

Recommended Club Constitution: Guidance Notes (August 2018)

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IMPORTANT NOTE: Where reference is made to any Swim England publication it is important to check that you are in possession of the current edition. Please 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.

Should you not be able to access any referenced document or require it in an alternative format, please contact legal@swimming.org

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 Swim England’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:

19. Interpretation

19.1 Throughout this Constitution words denoting the masculine gender include the feminine gender and vice versa.

Explanatory Notes

1. Legal Status

It is important for those forming a Club to understand the nature of a “Members Club” and its legal status and responsibilities. This will help to understand why Swim England and its Regions require the inclusion of certain aspects in the Constitution or Rules of an affiliated Club.

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 in 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 are recommendations with regard to Club insurances.

The Recommended Model Club 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 Swim England 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 Swim England cannot be underestimated. To do otherwise, means a member will not qualify for the full benefit of the Swim England insurance cover provided with 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 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. Affiliation to the Region includes comprehensive insurance which covers all aspects under public liability, including member to member cover (see section 13. “Insurance”). 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 and sign for 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 he/she was 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 (see section 3. “Committee”) this is different to being able to enforce “responsibilities” (e.g. a contract). For this reason it is strongly 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.

(For additional information see section 18. “Company Limited by Guarantee” and section 19. “Charitable Status” below)

2. 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 Committee. The advantage of enabling the making of by-laws by the 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.

When changing the Club’s constitution, a copy must be provided to the Region to approve. Details of your Regional head office can be found on the Swim England website or from the Swim England head office on 01509 618700.

3. Committee

The arrangements for the day-to-day management of its affairs are 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’s 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 that the Club Coach or instructor attends the Committee meetings, but it should be borne in mind that he/she may have personal interests in Club affairs. The terms of employment must be clearly laid down and understood.

Where the Committee is 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 his/her 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 Committee meetings and whether the Chairman is to have power to exclude them when issues relating to other young members/colleagues are being discussed.

4. Chairman/chairperson

NB. Attention is drawn to the Good Club Guide to Volunteer Roles

<http://www.swimming.org/swimengland/good-club-guides/>

The term “Chairman” is not intended to denote any particular gender. It is used in the modern-day gender-neutral sense of the word. However, it is of course open to Clubs to adopt an alternative (appropriate) term if they prefer, such as “Chair” or “Chairperson”.

The Chairman is responsible for the overall running of the Club with the assistance of the Treasurer and Secretary during his/her 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 Committee meetings. In that he/she has three functions:

- To preserve order.

- To take care that the proceedings are conducted in a proper manner.

- To ensure that the views of the meeting are properly ascertained concerning any question properly raised 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 to the Model Club Constitution. In particular, regard needs to be given to the principles contained in the Swim England Code of Ethics (see Annex 2 to the Model Club Constitution). 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 Committee. Usually the rules provide for a minimum number of members necessary for a quorum of members or 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.

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 Swim England Judicial system brought under a breach of the Code of Ethics. It is not intended that the Code of Ethics 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 Swim England 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 his/her 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 figure(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.

5. 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 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 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 Information Commissioner's Office at www.ico.org.uk. Or, alternatively for any queries regarding data protection and your members please contact legal@swimming.org.

The Secretary is also responsible for meeting any licensing requirements (e.g. if the Club wishes to organise a prize draw raffle). For Committee meetings, the Secretary should prepare an agenda and send a copy together with any accompanying documents to each member of the Committee. At the meeting the Secretary should take notes and subsequently prepare minutes. It is recognised that certain business discussed in Committee meetings may be prejudicial to the Club (or other persons) if made public (e.g. contracts of employment of staff). Minutes of Committee meetings may be kept private but **ALL DECISIONS MUST BE MINUTED**. It is also recommended best practice for the 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, Committee meetings are private to the Committee members and General Meetings are 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 six years.

6. 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.

