THE ASSOCIATION FOR GAFF RIG SAILING

Proposal to Change the Legal Status of the OGA
Proposer: Georgina Tall

For pre-reading, before the October 2025 ACM, here are some prepared Q&As on this proposal.

The GMC has for the best part of 2025 been discussing the pros and cons of the OGA incorporating as a legal body. We have also received pro bono advice from an accountant, advice from RYA legal and contacted our insurer with questions.

The GMC has discussed the following options:

1. Incorporate as a company limited by shares/ guarantee
2. Incorporate as a charitable incorporate organisation
3. register as a community interest company
4. make no change to the legal status

The GMC's recommendation to the ACM is that the OGA will remain as an unincorporated association but to complete a number of administrative and legal tasks to secure the OGA's ownership of specific assets and property, plus a change to the OGA's rules clarifying its liability to third parties, committee members and regular members.

Background

The OGA is currently an unincorporated association which means:

(i) it is not a legal entity or body so we have no recognisable legal status,
(ii) members of the ACM and GMC are personally liable to any actions done by other committee members (nationally) or legal actions taken against the OGA, with no restriction on the financial extent of that liability, and
(iii) the OGA cannot be the owner of any assets or property i.e., bank accounts, trademarks, Gafflings, trophies, bonds etc.

An incorporated entity is recognised in law as a separate legal 'person' from its members. Incorporating your club can provide liability protection, tax benefits, and other advantages to improve the clubs operations and encourage growth.

Why change now?

- The OGA is a national organisation that has grown in size over the last 60+ years and so the way it looks now, and the nature of sailing compared to then has drastically changed. The geographical range of the committee means that other committee members won't always know what is going on or how others are organizing their events and activities or entering into contracts (i.e., increased risk of personal liability).

- Sailing, by its nature, is a dangerous sport and attitudes to health and safety and accidents has changed over recent years (for example, the result of the – if a claim is made for negligence or injury/damage/death due to negligent organisation of an event, our OGA insurance is unlikely to cover any claims (increased risk of personal liability and personal financial risk).

- The OGA is currently unable to enter into contracts in its own name, or be the owner of any trademarks and, typically, cannot hold a bank account (we use a special type of bank account that is specifically for unincorporated associations).

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The following pages contain a number of questions and answers to help guide your thoughts and discussions.

No.	Question	Answer
Incorporation Options		
1	What types of limited company are there?	**Limited by Guarantee** • Member's liability is limited to a specific amount i.e., £1. "Members" could be the ACM and/or GMC • Adopts Articles of Association (like our existing rules) • Board of directors to make decisions i.e. ACM • Considered by the GMC but discounted due to the potential taxation impact on the OGA • Not eligible for certain grants, donations of GiftAid • Tax – required to pay corporation tax but depending on the OGA's finances this may be waived if HMRC consider the OGA to be a dormant company. • Annual fees for filing compulsory documents • Would provide the OGA with access to third parties that we can't currently contract with i.e., PayPal (who have refused to allow the OGA to use their services because it is unincorporated) **Limited by Shares** • Typically suited to larger clubs that operate on a profit for its owners/ shareholders. • This option was dismissed in the early stages as it is inappropriate for the OGA's ethos. • Shareholders are liable up to the value of their shares
2	What is a Chartable Incorporated Organisation ("CIO")?	• A special type of charity that is incorporated but regulated by the Charity Commission. It is designed for organisations with charitable aims. • We would have at least one trustee (as required by law) but recommended to have at least 3 trustees – these can either be elected by the members or as set out in our Articles of Association (equivalent to rules). It could be the National President, National Secretary and National Treasurer or anyone who puts themselves forwards to be elected as a trustee i.e. there may be ACM presidents/

