EGM November 1 2026 – Responses to members' questions

Is the Council just trying to centralise its power through incorporation and take away members' control?

No. Members will still have considerable control. They will still elect the directors, as they do the Council members. They will still control major spending, borrowing and investment (anything over £75k). **The main reason for incorporation is to limit members' liability** should anything ever go wrong. Incorporation is encouraged by our sports' governing bodies as well as our own professional advisers.

Is the Council just proceeding with incorporation to push through the full re-development option.

No. The Council will be in the same position after incorporation as it is now – reliant on a democratic vote of the membership to choose which option to take (at a later EGM).

How much has this ongoing dispute cost the club in accountants, legal fees and other associated charges?

Circa £3000 to date.

Is it true that DSCL has a remit to protect and use the assets for squash, tennis and racketball as claimed in a document distributed at the squash finals.

No. This document made many claims about DSCL, which do not appear in the company's articles of association. The only object of the Company is 'to promote and provide facilities for the amateur sports of squash, racket ball and tennis and community participation in the same.' That said, **the former squash club had already set a precedent for extending this remit** by building and maintaining a gym. Furthermore, the original DSCL articles did not include racketball – this was a later addition. The current DRF council feels it is important to allow the club to develop to meet our community's current and future needs, as it has always done in the past.

The growth of the Pickleball and Fitness sections is an example of how the club is benefitting from this policy. Pickleball has attracted over 100 new members while gym membership is registered at 89. Many members from other sections are enjoying these facilities, giving added value to their membership.

Why have you threatened the DSCL directors with legal action

The council sincerely hopes that the squash directors will follow the direction of the members and agree to the transfer of DRF assets without the need for any legal action. It would cost them and the club a significant amount of money. Any legal action will be taken very reluctantly but, for the club's future security, we must resolve the issue.

When did DSCL shareholder-directors launch their action?

February of this year but other challenges had been issued by squash members before this. Challenges were made regarding our CASC status, including a threat to report us to HMRC. Resolving all these issues has taken a lot of the Council's time and energy. Furthermore, when two new squash directors were appointed to the DSCL board one of them made an approach to our architects asking for confidential club information. This action had not been authorised by the board.

Why do we not use existing savings rather than borrowing money to improve the existing bar, entrance, changing rooms etc.....this would be a 4 or 5 squash court model.

The Council has always said that it would examine a range of funding methods for the redevelopment. We do have substantial savings which, of course, would be put to good use. We would also investigate grants and financial support from members.

The Council was asked by members to draw up plans to modernise our club to make it fit for the next 20-30 years. A set of criteria was presented to the membership in February 2025 and the Council drew up a brief for the architects based on these criteria.

Whilst the Council wants to avoid a piecemeal approach which would not give us value for money in the long run, we are aware that many members are uncomfortable with the proposal to borrow money. The Council is willing to be pragmatic and chart a path that respects members' wishes, avoids too much disruption and delivers the desired result within a manageable budget. The Council very much looks forward to discussions with members which have been side tracked by other issues.

With regard to squash courts, the Council wants to see a strong future for the sport at the club. It is part of our heritage and we are committed to retaining sufficient courts to meet both existing and anticipated future needs.

When will the transfer of assets take place?

The transfer of the assets of the Club and the transfer of the property will take effect following the registration with HM Revenue and Customs of DRF Ltd as a Community Amateur Sports Club (CASC). The constitution of DRF Ltd has been prepared by the Club's solicitors to comply with the rules and regulations for CASCs.

Do we need DSCL to prevent the assets being sold off?

No. If the assets are transferred to DRF Ltd, our c800 adult members will have ultimate control rather than the 10 DSCL directors.

Why is the Council giving only one perspective of incorporation and property transfer

The Council has taken pains to obtain accurate, legal information from a reputable, independent barrister who is an expert in property and trust law. We have shared the full advice document with the DSCL directors and now the whole membership. All other relevant

documentation has also been provided. We are being open and transparent so that members can read all the information for themselves and make their own judgement.

The Council has issued the DSCL directors' note to members alongside other EGM communications. The DSCL directors themselves also distributed a note to members at the Squash and Racketball Finals in April. We also understand that the squash sub-committee has set up WhatsApp groups to share information among club members. All the relevant articles relating to DSCL have also been distributed so that members can make their own judgments. These include the DSCL articles of association as well as Mike Taylor's statement to Sport England that DSCL is merely a holding company accountable to the club and its members.

