

# Incorporation and Legal Structures Presentation

Newtonmore Golf Club  
x Club Development Consultancy  
18<sup>th</sup> September 2023



# About Us



- The consultancy arm of Supporters Direct Scotland, established in 2016 to support community sports clubs through guidance & services.
- We operate as a social enterprise, investing all our proceeds back into non-profit organisations.
- Partnerships with Scottish Athletics, Bowls Scotland, Scottish Swimming and Netball Scotland.
- We've supported clubs from St Mirren FC to grassroots clubs and have started discussions with several golf clubs in Scotland.

# Overview of webinar



- To provide an overview of the key differences between unincorporated and incorporated golf clubs.
- To provide an overview of the most commonly adopted legal structures by golf clubs.
- To highlight the process of incorporation (and outline expected timelines)



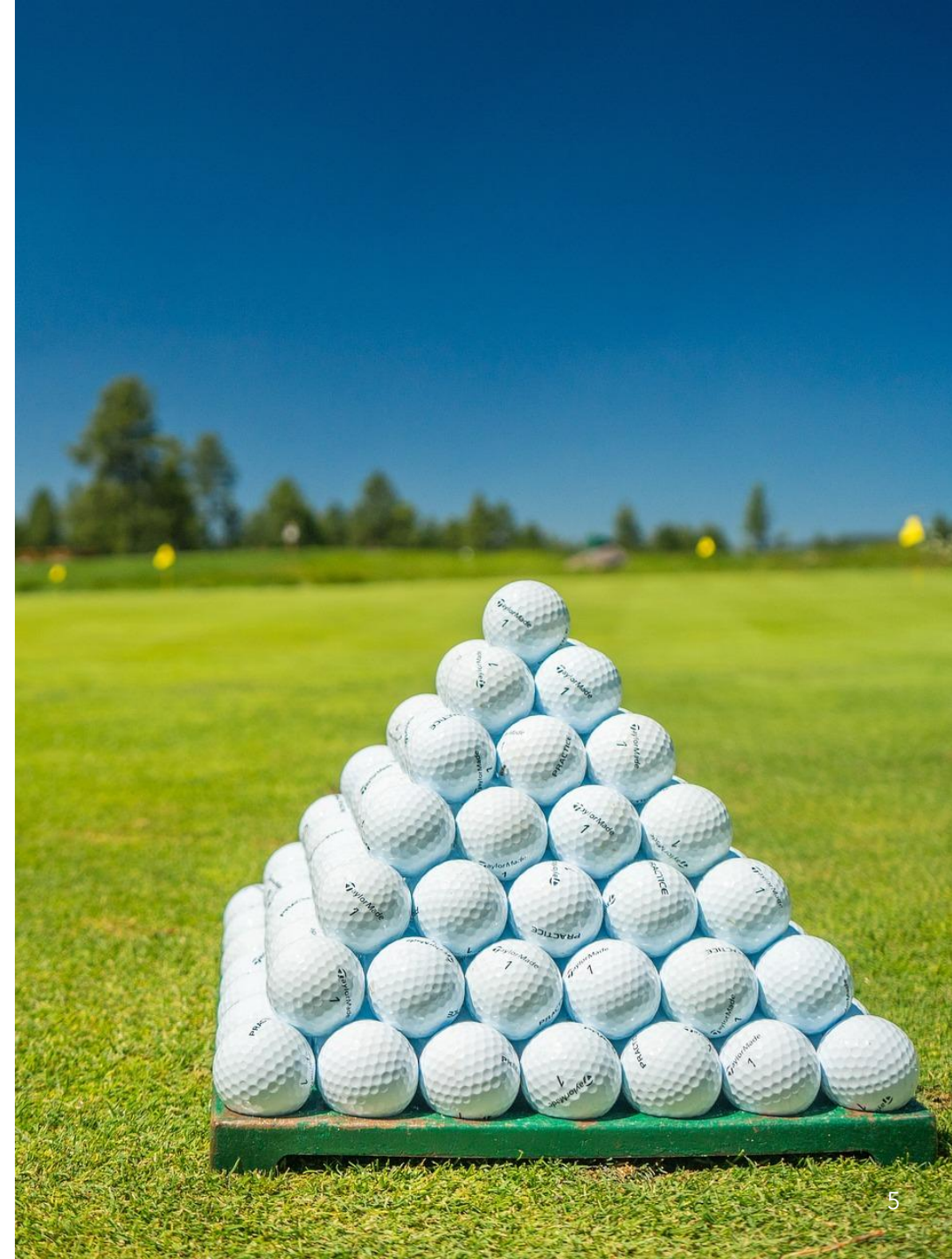


The difference between unincorporated vs incorporated golf clubs



# Unincorporated Associations

- An unincorporated association is not a separate legal entity from its members
- There are around 340 golf clubs in Scotland that operate as unincorporated associations
- It is the easiest, cheapest and the most flexible way of operating
- Do not have the legal requirements that apply to incorporated entities.