		secretaries/ elder gaffers who are knowledgeable in the OGA and keen to be a trustee. • Trustees' liability is limited or no liability at all • Any profits generated must be used for the charity's purpose • We would be eligible for charitable exemptions such as Gift Aid and Corporation Tax exemptions • More likely to be eligible for grants • Must hold trustee meetings but not mandatory to hold AGMs • One person would be required to do the filing which could be the Company Secretary or a nominated person.
3	Make no change	• Not eligible for certain grants, donations or GiftAid • Tax – subscriptions would typically be subject to income tax, but the concept of "mutual trading" may apply meaning no income tax • The GMC and ACM acknowledge the personal liability that they each hold to the OGA which is currently being covered by the OGA's directors and officers' liability insurance (but it is noted that policies can change and that this stance may change and will need to be monitored). • Wording is added to the OGA's rules that sets out fully the OGA's position regarding liability (the RYA has sample wording). • All contracts entered into on behalf of the OGA will be required to include specific legal wording regarding liability (this wording has been created by the RYA). • A number of trust deeds will need to be created for the OGA's trademarks, and any other property owned by the OGA i.e., gafflings, trophies • Currently have a bank account that is specifically for unincorporated associations, however, this may change in the future and the position will need to be monitored
4	What is the OGA's current tax position? What is mutual trading?	The OGA currently doesn't pay tax on income from membership subscriptions due to the concept of mutual trading which is a form of tax exemption. A club which is established by members for social or recreational purposes is unlikely to be a liable to tax on any surplus which arises from transactions with its

		members as the surplus does not arise from a trade. If the subscriptions exceed expenses in any year, the surplus is not a trading profit because the activities lack the commerciality to be a trade. However, any investment income, trading income from non-members and chargeable gains is subject to tax.
5	If we apply to become a 'Charitable Incorporated Organisation' might we be challenged that we really only exist to benefit our members and don't have much in the way of a wider charitable purpose?	There are other sailing clubs that are CIOs and it is by carefully wording the activities for the club. Our purpose could be considered to be **promoting and facilitating community participation in sport and healthy recreation by providing facilities (events, tours, talks, training) for sailing of traditional gaff, luff and spirit sail boats, as well as encouraging and supporting access to younger people across Britain and Ireland**. Georgina reached out to the Charity Commissioner but did not receive a response. This purpose has been drafted on the basis of existing CIO sailing clubs that also have a membership fee. The key is that it is including local communities and is encouraging sport and healthy recreational hobbies - the majority of OGA events are open to the public to attend, we have the Youth Fund and have advertised the benefits of traditional sailing at events such as Southampton Boat Show etc.
6	Who can be a trustee of a CIO?	The requirements are: • At least 16 years old • Cannot have been previously disqualified as a trustee or company director • Cannot be an undischarged bankrupt Cannot have certain unspent criminal convictions i.e., relating to dishonesty, deception or offences involving financial crimes (bribery, money laundering), the sex offenders' register
7	What are the duties of a trustee of a CIO?	• Ensure the OGA's activities are for the public benefit • Comply with the law and governing document • Act in good faith and only in the interests of the OGA, making informed and balanced decisions • Manages the OGA's resources responsibly • Act with care, skill and diligence • Ensure the OGA is accountable to donors, beneficiaries and regulatory bodies • Manage conflicts of interest to ensure the OGA's interests are always prioritised

OGA
THE ASSOCIATION FOR GAFF RIG SAILING

Liability of Committee Members		
8	Liability as an unincorporated organisation	• Liability can arise in many situations, but the occasions where liability is most relevant is where there has been negligence and/or fraud. • Anyone suing an unincorporated club will be suing the representative individuals (i.e., the ACM, GMC and potentially the relevant regional committee). • The individual members of an unincorporated club can be held personally liable to meet the debts of the club. Debts can arise out of contractual disputes, employment disputes, personal injury claims (if club's insurance is inadequate) • Contracts - General principle: members of an unincorporated contract are not personally liable for the acts of those who enter into contracts on behalf of the club – those who enter into the contract will be personally liable.
9	What is the personal liability of the Officers of the OGA in the event of a claim against the organisation?	If the OGA is ordered to pay a claim/ settlement amount, and insurance will not cover it, the amount will be equally split between all committee members. This could range from small amounts to in some extreme cases, millions of pounds. A claim/ settlement doesn't have to be just for injury/ death but could be for damage to property, loss of enjoyment, loss of earnings etc.
10	Am I (a relevant member) protected by the OGA's insurance?	**OGA Public Liability Insurance** - YES The legal drafting of the relevant clause in the policy isn't clear, if interpreted narrowly – then no, the insurance does not protect OGA committee members unless the negligence is connected to racing. However, the insurance company have confirmed that all negligence and fraud committed by the OGA will be covered by the policy. **OGA Directors & Officers Liability Insurance** - YES According to the definitions of an Insured Person, this policy will not apply to any of the committee members as we are not an incorporated company. However, the insurance company have confirmed that all negligence and fraud committed by a member of the OGA will be covered by the policy. It is worth noting that insurance policies can change and legal interpretations can also change – if the OGA remains as an unincorporated association, the