Please can it be explained what the current status is of Duffield Lawn Tennis Club and Duffield Squash and Racketball Club It seems to me that DRF does not explicitly contain these entities and that it is free to have any types of members that the club council agrees.

Duffield Lawn Tennis Club and Duffield Squash and Racketball Club agreed by a near unanimous vote to merge in April 2024. The new club still focuses on racket sports - as suggested by our name - but also continues to offer the fitness and gym facilities originally introduced by the former squash club.

The former squash club already had an option for gym membership prior to the merger. The tennis club introduced pickleball membership when it created the new pickle courts after the flood, also before the merger. These memberships were transferred to the new club.

It seems that under the current DSCL constitution the squash members and tennis members are in balance and there is no such balance under the new proposed DRF.

The DSCL articles do provide equal numbers of squash and tennis representatives but this is a vestigial organisation and it has not kept up with the reality of the changing membership of the club. DSCL was set up as a holding company. It has never had any role in the running of the old clubs or their merged successor.

Under the merged constitution, although we may play one or more sports, we are all members of Duffield Rackets and Fitness, we are not squash, tennis or pickle members. This will be the same under the newly incorporated club. We need to break down this silo mentality if the club is to prosper.

Does DRF have the flexibility to reduce either tennis or squash facilities at the expense of pickleball, fitness or new sports such as Padel. Can this issue of flexibility (which is clearly a divisive one for members with a strong allegiance to only one sport) be explained and discussed.

The council believes that it should create a strong future for the unified club. It seeks to maintain facilities to meet the needs of existing members as well as develop facilities to attract new people to the club. In doing this we are following established traditions where, for example, the former squash club introduced racketball in addition to squash and later built a gym to cater for changing needs. None of our individual sports can survive on their own, we need to support each other to thrive in an environment where alternative leisure activities proliferate. Although we are a community and members' club rather than a business, we cannot afford to stand still otherwise people will move to other more up-to-date facilities elsewhere.

What are the adverse consequences to the Club if the vote is negative and remains as is now?

The club has had a strong tradition over the years of responding to the changing needs of existing and potential members. The Council is seeking to continue this tradition by trying to update both our legal status and the club's offering. If we do not succeed, we put members at risk regarding their liability and discourage new volunteers from taking part in the running of the club.

The two former clubs have not previously owned the premises directly, but we now have the opportunity to change this for the merged club if it becomes a limited company. It would make the club more secure and facilitate future administration. The new Articles of Association would continue to ensure that members have control over all major decisions. Furthermore, some of the directors of DSCL have disputed (or at least failed to agree) that DSCL holds the land and buildings on trust for the Club. That raises all sorts of issues and was one of the reasons we sought a barrister's opinion on the matter. On that basis the Council felt that the property should be in the hands of the Club.

We believe the continued success of the club relies on us keeping up to date or we will suffer a slow death, unable to attract new members with existing ones leaving for better run commercial facilities.

Why are you allowing email and proxy votes?

The Council gave a great deal of thought regarding continuing the precedent of allowing email/proxy voting, which as we indicated was originally requested by squash members.

On balance, we considered that we must continue this form of voting, particularly given the problem of accommodating so many people on the premises. I'm sure you wouldn't want to disenfranchise people just because they couldn't fit in the room.

We have provided members with full and accurate information on which to base their vote even if they cannot attend the presentation.

We want to hear the true voice of the membership by getting as many people to vote as possible.

Why have you closed email and proxy voting 48 hours before the EGM which means that those who are not in support of the resolutions have no opportunity to state their cases?

Any similar situation where an eligible person votes by email will mean that they will not hear opposing cases put directly. In any event, the council is aware that information and opinions are being widely shared by those with contrary views.

With the number of resolutions involved and the large number of votes expected for this EGM, it has to be reasonable to allow those involved enough time to administer the electronic count.

What is the current status of Duffield Lawn Tennis Club and Duffield Squash and Racketball Club since as far as I can see these no longer exist. It seems that DRF does not explicitly contain these entities and that it is free to have any types of members that the club council agrees.

