**Proposal to Incorporate Byfleet Lawn Tennis Club**

This document is for information only to provide members with some background information on the proposal to incorporate Byfleet Lawn Tennis Club (BLTC) and the high-level timeline of the steps needed to achieve this.

Now the new committee has been established, we will be holding an open evening prior to an SGM at which a vote will be held on the change. The open evening will provide members with the opportunity to discuss the proposals in more detail.

**Background**

The committee is proposing to change the legal status of BLTC from an unincorporated members’ club with unlimited liability for each member to that of a company limited by guarantee, with limited legal liability for each member of £1.

The primary reasons behind the proposed change of status are summarised below:

* Under the current structure, the club does not exist as a legal entity and therefore any dispute resulting in litigation would require legal proceedings to be brought against individual members, who would become personally financially liable for any damages awarded in any such claim if those could not be met from the assets of the club or from an insurance claim. Following issues experienced in 2016 with a former committee member, the then committee decided to initiate the process to become incorporated. In an increasingly litigious environment, it was felt that it was unreasonable to expect volunteer committee members to be responsible for taking decisions on dealing with such liabilities/risks which could have an effect on all members. Furthermore, it was felt that it would become increasingly difficult to find members who would be prepared to assume office in the event that such committee members might at some stage become personally liable, if members sought to blame them for any losses.
* As an unincorporated club is not a legal entity in its own right, BLTC is not able to enter into contracts and hold land and investments in its own name. As a result, the club’s land and building are currently held in trust. The existing trustees have indicated that they are no longer willing to continue in this role without charge and have advised that the trust asset (the freehold title to the property) should be transferred to the officers of the club or an incorporated association under the control of those officers.
* Many other tennis clubs have already changed their structure and the governing bodies of clubs across the wider sporting community are encouraging their member clubs to do likewise.

**Advantages and Disadvantages of Incorporation**

The main advantages of incorporation are:

* If a claim were to be made against the club, the potential personal liability for members will be limited to £1 per member.
* BLTC will be able to enter into contracts and hold land and investments its own name.
* A more rigorous governance structure.

The main disadvantages are:

* Increased legal and administrative requirements.

The proposed change of status would *not* affect:

* The fundamental principle that BLTC is a members’ club owned by the members, run by the members and operated for the benefit of the members.
* The corporation tax or VAT position unless tax rules change at some time in the future.

Further information on the advantages and disadvantages of the existing and proposed legal structures, based on information on the LTA website, is contained in Appendix A.

**Timeline to Incorporation**

The provisional timeline to achieve incorporation is set out below:

* Place Background Document and Articles (including amended rules) of Incorporation onto website members-only area - 12 February 2019
* Open Evening/Forum for all members to be held – 19 February 2019.
* SGM to approve incorporation –7 March (tbc) 2019.
* Operate as incorporated company if proposal approved – 1 April 2019 onwards.

A list of frequently asked questions (FAQs) is contained in Appendix C.

**Management Structure under Incorporation**

The table below compares the management structure of the existing and proposed legal entities. The current committee structure, together with copies of the Regulations and Rules, can be viewed on the club website.

| **Byfleet Lawn Tennis Club Management Structure** **(Unincorporated – “the club”)** | **Byfleet Lawn Tennis Club Limited Management Structure** **(Company Limited by Guarantee - “the company”)** |
| --- | --- |
| **Management Structure*** The management committee (the ‘’committee’’) takes ultimate responsibility for all decisions affecting the club. In addition, sub-committees consisting of committee members and in some instances, other club members, have been set up to focus on a particular area (e.g. Club Management, Finance, House & Grounds, Tennis etc.)
* The committee consists of a minimum of 6 and a maximum of 12 members, including officers of the club (Honorary Secretary, Honorary Membership Secretary and Honorary Treasurer) who are elected each year at the AGM to serve for a period of one year, after which they may offer themselves for re-election.
* Sub-committees generally have a minimum of 3 members, of which at least 2 are committee members. The committee must agree the membership of sub-committees by vote at a committee meeting.
 | **Management Structure*** A Board, comprising the Directors of the company, will be responsible for the general management of the company. The Board will have the power to delegate any of its powers, but not its responsibility, to such committees as it may deem necessary.
* The maximum number of Directors will be 12 and the minimum number will be 6. The Directors, who include the Officers of the Company (Honorary Secretary, Honorary Membership Secretary and Honorary Treasurer) will be elected annually at the AGM and will hold their respective positions for one Board year, when they may be eligible for and offer themselves for re-election at the following AGM. A candidate must receive at least 50% of the votes cast at the AGM to be voted onto the Board.
* The Chairman of the Board will be appointed by the Board. The Board will also appoint a company secretary, who may be an employee of the company, at such renumeration as it thinks fit.
* Any committees to whom the Board delegates powers must consist of at least 1 Board member. No Board member may sit on a committee where he has or may have a conflict of interest in the work carried out by the committee. Any member who is not a Board member may be co-opted onto any committee but will not be entitled to vote on any decisions made by that committee.
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| **Committee Members’ Responsibilities*** The committee is responsible for the general management of the club and has power to make regulations for the conduct of the club as it considers necessary in the interests of its members.
* Sub-committees annually review budgets and strategy and development plans for their area with the committee. They can make and act on decisions involving the general operation of the club related to their area. Any major decisions, e.g. updating regulations, having financial implications, are taken to the committee for approval.
* Committee members are bound by the club rules and disciplinary code.
* Any conflict of interest from any committee member should be declared and that member should not vote on the issue concerned.
 | **Board and Directors’ Responsibilities** * The Board will exercise the powers given by the company’s Articles of Association and will deal with the general management of the company and the club, including the employment of such paid staff or self-employed contractors as the Board deems necessary.
* The Board will have the power to make rules for the conduct of the club as it considers necessary in the interests of the members.
* Directors’ responsibilities and obligations are codified in the Companies Act 2006. In addition, a member will need to meet certain criteria, as defined in the Articles, to be eligible to be a Director of the company. These include being a Voting Member for at least three consecutive calendar years. Further information on Directors’ general responsibilities and the criteria specified in the Articles is contained in Appendix B.
* No Director of the company will receive any remuneration for his services in his capacity as a Director except reasonable expenses incurred as a direct result of his duties.
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| **Governance*** The club is governed by Rules agreed and amended only by vote at General Meetings (AGM/SGM) and Regulations drawn up and enforced by the committee as and when necessary for the smooth running of the club.
 | **Governance*** The company will be governed by its Articles of Association agreed and amended only by vote at General Meetings (AGM/SGM) and its Rules, drawn up and enforced by the Board. The Articles relate to the constitution of the company whereas the Rules relate to its day to day running.
* As a result of incorporation, most of the club’s current Rules will be covered by the company’s Articles (e.g. the Board’s authority to spend) and most of the club’s Regulations will be covered in the company’s Rules (e.g. membership categories).
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**Appendix A**