		wording of policies will need to be monitored and reviewed during renewal.
11	What might be the size of a legal claim against the OGA?	A claim could range from a single individual or a single business to a group action claim (multiple people). For example, if a claim results from a boat accident, you would have the skipper(s) and crew from all boats involved. *[Information has been provided by RYA Legal]*
12	How likely is it to occur?	There is no record of there ever being a claim for damages against the OGA in our 60+ years. This doesn't mean that there is no risk – is it better to hope it doesn't happen and remain potentially unprotected or put limitations in place before it happens.
13	If there was a claim arising from an incident in a particular OGA Area, could all AC members be held to be responsible?	Yes, as an unincorporated body all ACM and GMC members would be held responsible for the actions arising from a particular area. This is because these are the primary groups that make the decisions and are designated as the decision-making groups within our Rules.
14	Does having "limited liability" reduce our insurance premiums?	No, this is different from insurance. It ensures that individual members of the ACM and GMC are no longer personally liable for any claims or settlements. Instead, their liability will be limited and the claim would be directed to the area/ officers at fault.
15	Will there be any effect on our insurance if the OGA were to become a Charitable Incorporated Organisation?	Our insurer said "regardless of the "type" of organisation, cover will be provided under the name of Old Gaffers Association. This process will therefore not have any bearing on the insurance. We would be able to benefit from other types of insurance such as 'Directors & Officers Liability Insurance".
Impact on the OGA as an organisation		
16	What are the costs of setting up and of maintain a limited company status?	**<u>Set Up</u>** • Registration with Companies House is £50 • Registration takes 24 hours • Key requirements include a company name, Form IN01, a Memorandum of Association and Articles of Association • Register with HMRC for corporation tax • Open a business bank account **<u>Annual Costs After Set Up</u>** • Annual confirmation statement - £34 • Annual accounts – depends on complexity and whether we have to hire an accountant
17	What are the costs of setting up and of maintaining a CIO status?	**<u>Set Up</u>** • There is no fee to register as a CIO. • There is no fee to register with HMRC. • We would change our bank account to a charity bank account.

		• Can take up to 40 days for the registration to be confirmed **Annual Costs After Set Up** • Cost of an independent examination of the annual accounts (not an audit) if gross income is more than £25,000 but less than £1million. If £25,000 or less than no examination is required. The independent examiner may charge a fee or be pro bono. • No cost for the annual filings with the Charity Commission • The majority of a charity's income, typically between 60-70%, should be spent on supporting the charity's cause, with the remainder covering these running costs.
18	How long would it take to incorporated as a CIO?	Plan for 4 months to register your charity. One month to pull together all the information and write your application and 3 months for it to be approved, although it can be much quicker or take even longer. Georgina Tall has offered to complete the set up but is open to have a small working group to aid discussions and answers, if this is the route that the ACM would like to go down.
19	What effect would it have on the financial record keeping and reporting and what we would need to do (both centrally and in the Areas)?	Information provided to the National Treasurer would need to involve more details than it currently sounds like it covers. Areas would need to provide details of how money has been spent. If our gross income is less than £25,000 then the accounts would just be receipts and payments accounts with a statement of assets and liabilities with approval by the trustees. If our gross income is £25,000 to £250,000 then the account would be receipts and payments accounts with a statement of assets and liabilities with lay independent examination.
20	If the OGA became a CIO, what would the structure of the organisation be?	The structure wouldn't need to change. Our governing document ('constitution') can state that the ACM will be the governing committee and the trustees could sit on that committee too but wouldn't have overarching powers (they are there to ensure accountability and ensure that the OGA's charitable purpose is met). We can continue to have AGMs and use our current voting process.