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Indeed, current membership options include fitness, pickleball and social which do not clearly link to either tennis or squash.

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Although we are a community and members' club rather than a business, we cannot afford to stand still otherwise people will move to other more up-to-date facilities elsewhere.

Why was the barrister's advice note attached to the EGM paperwork, without any briefing information?

It really is just a question of how much information members require. Many people are saying we have provided too much. As soon as this was requested, we made it available to members alongside the other documents.

Why does Resolution (a) in the barrister's advice state that members may direct the trustees as to the "holding, management and transfer" of the Property and the shares, contrary to advice elsewhere in the document?

Ans: It does not. Paragraph 17 says that the proposed actions must be done with the authority of the members of the Club. This is precisely what the EGM and the resolutions are all about.

Does DSCL have any rights over the flood insurance money

The insurance monies paid to the club were on a policy taken out by the club not by DSCL, although DSCL is named on the policy. The former clubs paid for the land via a loan to DSCL which has never been repaid and over the years the two clubs also paid for further land and construction. DSCL holds the land in a bare trust for the members and legally must follow members' wishes – resolutions at the November EGM ask members to confirm that they want this property to be transferred to the club. The proper forum as to how the proceeds of the insurance are spent is within DRF not DSCL. If the insurers require instructions from DSCL on anything, DSCL must comply with the instructions of the Club.

Technical, legal and financial questions

1, Barrister's Advice

How are we as club members meant to agree this advice when we do not actually know the brief that was provided to the barrister? If I were to say to you the answer was '4' but you did not know the question was 'what is 1+2' it would be fairly idiotic of you to simply agree the answer is correct!

Could you please therefore provide a copy of the request that was sent to the barrister?

Q. From the advice as to the way forward by the barrister, it appears to me that the brief was 'how do we ensure the transfer of the property occurs'. Without actually seeing some context to the advice I am reading, I cannot possibly agree to it.

A. This was not the brief. We gave the barrister our current constitution, proposed Articles of Association (AoA's) and the current DSCL AoA's and a detail history of DSCL from inception to date. We maintained if a trust situation did exist, as per DSCL AoA's and could he therefore opine on this assertion and, if needed, correct our understanding.

We have put a copy of the Instructions to Counsel on the website. We trust that you agree that we tried to present the facts in as impartial a way as we could. One key question for members to consider is if the property is not held by DSCL on a bare trust for the Club and if the shareholders of DSCL do not hold their shares for the members of the Club on a bare trust on what legal basis do they hold those assets? We do not know of any other legal basis. That then leaves the shareholders and directors of DSCL with absolute control of DSCL subsect to the AoA's. Admittedly as the Squash directors say, that does include an Asset Lock but, in the absence of a bare trust, those articles could be changed by a majority of 75% of the shareholders of DSCL. Is something the Club really wants?

2. Incorporation of DRF Ltd

Q. In section 21 of the proposed articles of the DRFL, it appears to say that the directors of DRFL can vote and pass resolutions without the need for a members vote, and that those resolutions are then binding on the club. Is this not simply taking power away from the club members? Indeed, once the property is transferred to DRFL, do the club members then not actually have say over the control of their own club property?

A. No this is not what this says. All directors are bound by the Companies Act of 2006 sections 171 to 177 and are duty bound to do the right thing for the club, in this case what is expected to be DRF Ltd. This is about formalising in standard format in Articles of Association in compliance with the Act that Directors have one vote and that if a vote is tied then the Chair, should they wish to exercise it, has a casting vote. This is no different to the current constitution.

All decisions of the Board will be binding on DRFL unless they are ultra vires. Article 7 of the current constitution says that management and control of the funds and affairs of the club will be vested in the club council. So, the powers of the Board will be similar to the powers of the Council. You will appreciate that it will be impossible for volunteers to run the Club if they have to go back to the members frequently.

At the AGM, members have the opportunity to put forward business for consideration by the AGM (Articles 29 and 30) which are similar in content to Paras 8.2 and 8.4 of the current constitution. Under Article 31, members holding not less than 5% of the Voting rights ("the Requisionists") can require the directors to call an EGM to discuss any business which they, the Requisionists, require. Those resolutions are binding on the board and the members. All of this is similar to Para 8.5 of the current constitution.

