

# GOVERNING COUNCIL OF THE CAT FANCY

## Legal Status - Pros and Cons

Anyone can get together and agree to start a club or association without legal formalities. In law this is called “an unincorporated association” which is the current status of GCCF. The advantages of this kind of association are:

- It is flexible
- Can have any aims and rules which are easy to change from time to time
- Members have a say in day to day decisions
- Paid staff can be on the Committee
- No limits on trading
- No rules regarding the format of accounts or where they have to be submitted
- Easy to wind up

The disadvantages are:

- It is not a legal entity
- Property cannot be held in its name
- There is no limit to the financial liability of individual members
- No automatic relief from Corporation Tax
- No automatic relief from business rates
- Individual members of committees are jointly and severally liable for any contracts
- People may be unclear about liabilities.

The following is a list of the advantages and disadvantages of GCCF becoming an incorporated company. The list is by no means exhaustive.

The advantages are:

- The GCCF becomes a legal entity
- Can enter into contracts, rent or own property in its own right without the need for holding trustees
- Limited liability for members and governing body
- Paid staff can be on the committee (except if company is also a charity)
- Transparency – details of officers and memorandum & articles of association are on public record
- Company status – respected by members of the public
- Company secretary (if one appointed) can be a member of staff or a board member
- Company accounts format provides structure
- Permanent succession – no need to transfer contracts or leases when signatories leave or die.
- Permanent – company exists until dissolved, even if dormant.

The disadvantages are:

- There can be a false sense of security, it should be remembered that limited liability will disappear if technically insolvent within a short period of time following incorporation.
- Company directors are still personally liable if considered negligent
- In practice most landlords require named individuals to be liable for leases
- Most lenders would require named sureties
- Details of directors are made public. The final implementation of the Companies Act 2006 which came into force on 1 October 2009 has now made it possible to use a “service address” (usually the company’s registered office) rather than a home address. However, Companies House still require details of a directors home address in addition to a service address. Directors’ details shown on public record are therefore – full name, service address, date of birth, nationality, country of residence and business profession, if any.
- There are restrictions on who can become a director although again, the Companies Act 2006 has been helpful as the upper age limit has now been abolished.
- Legal language of memorandum & articles of association are not user friendly to most club members.
- Administration requirements are more onerous – it must submit accounts, company returns and certain resolutions within specified time limits.
- Risk of fines and at worse imprisonment if company’s legal requirements are not followed. There are in excess of 200 criminal offences within company law.
- Formal process to be undertaken in order to wind up the company.

Having heard all the groans, it begs the question why the GCCF having happily been around for nearly 100 years operating as an unincorporated association, should now go down the route of incorporation!

The main considerations are usually based on reaching a certain size in terms of staff and/or financial turnover; entering, or wanting to enter, into a commercial contract (for example the Supreme Show) or owning freehold or leasehold land and other property and of course the benefits of limited liability. However are these considerations really that necessary that the GCCF should enter into the unknown realms of the Companies Act!

Perhaps not – However, the GCCF as with all Clubs, Societies and Associations operates like any members club through its various committees whose decisions ultimately have to be placed before its members who meet infrequently throughout the year and who enjoy the final say as to whether any decisions are carried or not. I feel the GCCF outgrew this kind of operation many years ago and in today's economic climate it is paying the ultimate price. Its inability to have sufficient control over its business activities, inadequate time constraints and wrong decisions made by its members have exhausted most of its cash reserves and together with a drop in revenue and increasing overheads it finds itself on the brink of insolvency.

We are all involved because it is our hobby and it is important that it remains enjoyable and not a burden so for the sake of argument let's separate the hobby (the cat fancy) from the business activities. The cat fancy has operated successfully for 100 years under its current "Constitution" so you must avoid any unnecessary changes. Your members will be happy, they understand the "Constitution", and they can continue to debate and argue as they always have at the three Council Meetings held in the year. Should you go ahead and incorporate you will be regulated by the Companies Act but it need not have any real impact on the cat fancy "hobby".

Any major differences between the Companies Act and the GCCF's current "Constitution" can be restricted to its "normal business activities" where it will prove the most advantageous. As a director of a company, you are taking on an onerous responsibility, and you should be aware of that. There are many circumstances where a director can be held liable for decisions made by the company, even if they didn't agree with them. In addition, if the company becomes technically insolvent (i.e. its balance sheet shows more liabilities than assets or it can't pay its debts as they fall due), your directors' duties change and you now have to do what you can for the company's creditors, rather than its members. In such circumstances, you might find yourself at the wrong end of a claim to pay your personal money into the company. At worst, you could find yourself charged with a criminal offence arising out of company business.

So you see the Board of directors in a limited company carries full legal responsibility, not the members, and as such is entitled to exercise considerably more power than a committee within a members club. The Board of Directors does not have to seek member approval for every business decision taken. Members have no legal right other than what the law requires which, in a company limited by guarantee, is usually limited to say, Changes to the Memorandum and/or Articles of Association (Special Resolution), Election of Directors, Removal of a Director/Directors (Special Notice required) Receiving the Annual Directors' Report and Statutory Accounts, Appointment of Auditor. (In saying this I am referring solely to the "normal business activities" and not to the involvement members will continue to have in pursuance of the Company's main objects).

At the Executive meeting on 6<sup>th</sup> January 2010 I shall interpret the Articles of Association that I suggest you adopt and I shall explain in detail how the Companies Act and an Association like the GCCF can co-exist with its Articles of Association and its current Constitution without too many changes.

Gill Wilson