

# **Logics and Legal Forms: An Empirical Legal Analysis of Sports Club Decision-Making**

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## Abstract

There has been a growth in concern that the legal risks of personal liability for those contributing to amateur sport has translated into a circumstance whereby voluntary sports clubs struggle to recruit and retain both members and volunteers. A contributory factor to such struggle is understood to be related to clubs' choices of legal form, and in particular, problems connected to the use of the unincorporated association. This study explores club engagement with a policy attempting to placate concerns of personal legal liability through the advocacy of a move away from the unincorporated form. The Welsh Rugby Union's "incorporation policy" consists of the provision of information and funding to constituent clubs in order to facilitate a transformation of legal forms away from the unincorporated association to the company limited by guarantee. By undertaking this incorporation, clubs afford the opportunity to their constituent members and volunteers to mitigate those risks of personal legal liability perhaps serving as barriers to participation.

The study utilises a mixed-methods approach, underpinned by critical realism, to improve understanding as to the how, the why, and the consequences of club engagements with incorporation. The research suggests that to properly account for those forces influencing club choices of legal form, a holistic understanding of causation is required. The research therefore seeks to supplement legally grounded explanations for incorporating with theories and concepts traditionally existing outside of legal scholarship. Attempting to provide a theoretical richness to understandings of causation, the thesis engages existing perspectives applied to explanations of organisational change regarding voluntary sport clubs. The thesis ultimately concludes that an institutional logics perspective, established within the voluntary sports club literature and experiencing growth in empirical legal scholarship, is capable of enriching existing explanations of how and why not-for-profit entities engage with decisions of legal form.

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## Chapter 1: Introduction

This thesis focuses upon legal forms and not-for-profit sporting organisations. Specifically, the research is concerned primarily with two types of legal form being the unincorporated association and company limited by guarantee, and one specific kind of not-for-profit sporting organisation, amateur Welsh rugby clubs (AWRC).

The research originated from a desire to develop understanding as to why AWRC had engaged or perhaps had not engaged with their national governing body's policy promoting a move away from the much-maligned unincorporated association to the seemingly more suitable company limited by guarantee. Termed "the incorporation policy", the thesis explores why and how clubs as receiving entities have engaged with the policy's message and actualised its requirements. Through consideration of the relevant legal context and analysis of empirical data, the thesis advocates a conceptual explanatory model underpinned by institutional logics as capable of accounting for those reasons why AWRC tend to engage with the incorporation policy in the manner observed. By seeking a better understanding of club decision-making regarding matters of incorporation, the research provides concurrently for an evaluation of whether the incorporation policy provides a fitting solution to what will be shown to be a problem of legal form.

This chapter outlines the fundamental components of the research. This is not done so in a comprehensive manner but rather as a means of introducing those features of the study which may assist understanding as one moves through the thesis. Beginning this process, the chapter first discusses sports clubs and the unincorporated association legal form. The thesis begins in this way as a means of understanding the genesis of the incorporation policy as well as its fundamental objectives.

## 1.1 Sports clubs

This research sought to engage with the 275 rugby clubs<sup>1</sup> operating within the Welsh Rugby Union league structure.<sup>2</sup> The Cambridge dictionary defines a club as “an organisation of people with a common purpose or interest, who meet regularly and take part in shared activities.”<sup>3</sup> Ashton et al, referring to judicial commentary as to what features may indicate the existence of a club at law, have suggested the legal definition requires greater formalities than the dictionary alternative.<sup>4</sup> Whether the AWRC engaged by this research do in fact adhere to legal definitions of a club is however of little significance to this research. It is rather those legal definitions pertaining to the legal forms utilised by the relevant organisations which is of interest and consequence. Beginning then with the unincorporated association, the form can be considered something of an inclusive legal structure. Warburton defined the unincorporated association in the following way:

*“whenever several people join together to carry out a mutual purpose, other than for a profit, an unincorporated association comes into being.”*<sup>5</sup>

Given the accessibility such a definition affords, it is not difficult to understand why the unincorporated association’s popularity is considered to derive from being the easiest, cheapest, and the most informal way of creating a club.<sup>6</sup> Despite the convenience such a legal form may offer sports

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<sup>1</sup> Unlike many European countries who provide community sport through multi-sport organisations, Welsh rugby clubs are typical of the single sport organisations most prevalent within the UK. Mary Allison, *Sport clubs in Scotland* (Sport Scotland 2002)