# Disadvantages of Unincorporated Associations (1)



- Members' personal assets could be at risk if there are debts or other liabilities which the club cannot meet.
- This could either be the committee members (e.g., if the decision resulting in the loss was passed at a committee meeting) or entire membership (e.g., if the decision was passed at a general meeting).



# Disadvantages of Unincorporated Associations (2)



- Unincorporated associations cannot enter into contracts, employ people or own assets in their own right.
- If your club owns property and is unincorporated, it will be owned in the names of certain members. If any of those members leave the club, you need to update the property title and this can have legal and registration costs.



# Case Study: Davies vs Barnes Webster & Sons Ltd

- Barnes Webster & Sons Ltd were contracted to carry out works for a rugby club.
- The contract, which was signed by the club's treasurer and witnessed by Mr Davies (Club President), provided for payment by the club of an agreed sum plus other sums which might become payable under the contract.
- The building work was completed and the agreed sum paid by the club. However an additional £147,000 for agreed variations was not paid by the club. Barnes Webster & Sons Ltd served a statutory demand on Mr Davies in respect of the additional sum.
- The district judge held that Mr Davies was liable as he had been kept informed about the progress of the contract and had raised no objections; he had voted at the club meeting in favour of entering into the contract; he had witnessed the signing of the contract; and he was a trustee of the club.





# The Trust Registration Service

- Following a change in the law in September 2020, all express trusts (that includes unincorporated golf clubs), subject to a limited number of exemptions, are now required to register with HMRC Trust Registration Service.
- Unincorporated associations such as some golf clubs who have no separate legal capacity but whose property/assets e.g. freehold or leasehold land/equipment/bank account(s) are held by individuals or by a legal entity on their behalf should register.
- If your Club is a registered Charity or Charitable trust, then you do not need to register the trust. However, HMRC have stated that this exclusion does not apply to clubs registered with HMRC as community amateur sports clubs.

## A comparison

	<b>Unincorporated Associations</b>	<b>Incorporated Associations</b>
Separate legal entity?	✗	✓
Can enter contracts?	In the name of a member	In the name of the club
Limited liability?	✗	✓
Compliance requirements?	None specifically required	Yes – e.g., Companies House/FCA/OSCR
Trust Registration Service?	✓*	✗





## Choosing a legal structure for your golf club



# Questions to ask before incorporation (1)



- What are the key risks that you face, now and in the short- to medium- term? Do you need to incorporate, to get the benefit of protection for committee members – thinking about risks from property/leases, building contracts, potential employee claims etc?
- Will you want additional status? Do you meet the criteria to have charitable status? Are you thinking of Community Amateur Sports Club status?



# Questions to ask before incorporation (2)



- How will you raise your capital finance and ongoing revenue? Grants? Loans? Shares? Community shares? Trading? Annual subscriptions? Donations?
- Who should have control or ownership? Do you want to give the wider community ownership? Or is there a small group of investors who will require ownership as a condition of providing finance? Or should control be limited to regular users of the facilities – or those participating at competitive level - rather than the wider community?

# Questions to ask before incorporation (3)



- What message do you want to give about the nature of the organisation? Do you want to be branded as a social enterprise? Do you want to be seen to be charitable? Or community focused, but not necessarily charitable?
- Are there sources of funding – or other opportunities - which will only be available to you if you adopt a particular type of governance model? Certain funders will only support organisations which have membership open to the local community.



# Questions to ask before incorporation (4)



- Are there tax benefits that you need to access? Are they vital or just nice if you can get them? This might include exemptions from corporation tax on trading income, and/ or access to tax reliefs for donors or investors and/or the ability to maximise the benefit of donations by reclaiming tax via gift aid.
- Ease of setting up. Are you ready to involve other people? How quickly do you need to set up? Are there funders or other key stakeholders that need to be part of the process of developing the new legal structure?