It is acknowledged that a number of club transactions will be via online banking. If this is the case it is recommended that at least two signatories are set up to approve online transactions. If this facility is not offered by the Club's bank then the Club should ensure that at least one other signatory approves in advance payments made by the main signatory operating the account. This approval should be recorded in writing and retained by the Club. It is also good practice for online transactions and bank statements to be reviewed regularly by the Committee.

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. (See also section 15. "Taxation and Dissolution").

Each Club must identify its financial year (Rule 14.5) e.g. 1st April – 31st March. 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 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.

7. Finance

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.

Once a person is accepted to membership he/she is obliged to pay his/her subscription and any other financial obligation such as coaching and squad fees until he/she resigns. A member who has not paid his/her subscription or other monies owed can be sued. If a member resigns or is expelled, Swim England (via its Membership Department) must be advised. He/she can still be sued for any arrears of subscription. It should be noted that Swim England Regulations provides that an individual who owes an outstanding sum to a former Club cannot join another 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.

There is generally no power to borrow money unless given by the Club's rules.

The Club may also be able to seek grant funding. Advice may be sought from one of the Regional or County Officers identified in the current edition of the Regional/County handbook for the area to which the Club is affiliated (or is seeking affiliation).

The Club is required to maintain full and accurate financial records of its dealings.

8. Fee Collection

Swim England fees are payable for all members between January and December each year. Any person initiating membership from 1 October to 31 December shall be charged 50% of the appropriate fee. The Swim England renewal fee is payable between January and February each year. Clubs which have not paid their Swim England renewal fee by 28th February 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 Swim England renewal fee. In January each year Clubs using the Online Membership System (OMS) will receive notification that they can access their renewals list online. Those Clubs not using OMS 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 Swim England fee (and where appropriate County and Regional fee) alongside the Club fee. July to June will enable Clubs to provide information to Swim England on members who have renewed the previous July and can either collect the Swim England 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.

9. Welfare Officer

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

1. The Welfare Officer is a person of appropriate skills and experience and performs no other role within the management or administration of the Club. Training can be given.
2. The Welfare Officer can be a member of the Committee (or alternatively to be invited to attend every meeting of the 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 Swim England's Independent Child Protection Officer/Swim England's Child Safeguarding Team with regard to any particular reported concerns.
3. 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 have created 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 Child Safeguarding as being the Welfare Officer's responsibility to a collective responsibility held by all adults in the Club environment.

10. Admission of Members

As a general rule no person has a right to become a member of a Club. The 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.

An important restriction on this general principle is in any decision to refuse membership on certain discriminatory grounds.

It is possible to amend the Model Constitution to allow refusal of membership without a reason being given. There is nothing in law to prevent a Club from adopting this clause. However, the following should be borne in mind:

If a Club adopts this wording it is known as a "closed Club". The alternative is to adopt the wording that will create application for membership as an "open Club". This will mean the adoption of the alternative wording, which provides that a reason will be given for any refusal

of membership to a Club. The wording means that a Club will also have to offer the ability to appeal against a refusal of membership to an independent panel that will have the task of considering as to whether or not the reason for refusal is fair. The significant benefit gained from adopting an “open Club” membership is access to funding e.g. from Lottery Grants or in seeking charitable status in the future.

Swim England’s Equality Policy has at its heart, the vision of being able to offer access to swimming to all on a fair and equitable basis. It is more in keeping with the Equality Policy that Clubs should adopt the “open membership” format. However, it is not a mandatory requirement for Clubs to adopt the “open membership” format.

In respect of a Club adopting the “open membership” format, Swim England would comment that it is not the governing body’s intention that any Club, as a result, should then lose the purpose for which it exists. For example, currently Swim England would say it is acceptable for some Clubs to exist for elite swimming purposes and to refuse membership on the basis that the applicant’s standard is not high enough. However, this may change and caution is particularly advised on issuing reasons for refusal of membership, insofar as they do not contradict discrimination law. Refusal of membership on the example given may also prevent some Clubs from achieving charitable status (see separate guidance). The overriding factor is that a fair process must be available if membership is refused.