<sup>2</sup> The thesis utilised a sample frame of all clubs operating below the premiership level of the Welsh Rugby Union League Structure. See section 4.3.1 for further detail. Welsh Rugby Union ‘Documents and Regulations’ (Community.wru.wales undated) <<https://community.wru.wales/club/club-resources/documents-and-regulations>> Accessed 7<sup>th</sup> July 2020

<sup>3</sup> Cambridge Dictionary, ‘Club’ (Cambridge Dictionary Undated) <<https://dictionary.cambridge.org/dictionary/english/club>> Accessed 8<sup>th</sup> December 2021

<sup>4</sup> *R v RL and JF* [2008] EWCA (Crim) 1970 [2009] 1 All E.R. 786

<sup>5</sup> Jean Warburton, *Unincorporated Associations: Law and Practice* (Sweet & Maxwell 1986)

<sup>6</sup> David Ashton, Paul Reid & Ian Snaith, *Ashton & Reid on Clubs and Associations* (3<sup>rd</sup> edn, Bloomsbury Professional 2020) Greater democratic control in comparison with alternative forms has also specifically been noted as a reason for the popularity of the unincorporated association see Phillip Morgan, “Vicarious liability and the beautiful game – liability for professional and amateur footballers?” (2018) 38 *Legal studies* 242 p.256

clubs, even a cursory glance at the law's treatment of such entities leads rather quickly to questions as to the suitability of the unincorporated association as a viable legal form.

## 1.2 The unincorporated association problem and research contributions

“Of a peculiar nature”,<sup>7</sup> “a legal form which has left the UK lagging behind other major legal systems”,<sup>8</sup> and “the most anomalous group of human beings that is known to the law”.<sup>9</sup> It is largely accepted that the feature of unincorporated associations which has led to such commentary relates to the form's lack of legal personality distinct from its members. Succinctly, this translates into a circumstance whereby the law simply fails to recognise such an association's existence. As McGregor-Lowndes and Hannah stated, “the main legal difficulty arising from the often-nebulous nature of the unincorporated association is their lack of legal personality.”<sup>10</sup> Mr Justice Lewison, two years prior to McGregor-Lowndes and Hannah's remarks, had stated that the unincorporated association's lack of separate legal personality gave rise to almost all the myriad legal problems connected to the form.<sup>11</sup> A comprehensive explanation of why a lack of legal personality is problematic is offered at chapter 2. For the purposes of the introduction, and at the risk of oversimplifying the law's treatment of unincorporated associations, *generally*, a lack of organisational legal personality means the law may look to an association's members to account for losses flowing from legal wrongs which the lay person may interpret the association to have committed.

For this reason, the unincorporated association can be considered a legal form built on foundations of personal liability. The possibility of personal liability for unincorporated associations' committee members, trustees, or even ordinary members simply by virtue of their membership,<sup>12</sup> has led to a

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<sup>7</sup> *Wise v Perpetual Trustee Co Ltd* [1903] A.C. 139, [149] (Lord Lindley)

<sup>8</sup> Scottish Law Commission, *Unincorporated Associations* (Scot Law Com No. 2017 2009)

<sup>9</sup> *Feeney & Shannon v MacManus* [1937] IR 23 (HC), [31] (Johnstone J)

<sup>10</sup> Myles McGregor-Lowndes and Frances Hannah, ‘Unincorporated associations as entities: A matter of balance between regulation and facilitation?’ (2010) 28 *Company and Securities Law Journal* 197, p.204

<sup>11</sup> *Hanchett-Stamford v Attorney-General* [2008] EWHC 330 (Ch) [2009] Ch.173, [28] (Lewison J)

<sup>12</sup> *Unincorporated Associations* (n 8)

concerted effort in several jurisdictions to move on from what is perceived to be an unsatisfactory form.<sup>13</sup> Within the UK, the Scottish Law Commission considering the law's relationship with unincorporated associations commented as follows:

*“The difficulties and uncertainties which arise out of the absence of recognition of unincorporated associations as legal entities are well recognised and have been the subject of adverse judicial and academic comment for many years....For many commentators, the law fails to reflect factual reality.”*<sup>14</sup>

Regardless of academic and judicial criticism, as well as the Scottish Law Commission's support for a statutory overhaul of the law's treatment of unincorporated associations, the UK's legal approach remains little changed since the commission's 2009 report.