Your attention is also drawn to Article 38.6 and to the definition of "Reserved Matters" in Article 1. Any dealing with the assets in excess of £75,000 requires a special resolution of the 800+ voting members of DRFL . Please contrast that with my comments in para 1 about what 10 director/shareholders of DSCL can do if there is no bare trust. As I see it

there is no difference between the binding effect of the resolutions of the Council and the decisions of the Board. You will also notice that in Para 7.6 of the Constitution there is a limit of £75,000 on capital projects but no limit on disposals or borrowing. This is tightened up in the proposed articles.

Please can you clarify this point and respond to questions asked.

Q. It is difficult to determine which elements of the current constitution of the club have been removed in the proposed articles. **Can this be made clear to the members?** I do not know how the members can possibly agree to the articles without knowing clearly what is changing from the current position.

A. This is understandable. The current constitution is just that and informal set of actions, agreed by members of how the club is run. The Articles of Association is a legal document that will be, if approved, posted on Companies House and the Directors are legally bound to adhere to. However, when the current constitution was agreed, it was stated that they were drawn up to be as close to being AoA's as possible without including some of the legalities required by the Act.

The current AoA's have been thoroughly reviewed by lawyers and our accountants as to their appropriateness. Both even stating that these AoAs go far beyond, to the openness of members, in what they provide.

Q. From a quick review of the current constitution and the proposed articles of DRFL, there are some concerning differences that I have noticed (and will likely be others), which I have summarised below:

A. The Clubs current constitution contains provisions for Safeguarding (Para 15) Purchase and Supply of Liquor (para 16 and Club Staff (Para 17). These are not repeated in the Articles but are now included in the draft Club Rules (issued by the Board under Article 13) and awaiting finalisation. The major difference is that because DRF is currently an unincorporated association, the decisions of the Council of DRF bind the entire membership potentially rendering each and every member to personal liability. In the case of DRFL that liability is limited to £1 because it is a company limited by guarantee.

Q. Currently the committee should publish in the website minutes of its meetings, within 10 days of being ratified at the following committee meeting. In the proposed articles, under section 23.4, it states records of decisions by the directors' will not be available for inspection by the members. (Note that I cannot actually find any committee minutes on the website, which goes against the current club constitution.)

A. Ordinarily, minutes of board meetings, that is what these will now be, not a council meeting, are not publicised on an open, publicly accessed site. e.g. if you a shareholder of shares in Tesco's you can't access Tesco's board meeting minutes etc.

Publication of minutes does have its problems – GDPR and data protection rules being an example. I think that account should also be taken of the fact that the Club is run by volunteers who would have to spend more of the spare time they have in redacting board minutes to delete personal or commercially sensitive matters, for example. We have taken your comments and would be happy to alter Article 23.4 (possibly at the AGM, but our challenge being that every change needs HMRC approval and they take c4 – 5 months to respond. However, we can make this commitment and at a later date make changes "on mass") to allow for publication of particular minutes dealing with specific matters against the requisition of 5% of the membership.

Q. Currently the AGM should be held in September following the March year end (exceptionally extended to the 2nd week in December) and a budget should also be presented as soon as possible after the year end, for the coming year. In the proposed articles these changes to the AGM should be held within 12 months of the year end, providing the annual accounts and budget. A budget for the following year will be completely pointless once that year has almost lapsed! To also be provided with annual accounts 12 months after the year end, for a quite simple entity, is also far too long. In any event, if the club operates through a limited company, then the accounts will need to be submitted to Companies house within 9 months of the year end, thereby making the 12-month limit irrelevant anyway!

A. First of all the budget being presented is for the following year. Not the current year. Under the rules of Companies House, a business has 9 months after its year end to Sumit accounts, that can be on request extended by 3 months. Nothing in these AoA's is contrary to the current account and companies House requirements.

We have no objection to the AGM being held in September and extended to December in the same terms as Para 7.11 of the current constitution. Audited Accounts as required by the current Para 7.11 should not be required

Q. There appears to be no mention of the make-up of the directors, in the sense that half should be from tennis and half from squash. This is a tennis and squash club, and this fact should not be ignored.

A. This is a misconception many members still struggle with. DRF is not a tennis and squash club. It is a rackets club that just happens to offer tennis and squash and other racket sports. The makeup of the directors should ideally reasonably represent the membership. We currently offer, tennis, squash, racketball, pickle, a gym facility and possibly soon Padel. Pickle is a growing sport at the club and currently has around 150 active players.

