated with submitting annual returns and filings to Companies House. The Club's accounts are already audited.

The professional advice to-date has cost £8,950 plus VAT and the legal costs of implementing the proposals are estimated at £4,000 - £5,000 plus VAT. Already the Club has benefited financially since the accounting advice identified important information about changes to CASC Rules and corporation tax thresholds that the Club was not aware of. The Club was also alerted to significant flaws in its legal documentation concerning the expiry of the legacy provisions to Fields in Trust, that it is now in a position to correct.

### **16. What is Fields in Trust?**

Fields in Trust is a charity, originally called the Playing Fields Association that was set up to secure the future of open spaces for the playing of field sports such as football. In more recent times its focus has broadened to protect parks and green spaces as well as playing fields for people to enjoy. The main mechanism it does this is through a legal agreement called a Deed of Dedication that is set up between the Fields in Trust and a space's landowner, usually the local authority or town or parish council. The "dedication" is that the landowner e.g., the Council, will retain the land for use as a public park, playing field or recreation ground in perpetuity and not sell or change the use of the land for commercial development or any other purpose. The Deed of Dedication also sets out what the landowner can and cannot do without consulting Fields in Trust, including in respect of facilities developments and investments.

The Club is in a very different space because it owns the land and its use for amateur sports is protected through Barn Hoppett Limited, the Connaught Trust and the Club's legal and governance structure. The updated Connaught Trust will restate and revive the amateur sports and Fields in Trust legacy so that the future of the land is secure and protected from commercial sale and redevelopment.

It is to be noted that the Connaught Trust has never provided for the land title to be gifted to Fields in Trust. What the Connaught Trust requires and will continue to require, to respect the wishes of the members who purchased and donated the land to the Club, is that the Connaught Trustees will hold the shares in Barn Hoppett Limited for the benefit of Fields in Trust, or a similar amateur sports and recreation charity, if the Club ever decides to close down and has assets remaining after settling any debts.

Historically Fields in Trust used to offer grants, but currently has no operational grant giving schemes. [www.fieldsintrust.org](http://www.fieldsintrust.org)



The legal advice is that Fields in Trust could have no reason to object to the Club transferring its business to an incorporated association and there is no need to notify Fields in Trust or obtain their permission to incorporate or update the Connaught Trust Deed.

#### **17. How will incorporation affect the Club Rules?**

The Club Rules is the document that governs the Club's current constitution as an unincorporated association. Instead of Rules, the incorporated association will have Articles of Association that are consistent with the Companies Act and the HMRC requirements for CASCs. The Articles of Association will set out all key features of governance reflected in the current Club Rules including the obligation to hold a members' AGM, member rights and notification obligations, voting procedures and the key features of the governance structure, including the powers and procedures for appointing Directors and the role of the Management Committee.

The Club will continue to maintain Bye-Laws, Policies and Procedures that may be changed and updated periodically, subject to approval by the Management Committee. Any important aspects of the Rules that are not transferred to the Articles of Association will be transferred to the Club Bye-Laws as appropriate.

#### **18. When will everything happen?**

If approved at the AGM, for tax and accounting reasons the target date for the transfer of operations to The Connaught Club Limited is financial year end 30 September 2023:

- Resolutions currently being prepared and will take into account member feedback from the consultation
- Approval of resolutions for AGM by Management Committee meeting 12 December 2022
- Notice of AGM and written resolutions sent to members no later than 1<sup>st</sup> January 2023
- 22 January 2023 – AGM vote and if approved:
- Appoint Board of Directors and Trustees
- Prepare and execute legal documents to implement the agreed proposals. Brabners to prepare all legal documents and LB Group to advise on any HMRC or tax questions. The resolutions will authorise the appointed Directors and Trustees to execute relevant legal and tax documents
- Open new bank accounts
- Apply to HMRC for CASC status for The Connaught Club Limited
- Set up trading subsidiary of The Connaught Club Limited
- Financial year end 30 September 2023 – transfer memberships, contracts and operations from the unincorporated association to The Connaught Club Limited (subject to HMRC granting CASC status)

#### **19. Where can I find more information?**

A file of key documents concerning the incorporation project is retained by the Club Manager for member inspection. The file includes confidential and valuable legal and tax accounting advice that the Club has commissioned and paid for specific to its own circumstances and for its own benefit. It is therefore not permitted to photograph, photocopy, scan or remove the file or any documents in it from Club premises. The file will be updated with new documents as appropriate.

Certain documents in the file have already been emailed and communicated to members as part of the consultation process, so you should find these in your inbox if you wish to refer to them again e.g., summary of current and proposed future legal structure and Management Committee recommendations.

If you have further questions, you may contact Steve Francis, Georgina Robbins or any other member of the Incorporation Working Group including Nancy Lycett, Nick Whiddon and Sangita Unadkat.

**Connaught Management Committee**

**December 2022**

## **Legal Terms - Potential FAQs prepared by Brabners:**

### **1. What does Separate Legal Personality mean?**

This means the entity/organisation has its own existence and legal personality. It is a "person" and the company can exercise rights and powers, and is subject to obligations and liabilities, similar to those exercised or borne by natural persons.

### **2. What is the difference between a company limited by shares and a company limited by guarantee?**

These are two different types of companies that can be registered in England and Wales. They are both companies but one is limited by shares and the other is limited by guarantee, both of these provide limited liability to the owners/Members.

Companies limited by guarantee are set up without share capital. So instead of shares and shareholders, they are owned by one or multiple guarantors (the Members) who each agree to pay a fixed sum of money (a 'guarantee') toward debts if the business becomes insolvent. This fixed sum of money is nominal (usually £1.00). The financial guarantee is the limit of a guarantor's (the Member's) personal liability to the company.

Companies limited by shares have a share capital. This means you must divide the company into shares and appoint shareholders. Each share represents a percentage of the company.

The proportional value of the shares owned by each shareholder represents their percentage of control and ownership, their profit entitlement, and the limit of their personal financial liability for company debts. In the proposed new structure, the Trading Subsidiary will be issued with one share which will be held by the Parent Company (i.e. the new company which is the Connaught Club itself) in its sole name.

### **3. What does 'Incorporation' mean?**

True incorporation is where a business or activity or ownership of property/assets is converted from being run in the names of individuals to being owned or run by a limited company. Technically, it is not possible to restructure or convert an unincorporated association into a company. However, it is possible for the Management Committee of an unincorporated association to incorporate a new company with materially identical purposes and people and transfer the unincorporated association's assets to it. Because in practice this achieves the same effect as a 'true' incorporation, this process is often colloquially referred to as the 'incorporation' of an unincorporated association. For simplicity, the phrase 'incorporation' has been used in Brabners letter of advice.

### **4. What is 'joint and several personal liability'?**

The following brief summary has been prepared, solely for the purposes of explaining joint and several personal liability to the Membership of the Connaught Club, this should not be relied upon for any other purpose:

In layman's terms, this means that each and every Member of the Club is individually responsible for the entirety of any debt owed by the Club. Any liability will be shared equally between the Members but, ultimately, each Member is responsible for the entire amount if the others cannot pay.