A list of similar sports bodies and their legal status:

The Cruising Association	Private Limited Company by guarantee without share capital use of 'Limited' exemption
Drascombe Association	Unincorporated Body
Norfolk & Suffolk Boating Association	Private company limited by guarantee without share capital
Cody Sailing Club	Unincorporated
International GP14 Class Association	Unincorporated
Tideway Class Association	Unincorporated
Wayfarer Class Association	Unincorporated
Wanderer Class Owners Association	Unincorporated
Dinghy Cruising Association	Unincorporated
Shrimper Owners Association	Unincorporated
Bench Blisters Rowing Club Limited	Private company limited by guarantee without share capital
London Cornish Pilot Gig Club	CIO
Cornish Crabbers Club	Limited Liability Partnership (LLP)
Portsmouth Offshore Sailing Group Ltd	Private company limited by guarantee without share capital

Next steps if we don't make a change

- Put in place paperwork to ensure that we legally own OGA assets using the following 'Declarations of Trust' templates provided by the RYA for unincorporated associations:
  - Declaration of Trust for the Trademarks
  - Declaration of Trust for the Ownership of Club Boats
  - Declaration of Trust for a bank account
- Amend the existing OGA Rules to clarify the liability position. The RYA has the following in their model unincorporated body constitutional document:

  "In pursuance of the authority vested in the Committee by Members of the Club, Members of the Committee shall be indemnified by the Members of the Club out of the assets of the Club from and against any liability, costs, expenses or payments whatsoever which may be properly incurred or made by them or any one of them in the exercise of their duties on behalf of the Club wherever the contract is of a duly authorised nature or could be assumed to be of a duly authorised nature and entered into on behalf of the Club.

  Should the assets of the Club be insufficient to satisfy such liability, costs, expenses or payments the Committee shall be entitled to a personal indemnity from the individual Members of the Club.

  The limit of any individual Member's indemnity in this respect shall be a sum equal to one year's subscription at the then current rate of that category of Membership unless the Committee has been authorised to exceed such limit by a General Meeting of the Club.

  The Committee shall endeavour to ensure that the following clause is incorporated in every contract, lease, licence or other agreement entered into by the Committee and/or Trustees of the Club, as appropriate.

“The liability of the [Committee/Trustees] for the performance of any contractual or other obligation undertaken by them on behalf of the Club shall be limited to the assets of the Club.””

- For ACM members, the RYA has the following explanation on our current liability position (Committee = ACM and GMC, Ordinary Members = the wider OGA membership)

  "**Liability of the Committee and Ordinary Members:** As a general principle Members of an unincorporated association are not personally liable for the acts of those who enter into contracts in the course of the affairs of the Club. Exactly who is liable depends on the Constitution of the Club and what acts of authority and ratification have occurred. However, it is possible for all the Members to be liable if they give appropriate authority either in terms of the general Rules of the Club or in respect of particular transactions. Whether or not the ordinary Members of a Club will be held liable for transactions entered into by the Committee is therefore a question of fact in each case."

Reference Sources

https://www.rya.org.uk/club-centre-support/affiliates/legal-advice/legal-structure-of-your-club

RYA Guidance: Legal Structure of your Club

RYA: Liability Guidance for Unincorporated Clubs

RYA: Guidance for Forming an Unincorporated Club

RYA: Guidance on Forming an Incorporated Club

https://www.gov.uk/register-a-community-amateur-sports-club/print

https://buddle.co/learning-and-support-resources/money-matters/reporting-and-tax

https://www.rya.org.uk/network/clubs-and-affiliates/legal-advice/regulations-and-laws/legal-structure-of-your-club/

CLGs, CIOs, CICs – understanding legal structures | ICAEW

https://assets.publishing.service.gov.uk/media/65c64528cc433b000ca90b98/Foundation_CIO_model_090224.pdf

Charity types: how to choose a structure (CC22a) - GOV.UK

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