It is also worth noting that in accordance with guidance produced by the Equality and Human Rights Commission clubs/societies can restrict membership to people who share a protected characteristic.

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 Swim England and to the Region.

11. Honorary and/or Life Membership

Where Clubs wish to make use of their powers to create honorary and/or Life members, consideration needs to be given to including in the Constitution as to how these categories may be removed at a future date, if (for whatever reason) the need arises; that is not to say, however, in the event of disciplinary action/expulsion against the individual member which would be governed by the Club’s usual procedures as prescribed in their Rules.

It is most likely that such a provision would never have to be used, but it is sensible to adopt all precautions. Please note that since honorary and/or Life memberships are conferred at an A.G.M, they will equally need to be removed at an A.G.M. The Committee would have to make an appropriate proposal in the meeting’s agenda, as required in the Rules, which will in turn put the matter into the public domain.

It is recommended that in the interests of fairness that the honorary and/or Life members should be formally invited to the Committee meeting at which the proposal is on the Agenda, in order to contribute to the discussion. However, if they decide not attend, the matter goes straight to the A.G.M to determine as a proposal. In these circumstances, the above Rule must permit the Chairman to not allow discussion but to insist that the matter goes straight to determination by either a vote by show of hand OR secret ballot (there is a choice here, so it is whichever the Club elects to include in its Rules and it is recommended that a secret ballot shall be held).

To that end, it is recommended that Clubs insert into their Constitution the above power by expanding the provisions in Rule 8 and 9 in the Model Club Constitution. The proposed additional wording is italicised in red brackets.

12. Expulsion/Suspension/Disciplinary Action

None of the above may be applied to a member unless there is a rule which allows this. 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 Regulations 150 – 155 (inclusive) and satisfy the rules of natural justice. See Annex 3 to the Model Constitution for further information.

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 precedence 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 Regulations 150 – 155 have been adhered to by the Club.

13. 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 Committee member or Officer to seek to obtain an indemnity from the membership for any losses or expenses suffered by him/her in the performance of his/her duties. However, an individual member or group of members may become liable for losses arising if a court finds him/her/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 Committee then it is the Committee that is liable. Individual members must take care to ensure that the basis upon which he/she enter into any contract on behalf of the Club is clearly understood by the person with whom he/she 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 his/her 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 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.

14. Insurance

Because of the legal position of 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 A REGION (AND HENCE SWIM ENGLAND) PROVIDES THIS COVER TO ALL CLUBS AND MEMBERS OF AFFILIATED CLUBS.

This insurance includes:

Public Liability Insurance (including member to member cover)

Employers Liability Insurance (a compulsory insurance where applicable). The Certificate of Insurance must be displayed at all places of work of the employee(s)

Personal Accident insurance

Directors and Officers insurance

Legal Expenses Insurance

For full details of scope of insurance cover provided through Swim England see our website on the following link <http://asa.howden-sites.co.uk/clubs>.

Insurance cover will not extend to any activities excluded from the scope of Insurances. A list of current excluded activities appears on the link above.

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. Details of this service can be obtained from the link above.

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

Each Club should maintain an Accident Book in accordance with Rule 7. Books can be obtained from Swim England's Customer Services Department – customerservices@swimming.org or via 01509 618700.

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, it must be submitted to insurers in accordance with the accident/incident notification/recording guidelines: <http://asa.howden-sites.co.uk/faqs>

A copy of entries should be kept for a period of six years (or longer in respect of a minor).

15. Taxation and Dissolution

As a general rule a Swimming Club is used only by the members who come together for the non-commercial purpose of providing themselves with the facilities to enjoy swimming for competitive or recreational purposes.

If the Club is likely to generate surpluses from non-trading transactions (e.g. subscriptions) with its members only and/or from non-members on a non-commercial or non-trading basis

(e.g. organising open meetings without a view to profit) then the choice of clause can be left to the Club members' personal preference.