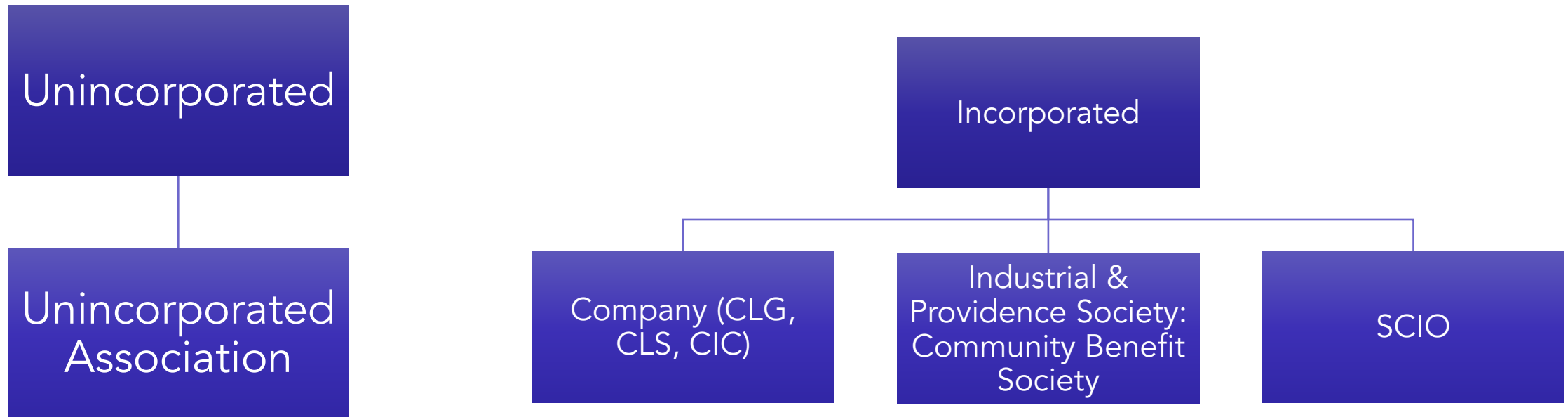
# Questions to ask before incorporation (5)



- Ongoing bureaucracy. Are you geared up to cope with the administrative tasks that need to be carried out? Companies have to notify Companies House of a number of changes, as well as filing annual accounts and an annual confirmation statement, while SCIOs have quite light-touch requirements so far as those aspects are concerned.
- Do you need to have a flexible structure that you can change later? Have you considered what your legal status should be in 3-5 years' (or 10 years) time? Have you considered how this will affect your club development & business plan?



# Legal Structures for Golf Clubs



# Company Limited by Guarantee

- Separate Legal Entity. This allows the club to enter into contracts and hold assets or investments in its own name
- Members are protected and only required to pay an agreed sum (typically £1) if the club becomes insolvent.
- Having limited liability will protect the directors (of the company) and members against a claim, provided the directors have been compliant with company law requirements.
- Administration/compliance involved
- Depending on how the articles are written, may qualify for grant funding.