Largely based on arguments drawing attention to the personal liability trustees, committee members, and general members assume, the unincorporated association has been specifically questioned as a legitimate legal form for sports clubs by several of the UK's national governing bodies. Perhaps in recognition that many association members are unaware of when personal liability may become a possibility,<sup>15</sup> a number of national governing bodies have sought to mitigate the legal risks for those individuals who make up the amateur club bases of their respective sporting pyramids through the advocacy of incorporation.<sup>16</sup> The Collins dictionary defines incorporation as the action of forming

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<sup>13</sup> Ibid

<sup>14</sup> Scottish Law Commission, *Discussion Paper on Unincorporated Associations* (Scot Law Com DP No 140 2008)

<sup>15</sup> Unincorporated Associations (n 8), para 2.20

<sup>16</sup> England Athletics, 'Guidance for New Applications for Affiliation' (England Athletics Undated) <<https://myathleticsportal.englandathletics.org/Resources/Download/5>> Accessed 8<sup>th</sup> August 2021, p.2. Rugby Football Union, 'Why incorporate?' (Rugby Football Union Undated) <[https://www.englandrugby.com/dxdam/52/52b51b7e-8228-4894-b01f-1bad589b1045/Why\\_Incorporate.pdf](https://www.englandrugby.com/dxdam/52/52b51b7e-8228-4894-b01f-1bad589b1045/Why_Incorporate.pdf)> Accessed 12<sup>th</sup> November 2019. England Golf, 'Guide for incorporation of golf clubs' (England Golf 2018) <<https://www.englandgolf.org/wp-content/uploads/2018/10/6.3.1-England-Golf-Club-Incorporation-Guide-February-2018.pdf>> Accessed 29<sup>th</sup> March 2019

into a corporation or other organisation with a separate legal identity from that of its owners or members.<sup>17</sup>

The greatest impact of incorporation is that an organisation itself becomes a legal person,<sup>18</sup> granted existence in the eyes of the law. In consequence, incorporation provides an opportunity to avoid many of those instances in which legal claims seemingly relating to the actions or omissions of an unincorporated association may result in personal loss for its constituent members. Incorporation, in short, transforms liability from being personal and hypothetically boundless, to limited to an often nominal amount.<sup>19</sup>

*“Incorporation creates a legal personality for an association. It means that the association can hold property, employ staff and enter contracts in its own name, thereby freeing members or committee members from certain liabilities.”<sup>20</sup>*

With concerns of personal liability argued to be detrimentally affecting volunteering levels in sport,<sup>21</sup> at a time when such contributors are already scarce,<sup>22</sup> the Welsh Rugby Union’s (WRU) offer of assisting with incorporation may be seen as consistent with a trend amongst sports’ national governing bodies to support member clubs to reduce organisational pressures.<sup>23</sup> Figure 1.1 outlines the incentivising measures the WRU implemented as a means of supporting member club incorporation. Specifically, incorporation was advocated through the promotion of a transformation

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<sup>17</sup> Collins English Dictionary, ‘Incorporate’ (Collins Dictionary Undated) <Incorporate definition and meaning Collins English Dictionary (collinsdictionary.com)> Accessed 10<sup>th</sup> December 2021.

<sup>18</sup> Ashton & Reid on Clubs and Associations (n 6), p.15

<sup>19</sup> A more detailed discussion of the effects of incorporation are provided for within chapter 2.

<sup>20</sup> Andrew Passey & Mark Lyons, ‘Regulating Third Sector Organisations; The views of Incorporated Associations in NSW’ (2009) 15 Third Sector Review 85, p.88

<sup>21</sup> Graham Cuskelly, Russell Hoyer and Chris Auld, *Working with Volunteers in Sport: Theory and Practice*. (Routledge 2006), p.54

<sup>22</sup> Christopher Clenk, Benjamin Egli and Torsten Schlesinger, “Exploring how voluntary sports clubs implement external advisory inputs” (2017) 22 *Managing Sport and Leisure* 70, p.70

<sup>23</sup> Ibid.

away from the unincorporated association to the popular amongst sports clubs, company limited by guarantee.<sup>24</sup>



*Figure 1.1: WRU's incentivisation of incorporation.*<sup>25</sup>

Despite concerted efforts on the part of the WRU, it remained the case that a number of clubs were seemingly unwilling to incorporate.<sup>26</sup> Through reference to legal scholarship one may conclude this to be somewhat surprising. From the perspective of unincorporated associations' members and committee members, the attribution of a separate legal personality has been suggested to represent no obvious disadvantage.<sup>27</sup>

Discussions of the law's treatment of unincorporated associations have often resulted in calls for an abandonment of the unincorporated form. Glennon for example examined the legal pitfalls of utilising

<sup>24</sup> Discussion Paper on Unincorporated Associations (n 14), para 1.11

<sup>25</sup> Welsh Rugby Union, 'The Clubhouse: WRU Newsletter' (Welsh Rugby Union 2015) Welsh Rugby Union 'Club Structure Incorporation' (Presentation, Welsh Rugby Union Undated) <<https://d2cx26qpfwuhvu.cloudfront.net/wru/wp-content/uploads/2018/11/01124859/ClubStructureIncorporation.pdf>> Accessed 12<sup>th</sup> January 2019. Cardiff University, 'Pro bono schemes' (Cardiff University undated) <<https://www.cardiff.ac.uk/pro-bono/pro-bono-schemes>> Accessed 2<sup>nd</sup> April 2019. See Section 7.1.1 Interviewee A16.