If, however, there are likely to be surpluses that arise from commercial trading activities with the Clubs members only (e.g. organising club meetings) then the second Rule at 17.3 (distributions of property on dissolution to members) should be adopted. This would assist the Club in arguing that mutuality applies (the principle that one cannot make a taxable profit out of oneself), with the result that the Inland Revenue would probably treat the surpluses as arising from mutual trading and not be charged to tax.

If the alternative option providing for the property of the Club to be given to a charity or non-profit making organisation is taken one possibility would be for the Club to consider the property being passed to the relevant Region to be used for the development of the sport within the Region.

NB: Mutual trading rules apply within clubs, but not inter-club (e.g. on an open meet, income from club members would be mutual trading; income from other clubs would not be mutual trading). Further information is available via the Swim England website at: <http://www.swimming.org/swimengland/tax-guidance-for-clubs/>

16. 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 Committee. By taking this step Clubs will hopefully encourage younger members to take a wider interest in the sport and the activities of the Club.

17. Temporary Membership

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 Swim England (in particular Wavepower) and are covered by Swim England insurance available to Club members.

However, temporary members whilst in this capacity have no right to compete in Swim England/ 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 Insurance Policy for all Clubs, the premium for which is based upon the overall membership throughout the sport.

18. Alternative Structures

Affiliated clubs can take any structure, providing the requirements for affiliation are present. Most clubs have taken the view that being a simple, unincorporated members club is the best structure for them.

However, some clubs may decide not to use the unincorporated Members Club template and instead, decide that an alternative structure may be more suitable to their own needs.

Further details are on the website and below are options more commonly pursued:-

(i) Company Limited by Guarantee

If members wish the Club to benefit from limited liability, incorporation under Company Law is one option. The form of incorporation generally adopted by Clubs is that of a Company Limited by Guarantee rather than by shares. The main benefit of incorporation from the members' point of view is that their liability is then limited to a nominal sum (typically £1) which the member guarantees to pay on the winding up of the company. Other benefits are that the company itself can hold property and sue and be sued in its own name. The disadvantages of incorporation are cost and lack of privacy. Costs are incurred in setting up a company in the first place and subsequently in preparing and filing the annual return and audited accounts. Details of the Club will thus, at least notionally, be available to the public. It should also be remembered that the members of the Committee who are appointed directors of the company will owe additional liabilities as company directors.

Companies are regulated by Companies House

The rights and responsibilities of the Club's Officers and members must be clearly spelt out in the Articles of Association of the company. It is strongly recommended that professional advice be sought by anyone contemplating forming a company. Company law can be complex and it is to be noted that failure to comply with company rules and regulations may invoke legal jurisdiction above and outside of Swim England.

(ii) Charitable Incorporated Organisations (CIO's)

CIO's are a new type of structure which combines limited liability with charitable status. Unlike charitable companies, which fall within the jurisdiction of both Companies House and the Charities Commission, CIOs are solely regulated by the Charity Commission.

Further, detailed information is available on their website:

<https://www.gov.uk/guidance/how-to-write-your-charitys-governing-document>

19. Registration as a charity or Community Amateur Sports Clubs (CASC)

We are often asked as to whether Swimming Clubs can obtain registration as a charity thereby gaining additional taxation and other advantages. This is often combined with the creation of a company limited by guarantee.

Any Clubs who believe that their own special circumstances may entitle them to seek charitable status should seek professional advice and, before proceeding further, are recommended to visit their very comprehensive website:

<https://www.gov.uk/government/organisations/charity-commission>

Alternatively, members may wish to consider the creation of a Community Amateur Sports Club (“CASC”) which enjoys certain taxation concessions. Further guidance and documentation is available on the Swim England website:

<http://www.swimming.org/swimengland/community-amateur-sports-club/>

<http://www.cascinfo.co.uk/> and <https://www.gov.uk/government/publications/community-amateur-sports-clubs-detailed-guidance-notes> also contain useful background information to CASCs.

20. 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 advantage 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, considered 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 incorporation.