You are correct that there is no mention of a Tennis Lead, a Squash & Racketball Lead; a Gym & Fitness Lead or a Social Lead in the proposed Articles. Article 2.2.8 requires the Board to "….advance and safeguard the interests of the Activities…". In Article 1 (Interpretation) Activities include "…tennis, squash, pickleball, racketball or any other racket sports, all gym, fitness and other training programmes and classes…" In other words, it is the responsibility of all directors to advance all of those Activities. You will appreciate that all of the Board are unpaid volunteers and it may not be possible to fill those particular slots. If we are too prescriptive of the constitution of the Board and it is unable to fill, for example, a Social Lead or a Tennis Lead, meetings of the Board may be challenged as Ultra Vires. I would suggest that instead a rule under Article 13.2 is adopted to the effect that the Board makes all reasonable efforts to ensure that the Board is representative of all the Activities.

Q. This reducing of communication and transparency is concerning, especially when confidence in the Council appears to be at an all-time low.

A. We don't disagree, but the council has been undersize in the last 12 months, unable to do the work it was elected, unanimously by the members to do in February 2025 (i.e. to investigate and to produce recommendations to members relating to the future of the Club and its offering to both current and future members) and this EGM is a culmination of these events. The Council have been unable to communicate its suggestions to members whilst those. Once the incorporation of the Club and the transfer of the Property to DRFL has

been cleared by the members and taken place the Council/Board can get on with putting its final proposals for the future of the Club to the membership at large. For these last few months, the Council has been fully preoccupied with tackling the problems created by half the directors of DSCL who take the view that they can block any proposal to reform the club for the future no matter if the members as a whole decide otherwise. See also my replies in 1 above and 3 below

Q. Why have the accounts for the year ended 31.03.26 not been presented to members yet? I feel this EGM should not actually go ahead until an up-to-date financial position is made clear to the membership. The committee has until, at the latest, 22.11.26 to provide accounts to the members. Would it not be more sensible to wait until that has been done before looking at the EGM resolutions? Why the rush?

A. Accounts are presented 21 days before an AGM, that is likely to now happen in late November / early December. We are fully compliant with our constitution and Companies house in doing this.

It is appropriate that the Council resolve the issue of incorporation and the property before an AGM. If, as you say, confidence in the Council is at an all-time low, an AGM taking place following the EGM is an appropriate time for a new team to be elected. The current Council have spent a lot of time and effort (as unpaid volunteers) to get proposals for the future of the Club to the members (February 2026) only then to discover that a small minority of members (the Squash members of DSCL) are trying to stop the Council from putting those proposals (of which there is currently a choice of two) to the membership for approval.

There have been some unpleasant rumours spread about the unpaid members of the Council via WhatsApp, one being that the chairman and another member of the council have plans to make a fortune for themselves out of selling the land!!

A great deal of effort has gone into putting proposals for the next stage of the Councils development to the membership. As mentioned below, the Council believe that before that happens the club should be incorporated and that it should own the property before any money is expended. The Council believe that those matters should be put to the members before the AGM. If those resolutions fail to pass members can replace them at the next AGM. Many or most will probably resign anyway. They will have had enough!!

Why are these changes being proposed, and why is the current constitution not being followed?

3. Transfer of the property

Q. Firstly, can you tell me what the benefit is of actually transferring the property? I understand the benefit of the club trading through a limited company, indeed that is in accordance with LTA advice, but given the property is already in a limited company, why bother moving it?

A. Any council, or more appropriate board of directors look to improve the club, then substantial funds will be required. It makes no sense to have DRF Ltd as a limited company and not the assets that its members own not under that structure. Why would you rent a house and then spend many hundreds of thousands of pounds renovating hot if the (perceived owners) could kick you out the next day? If the directors did this, they would likely be personally liable for the losses to the memberships funds and as they would be in breach of their legal duties as defined by the Companies Act 2006.

Below are some notes which we prepared to explain the reasonings behind the various resolutions to be put to members.