<sup>26</sup> The research was commissioned on the estimation that 80% of Amateur Welsh Rugby Clubs were utilising the unincorporated association legal form. The number of clubs utilising the unincorporated form was understood to be changeable throughout the timeframe relevant to the thesis. The quantitative phase of the research provided for a finding that 52% of the 62 respondent clubs were continuing to use the unincorporated form. See Chapter 5.

<sup>27</sup> Unincorporated Associations (n 8), para 4.1

the association with specific reference to matters of contract and tort.<sup>28</sup> Focussing upon difficulties of property ownership, Dowling further provided for a legal centric assessment of why the unincorporated form may provide for an unsatisfactory structure.<sup>29</sup> In turn, Ashton et al, Morgan and Warburton have all suggested not-for-profit entities give serious consideration to utilising incorporated legal forms over unincorporated alternatives.<sup>30</sup>

Problems connected to the use of the much-maligned unincorporated association are however not exclusive to the UK. Commentators from several common law jurisdictions have provided legal explanations as to why not-for-profit organisations have, or at the least should have, questioned the wisdom of utilising the unincorporated association. Turnour,<sup>31</sup> as well as McGregor-Lowndes and Hannah,<sup>32</sup> have drawn attention to the disadvantages of the form from an Australian perspective. Flannigan described the law's treatment of associations as a "residual regime", referring to commentary from an American perspective which suggested use of the form is often a consequence of ignorance rather than deliberation.<sup>33</sup> Fletcher,<sup>34</sup> and Smith and Kairys,<sup>35</sup> finally have drawn attention to the several risks those who choose to utilise the unincorporated form accept in New Zealand and Canadian contexts respectively.

Despite engaging with issues of the unincorporated form, scholarly attention has largely focused upon formal law. As yet, interactions with those entities who in fact utilise the form or perhaps have chosen to abandon the form, have been few in number. It is not the case however that empirical explorations

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<sup>28</sup> Lisa Glennon, 'Questioning the legal status of unincorporated associations' (2000) 51 *Ireland Legal Quarterly* 120

<sup>29</sup> Alan Dowling, 'Adverse Possession and Unincorporated Associations' (2003) 54 *Northern Ireland Legal Quarterly* 272

<sup>30</sup> Ashton & Reid on Clubs and Associations (n 6) Vicarious liability and the beautiful game – liability for professional and amateur footballers (n 6) *Unincorporated Associations: Law and Practice* (n 5)

<sup>31</sup> Matthew Turnour, 'Should Australians Have a Revised Uniform Unincorporated Nonprofit Associations Act?' (2020) 37 *Company and Securities Law Journal* 279

<sup>32</sup> *Unincorporated associations as entities: A matter of balance between regulation and facilitation?* (n 10)

<sup>33</sup> Robert Flannigan, 'Contractual Responsibility in Non-Profit Associations' (1998) 18 *Oxford Journal of Legal Studies* 631, p.632

<sup>34</sup> Keith Fletcher, *The Law Relating to Non-Profit Associations in Australia and New Zealand* (Cambridge University Press 1986)

<sup>35</sup> Natasha Smith and Katrina Kairys, 'Up The Creek Without A Paddle: The Law Relating to Unincorporated Associations' (Mondaq, 12 January 2021) <[www.mondaq.com/canada/contracts-and-commercial-law/1024430/up-the-creek-without-a-paddle-the-law-relating-to-unincorporated-associations](http://www.mondaq.com/canada/contracts-and-commercial-law/1024430/up-the-creek-without-a-paddle-the-law-relating-to-unincorporated-associations)> Accessed 19<sup>th</sup> November 2021.

have been entirely lacking. Woodward and Passey and Lyons's survey based empirical studies provided for an engagement with not-for-profit organisations' choices of legal form. Passey and Lyons directly sought to improve understandings of "why incorporate". Their reasoning referred to the benefits at law utilising a legal form conferring limited liability provided to individuals contributing to not-for-profit organisations.<sup>36</sup> Woodward, in turn, found 87% of respondents referenced legal advice as a determining factor as to their eventual selection of legal form.<sup>37</sup>

