

## **Explanatory Note to members about Ipswich Sports Club becoming a Charitable Incorporated Organisation (CIO)**

### **Background**

Members are probably aware that currently Ipswich Sports Club (ISC) is an unincorporated members club and as such members may have potential personal liability and while this is probably most keenly felt by those responsible for the management of the Club i.e. Trustees and Council members it could impact any member. The Club is also registered as a 'Community Amateur Sports Club (CASC) which gives it certain tax advantages not unlike those afforded to registered charities.

National sporting authorities such as the LTA have been recommending that clubs consider whether they should incorporate. Indeed England Rugby, rather than any governing body for the sports undertaken by ISC, has taken the lead in this regard and their website has considerable detail and advice for clubs on the subject. This concern about the need to incorporate may in part be due to the obvious risk of serious injury to players taking part in rugby that could lead to claims against clubs as well as the wider risks for indebtedness and other claims but that can be true for all sports. As a substantial multi-sports club with a total turnover approaching one million pounds per annum, plans for further significant development of facilities and substantial loans both present and anticipated going forward the Club's Council has been considering the options for some time and the possibility of incorporating has been mentioned at general meetings of members in 2015 and 2016.

### **Options**

Different options for incorporation have been considered by your Council over recent months including the following:

#### **a. Company limited by guarantee/CASC**

ISC could seek to transfer all its assets and liabilities to a new company known as a **company limited by guarantee** (where members could have a financial liability limited to One pound) and ensure that this ISC Ltd becomes a **CASC** in place of ISC by making due application to HMRC. However the current constraints under the latest changes introduced in April 2015 for CASCs mean that ISC will struggle to remain within some of those constraints. There is also the added difficulty of ensuring all ISC activities remain within the required England Sport definition of an 'eligible' sport – most notably 'Fitness' which has been the fastest growth area for ISC memberships in recent years.

#### **b. Company limited by guarantee/Charity**

Similarly we could form a **company limited by guarantee** and seek registration as a **charity** with the Charity Commission. That will leave the new ISC Ltd company subject to two forms of regulation namely company law/Companies Registry as well as charity law/Charity Commission.

#### **c. Charitable incorporated organisation (CIO)**

Another option is to form a relatively new type of corporate vehicle designed for non-profit organisations called a **charitable incorporated organisation** when ISC CIO would be subject only to charity law and Charity Commission requirements.

The Club has taken professional advice from Gotelee solicitors and Larking Gowen accountants and they consider this is the better route for ISC to follow. There are a number of reasons but they include:

- We are advised that all our current and likely sporting and fitness activities can fall within the definition of charitable activities
- Charities receive favourable tax advantages which in some circumstances are more extensive than for CASCs
- As a charity, ISC CIO might well be in a more favourable position to attract grants and other financial support

To be a charity, however, ISC CIO must comply with Charity Commission guidance on public benefit and must allow community participation (which includes having membership open to all members of the public). These aspects are covered in the application form to the Charity Commission but it is thought that the Club's current arrangements broadly speaking will meet these requirements.

### **Next Steps needed**

ISC has applied to the Charity Commission to form a CIO. This has been done by means of a lengthy **online application form** as prepared on our behalf by Larking Gowen.

The application has been accompanied by a **draft constitution** (the contents of which are covered in more detail later in this Note). The constitution is a lengthy document which needs to follow the Charity Commission's template for constitutions for a members run organisation. Some parts are mandatory, some are recommended and some can reflect the Club's preferences. The proposed draft constitution, as submitted, is available for members to read on the club website. It has been prepared by Gotelee after much consideration by the Council using the templates available from the Charity Commission and England Rugby (being the only sport wide model readily available) as well as our current constitution. The draft constitution is currently being vetted by the Charity Commission and until they respond we do not know whether all that has been carefully drafted in the new constitution will meet with the approval of the Charity Commission.

The general principle that has been followed is that as far as reasonably possible we have sought to mirror the Club's current constitutional arrangements but inevitable there have some changes. For example we need to recognise that in place of our current Council members the CIO will have a Board of Trustees. Their role and responsibilities are significant but in many ways not dissimilar to those of ISC Council members at present.

Once the application has been approved work has to be undertaken on a number of detailed matters before the Transfer Agreement between ISC (in its current form) and ISC CIO can be completed so that all the undertaking of the club can be transferred to the CIO. Hopefully that can all be achieved this year.

### **AGM approval**

Members' approval is sought to the resolutions set out in the notice letter for the AGM which resolutions have the full support of the Council. We hope members' will give their overwhelming support.

### **Comments on the draft CIO constitution**

This is a very lengthy document which is not an easy read. We have tried to summarise briefly some of the key points and differences between the current ISC constitution and the new ISC CIO draft constitution (but inevitably much of the detail is not expressly commented upon).

Clause 1. The public name of the club will not change

Clause 3. The wording of the objects clause should fully satisfy Charity Commission definition of for the club's charitable activities

Clauses 5, 6 & 7. As one might expect for a charity there are restrictions on the payment of benefits to members and even more restrictions on the charity trustees (and their connected persons) but none of these are thought to present any serious difficulty to the way the club is currently managed. Similarly the charity trustees are also subject to special provisions for any conflicts of interest they may have.

