

## HISC Incorporation Review – Frequently Asked Questions

Updated 05/06/2025

<b>What is HISC's current legal structure?</b>	<p>HISC is currently an Unincorporated Association, known more commonly as a private members club. We have our Rules and Bye-laws which bind the members together, set out the structure and state how we govern and operate the Club. Other examples of unincorporated clubs are organisations like village hall groups and voluntary and faith groups.</p>
<b>What are the key considerations about being unincorporated and what has that meant for HISC?</b>	<p>Unincorporated clubs are not, in law, considered to have their own legal identity, thus an unincorporated club cannot own property, enter into contracts or employ staff in its own name. Anyone suing an unincorporated club in relation to such matters must do so in the name of representative individuals and this usually means the officers, committee members or trustees. In addition, all of the individual members of an unincorporated club can be held personally liable to meet the debts of the club. Such debts may arise out of contractual disputes and employment disputes, or even personal injury claims if for some reason the club's insurance provision is inadequate.</p> <p>Unincorporated associations are not regulated by a specific statute (e.g. as companies are under the Companies Act 2006), so they must comply with the common law. This provides clubs with a certain amount of flexibility and less regulation compared to an incorporated company, for example, there is no legal duty on the club to file annual returns or to have the accounts audited as there are with incorporated companies.</p> <p>Unincorporated associations were thought to be most appropriate for small organisations but this is changing as discussed below.</p> <p><b>HISC Specifics relating to its unincorporated status</b></p> <p>We appoint trustees who hold all the property of the Club in their own names.</p> <p>The General Committee has delegated responsibility for the signing of contracts, including employment contracts, to the General Manager on behalf of the Club.</p>

	<p>We have extensive insurance which is regularly reviewed with the intention of covering all possible liabilities that may arise.</p> <p>As overall responsibility for the Club and its operations rests with General Committee, as laid out in the Rules, it would seem most likely that GC members would be the first to be sued if a claim arose.</p>
<b>Why would HISC want to become incorporated?</b>	<p>There are a number of factors which suggest that the Club should consider incorporation:</p> <p>The RYA and Sport England strongly recommend clubs to incorporate, i.e. become a Limited Company. Many have done so, including all the clubs in the Harbour except HISC and MRSC who are currently working on the change.</p> <p>Scale - the Club is of a size that operating as an unincorporated entity is not appropriate. The clubhouse and land have significant value; we have a large membership and a turnover of nearly £2m. On key projects to develop and improve the facilities it is increasingly difficult to contract with suppliers and 3<sup>rd</sup> parties as they are unsure of the legal status of who they are contracting with.</p> <p>The complexity of the Club, its offering and operations deserves the most professional governance which is modern and transparent.</p> <p>The regulatory environment has changed and become more onerous and there is a risk that circumstances will overtake us and jeopardise the Club's ability to operate.</p> <p>Due to Money Laundering and Know Your Client regulations, banks are becoming less interested in dealing with entities outside known regulatory structures, and indeed some banks are withdrawing facilities from organisations since technically they are dealing with "the members for the time being of the Club" with no checks in relation to who those members are. Similarly, insurance companies and suppliers are increasingly only wanting to deal with legal entities.</p> <p>It is not possible to guarantee that we have the appropriate insurance in place to cover all possible scenarios that might give rise to a liability. This situation is likely to worsen as the insurance market gets tighter, and risks are more specified to reduce the insurers exposure.</p>