Despite legal explanations appearing well placed to explain not-for-profit incorporation, widely publicised legal arguments advanced by the WRU were perceivably failing to cut through and drive AWRC towards the use of the company limited by guarantee.<sup>38</sup> In seeking to understand those reasons why clubs had perhaps not incorporated en masse, the research advocates looking beyond exclusively legal explanations. It should first be stated that the research is appreciative that Woodward as well as Passey and Lyons were not blind to influence outside of the legal paradigm. It is recognised that Woodward spoke of how use of incorporated forms was understood by respondents to confer an important sense of status.<sup>39</sup> Woodward referenced further how issues of taxation, public perception, and inter organisational relationships may also serve as contributory factors resulting in decisions to utilise the company form.<sup>40</sup> Passey and Lyons, perhaps building on the importance of interorganisational relationships, referenced how externally imposed needs were a considerable driver of the use of incorporated legal structures.<sup>41</sup>

For Woodward, as well as for Passey and Lyons, discussions of what had influenced choices of legal form were however undertaken in the context of the not-for-profit sector as a whole. This can be seen as somewhat problematic given the not-for-profit sector can be understood as defined by

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<sup>36</sup> Regulating Third Sector Organisations; The views of Incorporated Associations in NSW (n 20)

<sup>37</sup> Susan Woodward, "Not-for-Profit Motivation in a For-Profit Company Law Regime: National Baseline Data" (2003) 1 International Journal of Civil Society Law 37, p.58

<sup>38</sup> Welsh Rugby Union, 'The Clubhouse: WRU Newsletter' (Welsh Rugby Union 2015) Welsh Rugby Union 'Club Structure Incorporation' (Presentation, Welsh Rugby Union Undated)

<<https://d2cx26qpfwuhvu.cloudfront.net/wru/wp-content/uploads/2018/11/01124859/ClubStructureIncorporation.pdf>> Accessed 12<sup>th</sup> January 2019.

<sup>39</sup> Not-for-Profit Motivation in a For-Profit Company Law Regime: National Baseline Data (n 37), p.58

<sup>40</sup> Ibid

<sup>41</sup> Regulating Third Sector Organisations; The views of Incorporated Associations in NSW (n 20), p.93

heterogeneity, with charities employing thousands classified alongside small sporting clubs comprising no more than 10 members.<sup>42</sup> It is perhaps such heterogeneity therefore which has limited development of understandings of why not-for-profit entities select the legal form they do to references to formalistic legal arguments and limited quantitative explanations.

Within the diversity of the not-for-profit sector, AWRC can be understood as belonging to the sub-section of Voluntary Sports Clubs (VSC). Such entities may employ paid workers, such as coaches for example, but to be classed as voluntary they need to rely significantly upon volunteers as part of their workforce and/or leadership.<sup>43</sup> Literature belonging to the VSC field, though not silent upon organisational decisions surrounding choices of legal form, is nevertheless limited and has been confined to peripheral discussion. Focussing instead on organisational change more holistically, the advancement of theory laden understandings of how and why sports clubs engage with decisions of legal form has often been afforded little more than superficial consideration.<sup>44</sup>

On account of the above, the research attempts to contribute to perceived gaps in the literature by extending theory laden understandings of organisational behaviour common to VSC studies to choices of legal form specifically. In doing so, the research offers the opportunity to move passed exclusively legal and quantitative explanations and provide perhaps for a richer account of how and why choices of legal form are made in the not-for-profit sector.

Research addressing such matters is timely given concerns of personal legal liability have been recognised as a deterring force for current and prospective sports club volunteers. Cuskelly, Auld and Hoye argued that growing apprehension and unease regarding risks of personal legal liability have impacted significantly upon efforts at VSC volunteer recruitment and retention.<sup>45</sup> The situation is

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<sup>42</sup> Adalbert Evers and Jean-Louis Laville, *The Third Sector in Europe* (Edward Elgar Publishing Limited 2004), p.3

<sup>43</sup> Phillip Morgan “Judgment-Proofing Voluntary Sector Organisations from Liability in Tort” (2020) 6 Canadian Journal of Comparative and Contemporary Law 220, p.223

<sup>44</sup> Josef Fahlen, Cecilia Stenling and Ludvig Vestin, ‘Money talks – A qualitative analysis of the organisational change connected with the corporation formation of a voluntary sport club’ (2008) 5 Sport and Society 153