# More than a company?

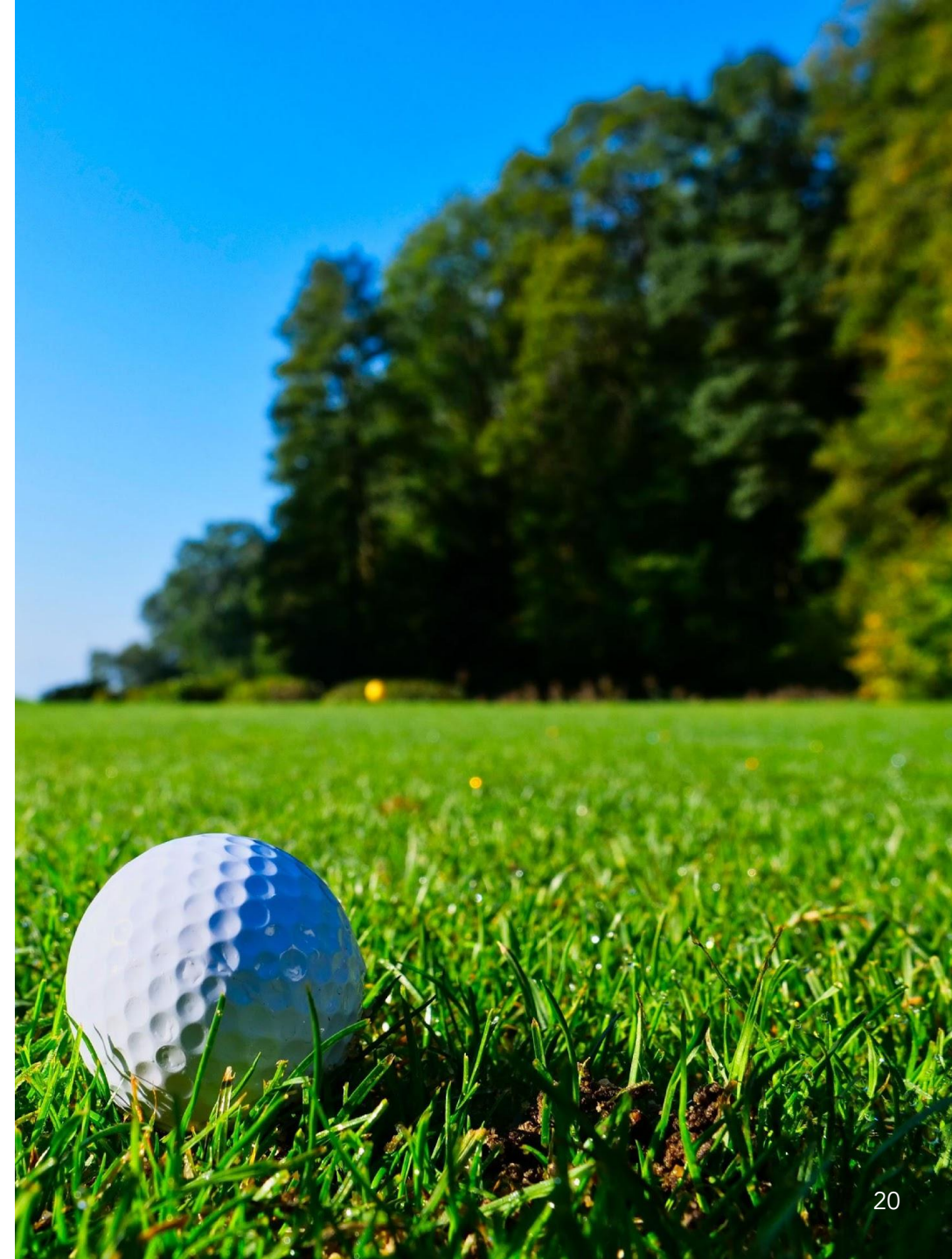
- If a club is set up as a limited company, what distinguishes it from any other business?
- Clubs aims are likely to be very different to those of a business, but nothing about being a limited company says this.
- That's where Community Benefit Societies, Community Interest Companies and Scottish Charitable Incorporated Organisations come in.
- In order to be recognised as one of these, your club has to demonstrate it isn't in it for making profit and rather, that you are committed to providing benefit to your members and the community, clearly distinguishing yourself from a business.





# Scottish Charitable Incorporated Organisations

- Scottish Charitable Incorporated Organisations are, as the name suggests, organisations that offer the benefits of being incorporated and charitable status in one body.
- A SCIO is a simple mechanism for a charity to trade although trading for a profit would still require a trading arm.
- SCIOs are regulated by one body – OSCR – and therefore can be simpler to administer than clubs set up as a company with charitable status.
- In order to register as a SCIO, the objects must be exclusively charitable and meet the Charity Test





# The Charity Test

The charity test is the legal set of requirements that an organisation must pass to become a charity and be entered into OSCR's register. The charity test is in two main parts – an organisation has to show:

- that it has only charitable purposes (this might require registering a subsidiary organisation)
- that it provides public benefit in achieving those purposes





# Golf clubs as charities

- Any golf club that wants to become a charity must exist strictly for charitable purposes.
- You might not typically think of a golf club when you think of a charity, but the advancement of public participation in sport qualifies as a charitable sport.
- In the vast majority of cases, the club may need to amend its constitution to ensure it is consistent with the requirements of a charity.
- 7 clubs in Scotland (with the name Golf Club) registered with OSCR.



A photograph of a white golf ball on a green, with a flag on a pole in the background under a blue sky with clouds.