	<p>It feels right that the Club should be doing what it can to protect its members and volunteers. If members, and particularly General Committee members (which include the Trustees) appreciate their potential liability, it may become more difficult to get volunteers and fill key posts going forward.</p> <p>All title deeds could be held by the Club and not by Trustees. Currently, a legal process to change title deeds is needed when Trustees change.</p> <p>All contracts would be made and held by the Club making things easier for management and giving us a greater choice of suppliers.</p>
<b>What would be the most appropriate incorporated structure for the Club?</b>	<p>The majority of clubs who have chosen to incorporate have become Companies Limited by Guarantee and this would be the most appropriate route for HISC.</p>
<b>What is a Company limited by Guarantee?</b>	<p>A company may be limited by guarantee or by shares. For clubs that operate on a not-for-profit basis, incorporation as a company limited by guarantee is the most suitable form of incorporation. Each member guarantees to pay an amount if the club becomes insolvent e.g. £1, which has the effect of limiting members liability to this amount. A company limited by guarantee cannot distribute profits to its members. A company will adopt Articles of Association (the equivalent of an unincorporated association's constitution /rules) and will have directors and possibly committees that are responsible for the running of the club.</p> <p>The conduct and administration of a company's affairs is governed by the Companies Act 2006 and therefore clubs must operate within the boundaries of this legislation, but the new Articles of Association can follow closely the Club's existing rules.</p> <p>Considerations:</p> <p>The law recognises an incorporated company as a separate legal entity and as such an incorporated company does not need to have its property held by separate trustees instead the company itself can hold property in its own name.</p>

	<p>Institutions such as banks and insurance companies are more comfortable dealing with a corporate legal entity.</p> <p>As a company has its own legal identity, if it becomes insolvent or a claim is brought against it, the members will not be liable other than for the amount each member has guaranteed to pay - ie. £1. However, it must be noted that if the company has broken company or other law its directors and other authorised people may in some circumstances be held personally liable so Directors and Officers insurance will be taken to protect them and they will have an indemnity from Club assets to cover innocent mistakes.</p> <p>An incorporated company must comply with the Companies Act 2006 and file annual accounts, annual returns and the appointment or retirement of directors at Companies House. Changes to the Articles of Association must also be filed at Companies House.</p> <p>Directors have duties and responsibilities under company law e.g. a duty to promote the success of the company, to act in the best interests of the company and to comply with its Articles of Association, breach of which may render them liable to civil and/or criminal action.</p> <p>We would need to provide Companies House with a register of voting members. These would be members in the Adult Single, Adult Couple, those aged over 18 in the Family Membership, and Honorary Life Members over the age of 18.</p>
<b>What other legal structures have we discounted and why?</b>	<p><u>Company limited by Shares (CLS):</u></p> <p>A CLS is the most common type of company in the UK used for commercial, profit-making businesses. In this structure, the company is owned by shareholders to whom dividends may be payable if there are profits.</p> <p>Every time a member joins and becomes a shareholder they take and own a stake in the undertaking, the company must issue a share to them and each time a member leaves their share has to be transferred to another member or redeemed. This would be extremely difficult for HISC to administer. There may be arguments about value.</p>

	<p>A CLS is structured to generate profits for external or internal shareholders, not to support the non-profit, member-serving purpose of a private club.</p> <p><u>A Charitable Incorporated Organisation (CIO):</u></p> <p>A CIO is a specific legal structure designed for charities in the UK. It allows a charity to be incorporated and have its own legal identity without having to register as a company with Companies House. Instead, it is registered with and regulated by the Charity Commission.</p> <p>A CIO would be appropriate for HISC if the Club's primary purpose was charitable—for example, promoting the advancement of amateur sport or providing sailing opportunities to disadvantaged groups. However, as the Club operates as a private members' club with social and recreational elements, it does not meet the criteria to be a CIO.</p> <p><u>A Community Interest Company (CIC):</u></p> <p>A CIC is a special type of limited company in the UK designed for social enterprises that want to use their profits and assets for the public good. CICs are regulated by the Office of the Regulator of Community Interest Companies and must meet a community interest test and ensure profits and assets are used to benefit the community.</p> <p>A CIC is not suitable for a private members' club like HISC because it is legally structured to benefit the public, not a defined group of private members.</p> <p><u>The CASC scheme (Community Amateur Sports Club scheme):</u></p> <p>Certain clubs, whether incorporated or not, may register to join the CASC scheme. This is a UK government initiative that gives amateur sports clubs similar tax advantages to charities. To qualify for the scheme, a club must be open to the whole community without discrimination and membership fees must be affordable for most.</p> <p>HISC does not meet this criteria.</p>
<b>What would be different about</b>	<p>There should be no reason for the Club to feel any different for the members and a key objective throughout any change would be to ensure it retains its culture of a members' club. The change</p>