<sup>45</sup> Working with Volunteers in Sport: Theory and Practice (n 21) See also Andy Gray & Sarah James, “The Legal Dimension” in Leigh Robinson and Dick Palmer (eds) *Managing Voluntary Sport Organisations* (Routledge 2010)

argued to have been worsened by a widespread belief in an apparent claims culture.<sup>46</sup> Unlike the USA and Canada, the UK furthermore currently offers no statutory immunity of any description to individuals carrying on not-for-profit activities.<sup>47</sup> If those individuals involved with unincorporated associations thus wish to limit those risks of personal liability described by Flannigan as offending public perceptions of fairness,<sup>48</sup> use of limited liability legal forms becomes an important consideration.

Understanding why a legal form built on personal liability is perhaps preferred over an alternative offering limited liability thus proves of interest therefore not simply from the empirical legal perspective. Rather, the research can be seen as contributing also to understandings which may serve social objectives of retaining an active voluntary workforce understood to be concerned as to their legal vulnerability.

The thesis, owing to a development of the research objectives at chapter 6, contributes further to understandings of how transformations of legal form may play out in actuality. The Scottish Law Commission's report addressing the unsuitability of the unincorporated association voiced much concern as to how smaller not-for-profit entities may facilitate organisational change and address the burdens and consequences incorporation may represent.<sup>49</sup> Somewhat legitimising those concerns, the research draws attention to the lack of substantive organisational change incorporation often occasioned in the AWRC context. Showing a consistency with the manner in which VSC have responded to professionalising requirements more generally, the research highlights a necessity to consider not just how the primary impact of incorporation, being the conferment of limited liability is perceived, but also the role of what are perhaps best thought of as ancillary detriments. In doing so,

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<sup>46</sup> Sebastian Peyer and Rob Heywood, 'Walking on thin ice: the perception of tortious liability rules and the effect on altruistic behaviour' (2019) 39 *Legal Studies* 266

<sup>47</sup> Robert Flannigan "Tort immunity for nonprofit volunteers" (2005) 84 *Canadian Bar Review* 1

<sup>48</sup> *Ibid*, p.5

<sup>49</sup> *Unincorporated Associations* (n 8)

the research provides for an engagement with incorporation appreciative of not just the benefits but those disadvantages which, as suggested by Fershee, have often been overlooked.<sup>50</sup>

The thesis concludes that an institutional logics perspective, established within the VSC literature and experiencing growth in empirical legal scholarship, ultimately provides a means through which AWRC decision-making regarding matters of incorporation can be better understood. The research utilises the institutional logics perspective in explanation of why the empirical data drawn from the clubs took the form which it did. The research further engages with the legal context in evaluation of what the research findings may mean for overall assessments as to the benefit of the incorporation policy to AWRC. In doing so, the research expands knowledge on the capacity and readiness of sports organisations to implement requisite changes in governance which Parent and Hoye described as an area requiring specific research.<sup>51</sup> The research from a legal development perspective thus provides for an empirically grounded investigation illuminating how organisations respond to changing legal responsibilities, and how both legal and non-legal, as well as external and internal forces, serve to influence decisions of legal form.

### 1.3 Meta-theoretical framework

Before delving into the substantive research, it is considered appropriate to outline in greater detail the study's meta-theoretical framework, critical realism. Providing for a brief introduction to critical realism at this early juncture was considered beneficial given the manner in which the framework guided different elements of the research, including those initial engagements with literature. As Webley acknowledged, there are different theoretical levels with meta-theoretical frameworks such as critical realism and positivism underlying projects from commencement to conclusion.<sup>52</sup>

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<sup>50</sup> Fershee commented that questions surrounding the use of limited liability entities often take the form of why do organisations not *just* incorporate. Fershee recognises such arguments often lack balance and are regularly coupled with a perception that limited liability forms allow for the removal of *all* risk of personal liability. Joshua Fershee, 'The Benefits and Burdens of Limited Liability' (2021) 22 *Transactions: The Tennessee Journal of Business Law* 313

<sup>51</sup> Milena Parent and Russell Hoye, 'The impact of governance principles on sport organisations' governance practices and performance: a systematic review' (2018) 4 *Cogent Social Sciences*, p.22

<sup>52</sup> Lisa Webley, 'The why and how to of conducting a socio-legal empirical research project' in Naomi Creutzfeldt and others (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge 2019), p.62