# Advantages of charitable status

- Tax relief. Properly structured, a charity can avoid any liability to tax on profits and benefit from Gift Aid.
- Rates relief. Mandatory 80% relief from business rates with further 20% relief subject to discretion of local authority.
- Public Perception. People may view your organisation differently as a charity.
- Fundraising. Charities often enjoy considerable support from funders and other potential supporters which might not be available to other legal structures.
- Other benefits. Amazon Smile, Easy Fundraising, Google Grants, TT-Exchange

# Disadvantages of charitable status

- Administration. Regulation by OSCRC can involve an additional administrative burden.
- If you lose your charitable status as a SCIO, you become unincorporated.
- Charitable status can, on occasion, constrain an entity's activities if these might not be consistent with its charitable purpose.





# What legal structure is right for your sports club?

Club currently just has a constitution = unincorporated association. Potential risks around personal liability as club does not have a legal personality separate from its members. Club is considering incorporation.





# Taxation Considerations

- Capital Gains - Generally speaking, it should be possible to effect incorporation as a company limited by guarantee as a reconstruction on a no gain no loss basis for capital gains purposes (i.e. without incurring a tax liability).
- Rates Relief – Clubs registered as charities (or CASCs) receive mandatory 80% relief from business rates with further 20% relief subject to discretion of local authority.
- Gift Aid - Clubs registered as charities (or CASCs) are able to claim gift aid on membership fees and donations.



	Unincorporated Association	Community Amateur Sports Club	Company Limited by Guarantee	Company Limited by Shares	Community Interest Company	Community Benefit Society (CBS)	Scottish Charitable Incorporated Organisation (SCIO)
Limited Liability/ Legal personality?	X	X	✓	✓	✓	✓	✓
Governing document?	Constitution	Depends on legal structure	Articles of association	Articles of association	Articles of association	Rules	Constitution
Regulatory body?	None (unless registered as a charity)	HMRC	Companies House	Companies House	Companies House	Financial Conduct Authority	OSCR
Can issue shares?	X	X	X	✓	X	✓	X
Is charitable status available?	✓	X	✓	X	X	✓	✓
Asset lock?	X	✓	✓	X	✓	✓	✓
Level of non-sport related regulation?	Less	Onerous	More	More	Onerous	Quite onerous	Onerous
Level of reporting and filing?	Less	Onerous	More	More	Onerous	Quite onerous	Onerous
Level of governance/compliance?	Less	Onerous	More	More. May be distorted by control	More	More	Onerous
Does the club need to pay corporation tax?	Partial exemption for any mutual trading	No (subject to structure)	Partial exemption for any mutual trading	Pay in full	Partial exemption for any mutual trading	Partial exemption for any mutual trading	No (subject to structure)
Is gift aid available?	X	✓	X	X	X	X	✓
Rates saving?	X	✓	X	X	X	X	✓
Limits on activities?	None	Yes, dependent upon structure	None	None	Must demonstrate community interest	Must demonstrate community interest	Yes, activities must be strictly charitable
External perception & access to grant funding	Poor - Limited	OK - Potential lack of understanding	Better (subject to disclosure) - Better	Poor	Better	Potential lack of understanding - Best	Best - Best
Membership	Open to all	Open to all	Open to all (subject to setup)	Limited	Open to all (subject to setup)	Open to all	Open to all
Community Asset Transfer?	X	X	✓	X	✓	✓	✓

# Overview of the Process

## Step 1

Decide on legal structure and discuss/propose with members

## Step 2

Prepare and finalise Articles of Association and Rules (consulting your members on their contents, as appropriate)

## Step 3

Prepare the notice and resolution to incorporate and identify information about your club's assets for the schedules

## Step 4

Incorporate new entity with regulator (Companies House/FCA/OS CR). If relevant, register the new entity as a CASC or apply for additional charitable status)

## Step 5

Call and Hold a General Meeting of the Club to pass the resolution to incorporate and transfer the assets to the new entity.



# Rough/Estimated Timescales

## Company Limited by Shares/Guarantee/CIC

- Registration with HMRC = 1-2 Weeks
- Total process = 8-10 months

## Community Benefit Society

- Registration with the FCA = 2-3 weeks
- Total process = 10-12 months

## Scottish Charitable Incorporated Organisation

- Registration with OSCR = 3-4 months
- Total process = 12-18 months



Andrew Jenkin

andrew@clubdevelopment.co

clubdevelopment.co

Thank you