<p><b>the Club after incorporation?</b></p>	<p>is about legal standing and should not really impact the day-to-day operation and use of the Club.</p> <p>Members will need to actively accept that they are becoming a member of the new company. This would require a tick box for new members and a process for existing members to do a one-time tick box acceptance on renewal. This drives the cut-over to the new status to be on January 1<sup>st</sup> to coincide with membership renewal.</p> <p>The Club Rules would be replaced by Articles of Association which would reflect the spirit of the current Club Rules but would also include sections that are specific Companies Act requirements. Once in place, the Articles of Association could only be amended with agreement of 75% of the members who vote on a resolution . They must be registered with Companies House and available for public view.</p> <p>The RYA has produced model Articles of Association which are a useful reference.</p> <p>Not all of the existing Club Rules/Bye-Laws will be appropriate to include in the Articles of Association, so there would still be a document of Club Rules/Bye-Laws which would be managed in the same way as they are today.</p> <p>All Club contracts, including employment, would need to be updated to reflect the Club's new status. Staff would be TUPE'd across to the new company.</p> <p>It's most likely that members of General Committee would become the directors of the new company, with the commodore as chairman. Anyone becoming a director who is employed would need to check that this was ok with their employers first.</p> <p>The intention would be to keep our existing committee structure as is.</p>
<p><b>If the club converts to an incorporated body, is it anticipated that Trustees will be retained, as there</b></p>	<p>This situation is very much for discussion as the Trustees have been valued long-term appointments. It is unlikely that the Club would continue to have a role entitled Trustee, but it is important that we consider how best to retain the knowledge, input and advice that our Trustees have provided.</p>

<b>will be no legal requirement?</b>	
<b>What are the implications re VAT?</b>	The VAT status shouldn't change if we ensure that the exemption criteria continue to be met under a new registration. Sailing is listed on the exemption list and the new entity will be a not-for-profit organisation whose profits are reinvested in the membership.
As a Limited Company would the Club be liable to Corporation Tax?	The company will be potentially liable for tax on profits in the same way as we are at present. As it will remain a not-for-profit organisation (with any financial surplus being reinvested in the Club) we do not expect to be making taxable profits, but we will make sure we receive full guidance from our Accountants.
As a Limited Company would the Club pay any dividends?	No, a Company Limited by Guarantee does not have any shareholders. In the unlikely event that the Club be wound up then the distribution of any surplus assets would be in line with Section 2 of the HISC Rules. If there were a liability, then the members would have to cover the shortfall, with their individual liability capped at £1 (currently as an unincorporated body this liability is uncapped).
<b>Would the Club's accounting requirements become more onerous?</b>	<p>We would have to file accounts on an annual basis, and we would qualify as a small company, so we could choose to file limited accounts. The accounts that we currently produce for the membership are more detailed than the small company exception.</p> <p>The only change would be that we have "to send" a copy to all members -the Articles can provide that this can be done by email or on a member's section of the web site.</p> <p>The register of members can be kept by the club, and we could use the ESP membership database for that.</p> <p>So there would be very little change from an accounting perspective.</p>
<b>How much would the move to incorporation cost?</b>	We don't have quotes yet, but info from other clubs implies that it would cost between £20 to £30k.
<b>What Club process would we need to go</b>	Following a period of consultation with the membership, a General Meeting and membership approval of a Rule change would be needed to enable the Club to change its status (Rule 2.2), and a further GM would be needed to get membership

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<b>through to reach a decision?</b>	<p>approval of the enactment of the change and the adoption of the Articles of Association.</p> <p>The current thinking is that we should aim for the October 2025 AGM for the Rule Change vote and the SGM in 2026 for the second vote.</p>
<b>When would the change to incorporated status happen?</b>	<p>If the membership votes to become incorporated at the SGM 2026, the implementation date would be Jan 1<sup>st</sup> 2027. This plan would only change if external factors forced us to act more quickly.</p>
<b>Who in the Club is working on this project?</b>	<p>There is a project working group. The members are Graham Williamson, Helen Everest, Henry Message, Caroline Alster, James Yearsley and John Message.</p>