**Advantages and Disadvantages of Incorporation**

Below are some of the advantages and disadvantages of the existing and proposed legal structures, based on information provided on the LTA website.

| **Structure** | **Advantages** | **Disadvantages** |
| --- | --- | --- |
| **Unincorporated Associations*** The majority of tennis clubs are unincorporated associations, being a group of individuals bound together by the constitution or rules of the club.
* The club is not a legal entity in its own right, so any contract of the club must be entered into by someone on behalf of the club.
 | * Simple administration: unincorporated clubs (excluding charities) do not have the same legal and administrative requirements that incorporated entities have (e.g. filing accounts).
* There is greater flexibility with the rules of the tennis club. As long as they are lawful, the rules can meet the needs of members and usually be easily changed.
 | * Unincorporated tennis clubs have an unlimited personal liability for the debts of their club. Members of the club and committee could be personally liable for any claim that may successfully be made against the club, in the event that the claim is not insured and the club has insufficient assets to meet the claim.
* An unincorporated club is not a legal entity in its own right, so any contract of the club must be entered into by someone on behalf of the club (usually committee members). This includes land which must be held on trust by trustees on behalf of the members. If individuals who hold contracts in their name leave the club then those agreements need to be transferred to others.
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| **Companies Limited by Guarantee*** The club will be owned by its members, but the club will have a separate legal identity allowing it to enter into contracts in its own right. This structure is well suited to clubs operating on a non-profit making basis where membership changes regularly.
* Members agree to pay a minimal amount if the club becomes insolvent limiting their liability (i.e. £1).
* Members are entitled to attend members’ meetings (e.g. AGMs/EGMs) and vote. This includes appointing and removing directors, who are responsible for running the club via a Board.
* The club will be governed by its Articles of Association (constitution) and, depending on how the articles are written, may be eligible for grant funding.
* There are no shares and dividend payments to members are usually prohibited.
 | * The club is a legal entity which enables it to enter into contracts and hold investments and assets in its own name.
* Club members’ and officers’ liability is limited, and they are only required to pay a small amount if the club becomes insolvent.
* Transparency – as a limited company, the club is required to file accounts and details of Directors at Companies House.
* No one individual will have control of the club unless the Articles specifically allow it.
 | * Significant additional administrative work in order to comply with legal requirements.
* Failing to meet the deadlines for filing information, e.g. accounts, can result in a fine.
* The articles will need to be carefully drafted to protect the club and its assets.
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**Appendix B**

**Directors’ Responsibilities**

The first column in the table below sets out the responsibilities and obligations imposed on directors personally and also on the company by the general law and various statutes. In certain circumstances, a director may incur personal liability if he/she fails to ensure that the company complies with its responsibilities and obligations. The Companies Act 2006 is the main source of a director's statutory responsibilities and obligations, but other legislation, regulations and the common law also limit his/her activities and are important in the management of the company's affairs.