1. The incorporation of DRF and the transfer of the Club's membership to it reduces the liability of the members of the Club.
2. The Club's barrister has advised that DSCL holds the property on trust for the Club and that DSCL's shareholders hold their shares on trust for the Club.
3. The transfer of the property to the club puts it under the control of c800 members of DRF Ltd as opposed to 10 shareholders of DSCL.
4. All of the assets of the Club will then be under 1 roof as opposed to 2. This is important if DRF Ltd is to execute the improvements required by the members.
5. If certain members of the Club deny that they hold their shares as bare trustees on behalf of the Club and refuse to comply with the resolutions of the membership of the Club, they should be required to do so by whatever means are available to the Council. This includes termination of their membership and legal action as a last resort.

The current structure has led to 5 members of DSCL failing to acknowledge that DSCL holds the property on a bare trust for the club. As we have mentioned before that should be a huge red flag for members. If there is no bare trust, we cannot surmise of any other basis upon which it can be said that the Club has any interest in the property. On that basis 8 members of DSCL could change the Articles of Association to take out the asset lock and do what they like with the property. Of course, if this were to happen there would be huge opposition from the members and, probably, legal costs to pay from the Club's funds. Given that 5 Squash directors of DSCL are refusing to acknowledge the existence of a bare trust is this a level of control which the Club can tolerate going forward. Given that it is the club which pays for the property and all of the expenses of DSCL we would have thought that it is obvious that the property should be in the hands of the Club not DSCL any longer.

Q. Has professional tax advice been sought on the proposed transfer of the property from DSCL to DRFL?

You appear to be attempting to transfer the ownership of the shares of DSCL from the current shareholders (who have the shares in trust on behalf of the club members) to a separate limited company. This will create a group, with the parent being the DRFL and the subsidiary being DSCL. Then a sale between the subsidiary and the parent, of the land and buildings, will take place at £nil consideration.

A. Yes, it has from our accountants and the sequence of events after the EGM will be shown on a slide in the meeting to ensure we meet these obligations.

Q. Is the idea around this to avoid any corporation tax on the sale of the property by DSCL to DRFL as it is selling to a parent?

A. The advice given is there will be no Corporate tax liability at all. Based on the advice of the barrister that a bare trust exists it is also a transfer of property from a trustee (DSCL) to its beneficiary (DRFL) all under CASC rules.

If so, this may work but would need to be transacted at market value to avoid it being potentially treated as an unlawful distribution. We appreciate that this is because DSCL will be insolvent because of the DRF creditor of £36,000 approx. From what I can recall I don't think that the transfer needs to be at market value but we may need either to write off the loan immediately prior to transfer or transfer the property for a price equal to the

DRF creditor. That is approximately £30000 and could be used to pay off the interco creditor. Transactions for under £150,000 incur zero SDLT.

Q. Have the tax and accounting implications of this been looked at/explained to anyone on the Council? If so, I would like to see that advice please, and it should also be provided to members. If not, this is a complex area, and the property transfer should not go ahead without being very clear of all the tax/accounting implications.

A. A transfer from a subsidiary to a holding company normally attracts zero corporation tax if done the right way. As we have also explained it will also be a transfer from a bare trustee to its beneficiary

The council has taken full tax advice and normally does not issue this to members. As we understand it a transfer of property from a trustee to its beneficiary takes place for nil consideration and is non-taxable. From HMRC's perspective it looks a lot better if we can show nominee agreements from each of the DSCL directors. All the tennis directors have agreed to sign nominee agreements. It will be considerably easier to convince HMRC that DSCL holds the property on a bare trust if all 10 directors and shareholders sign nominee agreements – hence the request to members to force the issue with any DSCL directors if they fail to sign them.

Q. There is also the issue of SDLT. **Can you confirm advice has been obtained, and can be provided to members, to confirm no SDLT will be triggered due to this transfer?**

A. As far as we know and have been advised, a transfer from a trustee to a beneficiary incurs no SDLT. If there is SDLT, we anticipate that it will be on the amount of the interco creditor of £30,000 approximately and the £150,000 SDLT exemption will kick in.