From the opening review of the pertinent literature, to the advancement of an explanatory model of behaviour at chapter 8, critical realism moulded the assumptions, choices, methods and claims which the research provides for. The alleged facilitative quality of critical realism as a perspective capable of seeking out those less perceptible influences underpinning organisational behaviour provided for a particularly attractive feature of the meta-theory.<sup>53</sup> Given the exploratory nature of the research, critical realism's openness to both agential and structural explanations of phenomena provided a useful fit for investigation of a somewhat underdeveloped and interdisciplinary endeavour. It is not however the case that critical realism is understood as the only meta-theoretical perspective capable of facilitating causative commentary. The research by no means claims critical realism to hold prominence over alternative meta-theories in all facets of social research. Rather, critical realism was understood for this exploratory research to afford the flexibility to progress in perhaps a tentative manner, to allow for the development of novel or surprising themes and amend the study's direction accordingly.

Sitting between positivism and interpretivism on the epistemological spectrum, critical realism's centrality affords the opportunity to draw benefits from the epistemic polarities and attempts to provide a more developed appreciation as to often latent and imperceptible causal forces. Critical realism is generally associated with more qualitative empirical methods; however, the perspective permits and indeed advocates use of quantitative methods to complement qualitative data collection where possible.<sup>54</sup>

From positivism, critical realists appreciate the need to explain causation. However, rather than subscribe to the constant conjunction theory, critical realism seeks to discover how specific causal

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<sup>53</sup> Stephen Ackroyd, "Critical Realism, Organisation Theory, Methodology, and the Emerging Science of Reconfiguration" In Peter Koslowski (ed) *Elements of a Philosophy of Management and Organisation Studies in Economic Ethics and Philosophy* (Springer 2010), p.60

<sup>54</sup> Berth Danermark and others, *Explaining Society Critical Realism in the Social Sciences* (2<sup>nd</sup> edn, Routledge 2019), p.130. See also Phil McEvoy and others, 'A critical realist rationale for using a combination of quantitative and qualitative methods' (2006) 11 *Journal of Research in Nursing* 66. Tatiana Ryba and others, 'Developing mixed methods research in sport and exercise psychology: potential contributions of a critical realist perspective' (2020) *International Journal of Sport and Exercise Psychology* <[www.tandfonline.com/doi/full/10.1080/1612197X.2020.1827002?scroll=top&needAccess=true](http://www.tandfonline.com/doi/full/10.1080/1612197X.2020.1827002?scroll=top&needAccess=true)> Accessed 14<sup>th</sup> November 2021.

forces (described as mechanisms) when operating in similar circumstances, provide for alternative consequences dependent upon the particular context in which such forces become actualised or do not.<sup>55</sup>

Put more concisely critical realism conceives of causality in the following way:

Mechanisms (M) + Context (C) = Outcome (O)

In terms of getting to grips with those causal forces underpinning observable outcomes, the starting point for critical realists is often the views of societal actors.<sup>56</sup> Critical realists view knowledge however as both fallible and context specific.<sup>57</sup> Recognition of this fallibility in particular, is crucial to understanding how critical realism utilises empirical evidence as a means through which to better appreciate causality. In order to sustain the view that human knowledge is fallible, yet empirical evidence of societal actors holds significant utility, critical realism employs the notion of a stratified ontology considered fundamental to the meta-theory.

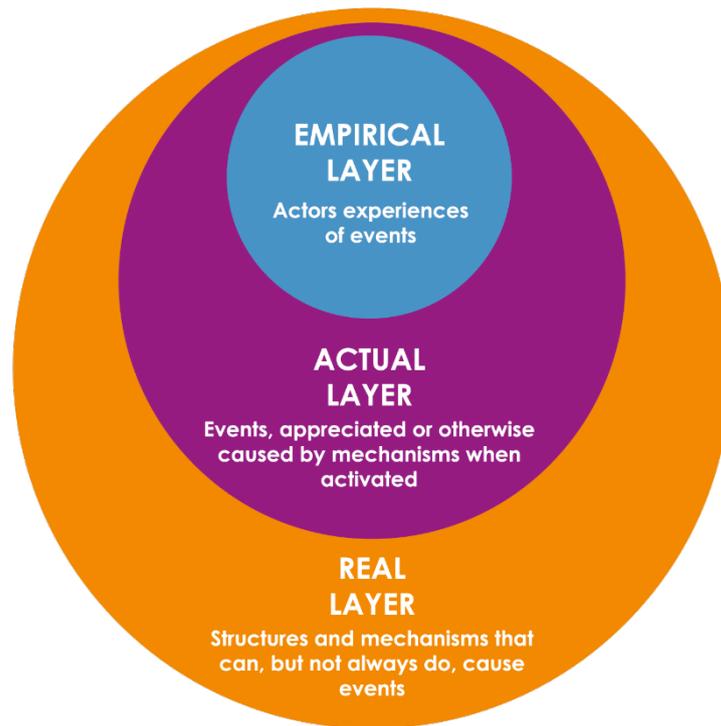
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<sup>55</sup> Steve Fleetwood, 'Bhaskar and Critical Realism' in Paul Adler and others (eds) *The Oxford Handbook of Sociology, Social Theory and Organisation Studies: Contemporary Currents* (Oxford University Press 2014)

