

# APSE National Sports and Leisure Seminar 2009

*Structured for success*

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# Overview

- Options for structure
  - Forms of Leisure Trust
  - Charitable Status?
  - Who should be involved?
- Navigating the Legal Maze
  - Transferring Land and Assets
  - Procurement
  - State Aid
  - Staff and TUPE
  - Legal Agreement(s)
- Avoiding the risks

# Options for structure

What is a Leisure Trust?

- Unincorporated Association
- Company – usually limited by guarantee
- Industrial and Provident Society
- Charitable Incorporated Organisation
  - From late 2009 / early 2010

Not usually a Community Interest Company (CIC)  
nor Community Land Trust (CLT)

# Forms of Leisure Trust

- Advantages of being a separate legal entity
- Powers
  - Leisure - s19 Local Government (Miscellaneous Provisions) Act 1976
  - Recreational Charities Act 1958
  - Wellbeing
  - Other - ie entertainment, tourism etc

# Charitable Status?

What does it mean in practice:

- Charitable objects and purposes
  - Public benefit
- Permanent Endowment
- Regulated by Charity Commission
- Must be independent of funders etc
- What is in scope?
- Decision of Charity Commissioners, Trafford and Wigan 2004

# Charitable Status?

- NNDR Relief
- VAT advantages
- Tax Advantages
- Ability to seek wider range of funding
- Community involvement
  - New best value duty to involve w.e.f 01.04.09

# Who should be involved?

What sort of structure and people?

- 2 levels
  - Members (stakeholders) ie users / local community representatives / other
  - Trustees (board) - Independent – a source of skills?
- Council representatives (?)
  - Councillors or officers
- Private Sector Partners / “Hybrid Trusts”

Don't forget duties and responsibilities of directors/trustees and potential for personal liability

# Navigating the Legal Maze

- Transferring land and assets
  - Lease or licence?
  - Structure, major repairs and replacement of plant etc
  - General repairs and maintenance
  - Valuation and best consideration
- Equipment
  - Replacement
- End of the arrangements

# Procurement

- Part A or Part B
- Advertising – OJEU or other form?
- Potential TECKAL exemption if controlled by contacting authority/ies

# State Aid

- 4 tests of Article 87
  - Aid ie financial assistance
  - Favouring an “undertaking”
  - Affecting trade between member states
  - Distorts or threatens to distort competition
- Is there an effect on trade?
  - Dorsten Swimming Pool case
- Services of General Economic Interest (SGEI) / Altmark decision

# Staff and TUPE

- New structure
- Secondment?
  - Astley v Celtec
- TUPE transfer on existing Terms & Conditions
- Best Value and 2 tier workforce Issues
- Equal Pay and Single Status

# Legal Agreements

- Grant or Service contract
- The differences and the implications
- Governance arrangements
  - Accountability
  - Funding
  - Scrutiny
  - Influence without control?

# Avoiding the risks

- Ensure strategy and purposes are clear
  - Health promotion and other priorities
  - On new contracts things may have changed
- Developing areas:
  - EU Procurement / State Aid law
  - Grants v Service Contracts
  - Charitable purposes, community benefit & CIOs
- Impact of the credit crunch
- Ensuring an audit trail

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