4 - Amended articles of Association of DSCL

Q. Under section 8 of this document, it states that DSCL must transfer the property to DRFL as soon as DRFL is incorporated. However, in other documentation, this is only meant to happen once DRFL has also been given CASC status by HMRC. **Is this therefore incorrect?**

A. Article 8 of the Articles of DSCL deals with directors' reserve powers. However, we can confirm that the transfer of the property will only take place once HMRC have given conformation of the CASC status of DRFL

Q. What brief was given to the club's solicitors when drafting the articles, and who are the club's current solicitors?

A. The drafting of the AoA's has been approved by lawyers and the club's accountants. The solicitors (Banner Jones in Chesterfield, a member of the Legal 500 top law firms) were instructed to prepare CASC compliant Articles of Association. These Articles were then amended by Council members and other club members who have corporate law experience to make them follow the Clubs constitution as closely as possible. They were then sent back to Banner Jones for final approval.

Q. I think that overall, the idea of putting the trading of the club into a limited company is not a bad one, to protect the individual members liability. However, the possibly unnecessary transfer of the property looks complex and I want to have assurances that no tax liability will be triggered from that transaction. Further, that from all the changes

proposed to the articles of association etc, that the powers of the members of the club are not being eroded in any way.

A. We think we have answered why the transfer is necessary previously. We have tried to follow the current constitution as closely as possible. We do not believe that the Articles of Association of DRFL weaken the powers of the members. Indeed, in the case of transactions over £75,000 those powers are enhanced.

Q. Can you please confirm receipt of this email and let me know how/when my questions will be responded to.

It seems to me that the council should learn to walk before it can run and start by doing the basics of adhering to the current rules of the club (see above under point 2). This would be a good way to deal with the lack of trust the members currently have in the council, rather than trying to progress this complex change to the club that I do not necessarily think is fully understood by either the council or members.

A. It is both disappointing and not a fair comment about the Council. There are members of it and advisors used who have 40 years+ each in Corporate law, and directorial responsibilities skills.

As I mentioned in 2 above, we do not think that the powers of the members of the Club have been weakened under the proposed Articles of Association. The main reason for the lack of communication to members has been that viz a vis the future proposals for the Club, there has been nothing to report because of the efforts of the 5 Squash directors to block progress on such matters. We have had a new website recently and time constraints have meant that meeting notes have not been transferred.

There will be no Corporate tax liability at all. Based on the advice of the barrister that a bare trust exists it is also a transfer of property from a trustee (DSCL) to its beneficiary (DRFL).

If so, this may work but would need to be transacted at market value to avoid it being potentially treated as an unlawful distribution. I appreciate that this is because DSCL will be insolvent because of the DRF creditor of £30,000 approx. From what I can recall I don't think that the transfer needs to be at market value but we may need either to write off the loan immediately prior to transfer or transfer the property for a price equal to the DRF creditor. That is approximately £30,000 and use that to pay off the interco creditor. Transactions for under £150,000 incur zero SDLT.

Have the tax and accounting implications of this been looked at/explained to anyone on the Council? If so, I would like to see that advice please, and it should also be provided to members. If not, this is a complex area, and the property transfer should not go ahead without being very clear of all of the tax/accounting implications. I have always understood that a transfer from a subsidiary to a holding company attracts zero corporation tax if done the right way. As I have also explained it will also be a transfer from a bare trustee to its beneficiary

Ans: The council has taken full tax advice and normally does not issue this to members. As I understand it a transfer of property from a trustee to its beneficiary takes place for nil consideration and is non-taxable. From HMRC's perspective it looks a lot better if we can show nominee agreements from each of the DSCL directors. All of the tennis directors have signed nominee agreements. It will be considerably easier to convince HMRC that DSCL holds the property on a bare trust if all 10 directors and shareholders sign nominee agreements – hence the request to members to force the issue with any DSCL directors if they fail to sign them.

There is also the issue of SDLT. **Can you confirm advice has been obtained, and can be provided to members, to confirm no SDLT will be triggered due to this transfer?**

We have taken accountants' advice on steps needed so there will be no SDLT liability.

Valuation

1. Has the Council obtained a formal market valuation of the property? If so, what is the value and who carried it out? I note that the insurance reinstatement figure is a rebuilding cost rather than a market value.
Not relevant given the comments below.