Clause 8 importantly indicates that in the event of the CIO being wound up members will have no liability for its debts and liabilities.

Clause 9 contains familiar provisions about admission of members, subscriptions and termination of memberships. One key point for members to note is that current social members cannot be members of the CIO and therefore will not have a member's vote at general meetings. This is simply because what they primarily gain from their social membership is access to the club's social activities including bar and restaurant. These are not charitable activities which in future must be undertaken outside the CIO by ISC's wholly owned trading subsidiary ISC Services Ltd (ISCSLtd). The intention, however, is for such social members still to be very much welcomed at the club as they are at present and they will be encouraged instead to become 'Friends' of the Club.

ISCSLtd was formed last year in order to help the club remain within the constraints for a CASC with effect from 1<sup>st</sup> April 2016 with a view initially to being responsible for receipt of club income such as rentals and sponsorship. All profits from ISCSLtd will be passed to the club/CIO.

Clauses 10 & 11 dealing with members decisions are somewhat similar to the club's current arrangements for AGMs and EGMs although there are differences to satisfy Charity Commission requirements. For example a resolution under the current club constitution to amend the constitution requires a 66 $\frac{2}{3}$  majority but under the new constitution this is raised to a 75% majority.

Clauses 12 – 19 deal with the important provision governing the role of the trustees of the CIO who will manage the CIO in place of the current club Council. These provisions detail the functions and duties of trustees, their eligibility, their number, how they are appointed, retired etc., how they take their decisions and conduct their meetings. Again many of these provisions are not so different to what the club has in its current constitution although in some areas they are more detailed.

Unlike the Club's current arrangements it is proposed that the Club General Manager will not be a trustee (although the new constitution does make provision for that to happen should the trustees so decide at a later date) and this reflects what we are advised is the normal practice with many charities.

The constitution provides that there must be at least 5 and up to a maximum of 12 charity trustees although the Council believes that ordinarily up to a maximum of 11 should be appointed or elected to hold office (which, after allowing for the fact that the Club General Manager would not be a trustee, equates with the number of Council members that the club has traditionally had until very recently). Those trustees could include five elected officers (President, Chairman, Vice Chairman, Secretary and Treasurer), 4 section chairmen and 2 other elected trustees. The first trustees are those who have formally submitted the application to the Charity Commission being the 5 current office holders and Dick Partridge currently our longest serving Council member. The new constitution retains the current position whereby each sports section chairman can be nominated as a trustee (rather than as a Council member) although if such section chairman declines to take on the wider role of charity trustee then another member of the section committee can be nominated. Except for the first batch of trustees all trustees must be voted into office by members at a Club general meeting.

Following what we are advised is common practice for charities, trustees will be elected for 3 year terms (although it is expected that the Board of Trustees will endeavour to stagger these periods) whereas we currently have a mix of 1 and 3 year terms. This is proposed because it both allows for a greater degree of continuity in office but avoids the possibility of too many trustees potentially having to stand down at any one

time. Normally the maximum period any trustee can hold office will be two periods of 3 years although there is provision for officers to serve a longer period if members so agree at a general meeting.

Many of the later provisions are about the procedures that need be followed for e.g. execution of documents, use of electronic communications, keeping of registers, minutes and accounts and annual reports etc which as a charity the CIO will have to meet.

Clause 27 provides that any amendment to the constitution requires a resolution passed by 75% majority of votes cast by members at a general meeting (currently the club constitution has a 66 & 2/3% requirement).

Clause 28 deals with the unlikely situation of the CIO being dissolved and clause 29 contains the various interpretations used in the constitution.

### **Transfer Agreement**

Again this is not an easy read although much shorter than the draft constitution. It will come into effect only after the CIO has been formed and if members approve the proposals set out in the AGM agenda notice. It will, in effect, provide for the transfer of the entire undertaking of the club to the CIO. Various steps will have to be taken before the transfer agreement can be executed and come into effect. Only then will the CIO become operative in place of the club as currently constituted and members will be members of the CIO. Afterwards the 'shell' of current club will need to be formally dissolved.

### **Regulations and Standing Orders**

Traditionally the club has had, in addition to its constitution, various regulations and standing orders which the club council approves and members subsequently ratify. Similar provisions will be a matter for the charity trustees to introduce once the CIO is formed but they will need to be extended because some provisions in the club's current constitution are not considered appropriate for a CIO constitution. Accordingly it will be a matter for the charity trustees of the CIO to determine the final version of those regulations and standing orders and then have them ratified by CIO members at a general meeting of the CIO.

**If members have questions arising from their consideration of the CIO material available for the AGM they are encouraged to submit such questions by email ahead of the meeting and we will endeavour to answer such emails in advance or at the meeting. Any such questions should be submitted to [enquiries@ipswichsports.co.uk](mailto:enquiries@ipswichsports.co.uk).**

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