The second column in the table below sets out the main criteria, as defined in the proposed Articles of Association, to be met by Directors of the company (Byfleet Lawn Tennis Club Limited).

| **Directors’ Responsibilities and Obligations (as imposed by the general law and various statutes)**  | **Criteria to be met by Directors of Byfleet Lawn Tennis Club Limited (as defined in the Articles of Association)** |
| --- | --- |
| **General Duties*** A Director must comply with and have regard to his/her general duties as a director of the company, including those duties contained in the Companies Act, being:
	+ to act within his/her powers;
	+ to promote the success of the company;
	+ to exercise independent judgment;
	+ to exercise reasonable care, skill and diligence;
	+ to avoid conflicts of interest;
	+ not to accept benefits from third parties; and
	+ to declare any interest he/she has in a proposed transaction or arrangement.

**Factors Prohibiting Individuals from Being Appointed as a Director** * A person will be prohibited from acting as a director or directly or indirectly taking part in, or being concerned in the promotion, formation or management of, a company, except with the leave of the court, if:
	+ The person is an undischarged bankrupt;
	+ A moratorium period under a debt relief order applies in relation to the person;
	+ A bankruptcy restrictions order or undertaking, or a debt relief restrictions order or undertaking, is in force in respect of the person;
	+ The person is subject to an order made under [section 429(2)(b)](https://uk.practicallaw.thomsonreuters.com/6-513-4119?originationContext=document&transitionType=PLDocumentLink&contextData=(sc.Default)) of the Insolvency Act 1986 (disabilities on revocation of administration order against an individual);
	+ A person has been disqualified from acting as a director by the court.
 | * A Director must have been a Voting Member for at least three consecutive calendar years.
* A Director shall not vote nor be counted as a member of the quorum at any meeting of the Board held in respect of any contract in which he has an interest.
* The office of a Director is further vacated automatically if:
	+ he holds any office of profit under the Company;
	+ he is directly or indirectly interested in any contract with the company and fails to declare the nature and/or existence of his interest in the manner required by s.182 of the (Companies) Act;
	+ his membership of the company is terminated in any respect;
	+ he absents himself from attending 2 meetings in any one Board Year or for a continuous period of absence of 6 months or greater without special leave of absence from the Board acting and duly recorded at any Board meeting held during that period of 6 months;
	+ he is disqualified from acting as a director by operation of law or order of the court;
	+ he gives the Board one calendar month’s notice in writing that he resigns his office or resigns his membership from the Company;
	+ he misrepresents himself in his nomination for election;
	+ he fails to provide, if asked, satisfactory references and/or complete a satisfactory DBS check or equivalent from time to time.
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**Appendix C**

**FAQs**

1. **Has the committee considered alternative structures to Company Limited by Guarantee?**

Yes.

**Companies Limited by Shares:** Not normally used for clubs that operate membership schemes because each time a member joins a share has to be issued to them and each time a member leaves their share has be transferred to somebody else or redeemed.

**Community Interest Company:** A company limited by guarantee may be more straightforward and cheaper to administer.

**Community Amateur Sports Club status (CASC)**: There are several criteria and the club would need to ensure ongoing compliance to the qualifying conditions.

**Charitable status**: Companies limited by guarantee may become charities, so this could be considered in the future, however all members must be playing members.

1. **What progress has been made in writing the Articles and rules for the new company?**

An Incorporation working party has been working with solicitors to produce the Articles for the new company. The Articles have been agreed by the committee and will be made available to members prior to the SGM to approve the change of status. In addition, the sub-committee have been reviewing the current regulations. In order to make the incorporation as smooth as possible, the decision has been made only to update the current regulations at this time to the extent necessary to ensure they do not contradict the Articles. It is not envisaged that there will be any major changes to the current regulations (which will become the rules on incorporation) at this stage.

Once the company has been incorporated, it is envisaged that the Board will revisit the rules (the old regulations) to see whether any further amendments would be advisable for the smooth day to day operating of the club.

1. **What are the implications if the change of status is not approved at the SGM?**
* The club will continue in its current format and the pre-registered company remains dormant.
* Members will continue to have an unlimited personal liability for the debts of the club and may be discouraged from volunteering for the Committee as a consequence.
* The club will be unable enter into contracts and hold land and investments in its own name. It will be subject to charges from the Trustees, who will continue to hold the land in trust for the members.
1. **What needs to be done to implement incorporation if the change of status is approved at the SGM?**

Steps to be taken include:

* The pre-registered company becomes operational.
* The committee is replaced by the Board of Directors.
* Rename bank accounts.
* Novation of any existing contracts.
* Inform all creditors/suppliers of change.
* Update website, stationery, all forms and materials to the new name.
* Update registration with LTA.
* Notify Insurers of change of status.
1. **Who will have overall responsibility for the management of the club after incorporation?**

Once incorporated, the club committee will be replaced by a board of directors. It is envisaged that, in the first instance, the first board will consist of the committee members voted in at the AGM in November 2018. Thereafter, board members will be individuals voted in at each subsequent AGM in a similar manner to the way in which members are currently voted on to the committee. Further information about the structure of the board will be specified in the new Articles. Certain responsibilities and obligations are imposed on directors personally and also on the Company by the general law and various statutes, many of which are similar to those responsibilities to which committee members are currently subject. The Companies Act is the main source of a director's statutory responsibilities and obligations, but other legislation and regulations also limit his/her activities and are important in the management of the Company's affairs.