Tax on DSCL's gain

2. A gift of land to a connected company is normally treated as a sale at market value. What corporation tax would DSCL face on its gain if CASC gift relief did not apply, and who would pay it, given that DSCL would by then have given away its only asset?
A transfer of land between subsidiary and holding company is free of Corporation Tax. A transfer between a trustee and its beneficiary is free of Corporation Tax. It is assumed that you are not disputing that DSCL is anything other than either or both of those.
Stamp Duty Land Tax

3. What SDLT does the Council expect DRF Ltd to pay on the transfer? There is no CASC relief from SDLT, and once DRF Ltd holds the DSCL shares it will be connected with DSCL, so SDLT would be charged on market value. Has this cost been budgeted, and has group relief been considered? No SDLT on a transfer of property between a subsidiary and its holding company. No SDLT on a transfer of property between a trustee and its beneficiary. It is assumed that you are not disputing that DSCL is anything other than either or both of these. We have advice from the Clubs accountants on the Corporation Tax issue and are seeking confirmation from the accountants on the SDLT point

CASC registration and gift relief

4. Will the Council confirm that no transfer will take place until DRF Ltd is actually registered as a CASC, with HMRC's written confirmation of the effective date, rather than on an indication that it will be registered?

Ans: Confirmed

5. Has HMRC been consulted on DRF Ltd.'s eligibility, given that its objects give equal weight to gym, fitness and wellbeing, and that Articles 22.7.4 and 25.5 permit payments to directors and free membership in return for loans or services? The Articles have been prepared by Banner Jones solicitors. They are familiar with CASC rules and have drafted the Articles with CASC rules in mind.

Ans: The Articles will be presented to HMRC for approval following the EGM if approved

6. DSCL's accounts show a loan of £35,990 that predates DRF and, as I understand it, is owed to

bodies other than DRF. How will that loan be treated on any transfer? If it is to be repaid, released or assumed by DRF Ltd as part of the arrangements, that would be consideration received by DSCL and could reduce the gift relief.

Ans: As the Council sees it, the main concern for DSCL is the transfer of the property being treated as an unlawful dividend if the loan is not dealt with. So either DRFL pays DSCL £35,990 for the property and DRFL then uses that to repay the loan (an accounting exercise in reality) or DRFL writes off the loan. There will be no SDLT because the consideration is less than £150,000.

Deregistration

7. If DRF Ltd were later to lose its CASC registration, it would be treated as selling and buying back its assets at market value, with the gain measured from DSCL's original cost. HMRC can also backdate the end of registration. Has the Council assessed this risk, including how the club's plans for fitness provision might affect its eligibility, and how DRF Ltd would meet that liability other than by borrowing against or selling the land? We disagree.

Ans: In our view the relief from Corporation Tax, comes from DSCL being a subsidiary or trustee of DRFL- we assume that you have no issue with this.

Advice and protection

8. Has the Council taken written tax advice on all of the above? If so, from whom, and will it be shared with members and with the DSCL directors who would be asked to execute the transfer?
Ans: Yes

9. Will the Council seek HMRC clearance before any transfer is completed?

Ans: Yes

And what indemnity will DRF Ltd give DSCL and its directors against any tax or liability arising?
Ans: Fair question. A trustee should expect to be covered for any liability incurred. Agreed. An indemnity is in clause 5 of the Nominee Agreement signed by some of the directors

10. Leaving the property in DSCL would avoid SDLT, the tax on DSCL's gain and the deregistration risk to the land. What benefit does the Council see in transferring the property that would justify these costs and risks?

Ans: The only reason for DSCL's existence is the fact that an unincorporated association (i.e. the Club) cannot hold a legal title to property (although the members can hold the equitable interest as the beneficiaries under a bare trust). DRFL can hold the legal title. At present the Club's chief asset is in the hands of a company with just 10 directors and shareholders 5 of whom dispute that they hold their shares on a bare trust for the Club and have refused to sign nominee agreements that they hold their shares on a bare trust for the Club. If they are right just 8 of those shareholders (75%) could change the Articles of DSCL and do what they like with the Property. That point will be made very forcibly at the EGM. Accordingly, the safest place for the property is with DRFL (a members' club with 800 members) with appropriate safeguards. The council has spent a lot of time and effort to come up with suitable Articles and safeguards for DRFL. For example, the Articles of DSCL contain no restrictions on sale other than it has to be at market value. The Articles of DRFL contain restrictions on loans greater than £75k; disposals

which are greater than £75k and projects with a spend of more than £75K.