<sup>56</sup> Roy Bhaskar, 'General Introduction' in Roy Bhaskar and others (eds) *Critical Realism: Essential Readings* (Routledge 1998), p.xvi

<sup>57</sup> Ibid

Figure 1.2: Critical realist ontology.



Critical realists posit (as depicted above) that through engagement with the empirical realm, within which actors present empirically graspable data, the actual layer, within which events and non-events occur, and the realm of the real, where often imperceptible causal forces exist, one can reach conclusions as to the nature of observable phenomena.<sup>58</sup> Through an appreciation of reality as stratified, critical realist scholars accept the gravity of individuals' perceptions but are open to the prospect that such views are often the product of forces of which said actors are unaware and that context may serve to actualise mechanisms in some instances and not others.<sup>59</sup> Critical realism, put simply, can perhaps be thought of therefore as facilitating attempts to understand the imperceptible from the perceptible. In order to develop knowledge of the potential causal mechanisms existing within the domain of the real, and often beyond the appreciation of the empirical actor, one must first engage with the experiences of those actors involved in the phenomena of interest. Through this engagement, critical realist scholars are encouraged to identify rough patterns or demi-regularities

<sup>58</sup> General Introduction (n 56)

<sup>59</sup> Bhaskar and Critical Realism (n 55)

within empirically observable behaviour which may help explain certain events and participant data.<sup>60</sup> Critical realism however calls for more than the identification of such demi-regularities in order to move past the descriptive to the causative. Utilising critical realism requires a more developmental step in which a researcher must theorise those causal mechanisms which may best explain the demi-regularities revealed by empirical evidence.<sup>61</sup> The process of working back from the descriptive, in order to facilitate an understanding of the causative, is fundamental to the development of critical realist research and is an approach utilised within this thesis.

What constitutes causal mechanisms has been interpreted broadly with social structures, organisations, ideas, or motivations deemed capable of satisfying the criteria.<sup>62</sup> Causal mechanisms are argued to have three fundamental characteristics (1) they are usually hidden; (2) they are sensitive to variations in context; and (3) they generate outcomes.<sup>63</sup> In matters of sport club behaviour, mechanisms such as disciplinary policies and organisational structures,<sup>64</sup> time and monitoring,<sup>65</sup> as well as political conditions and the disposition of implementing agents,<sup>66</sup> have all been relied upon for their explanatory qualities. In appreciation of the parameters of any research or theoretical perspective, critical realism is however sensitive to the concession that explanations can never include all relevant mechanisms.<sup>67</sup> Nevertheless, the perspective advocates endeavour to recognise those that are perhaps most significant.<sup>68</sup>

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<sup>60</sup> Amber Fletcher, "Applying critical realism in qualitative research: methodology meets method" (2017) 20 *International Journal of Social Research Methodology* 181, p.185

<sup>61</sup> Gareth Wiltshire, "A case for critical realism in the pursuit of interdisciplinarity and impact" (2018) 10 *Qualitative Research in Sport, Exercise and Health* 525, p.536

<sup>62</sup> John Mingers and Craig Standing, "Why things happen – Developing the critical realist view of causal mechanisms" (2017) 27 *Information and Organisation* 171, p.172

<sup>63</sup> Yasser Buchana and Lisa Seymour, 'Institutional Logics of IT-enabled Organisational Performance in Resource Constrained EMS Organisations' (Twenty-third Americas Conference on Information Systems, Boston, August 2017)

<sup>64</sup> Terri Byers, "Using critical realism: A new perspective on control of volunteers in sport clubs." [2013] *European Sport Management Quarterly* 5, p.6

<sup>65</sup> Ornulf Seippel, 'Professionalization of voluntary sport organisations – a study of the Quality Club Programme of the Norwegian Football Association' (2019) 19 *European Sport Management Quarterly* 666

<sup>66</sup> Thomas May, Spencer Harris and Mike Collins "Implementing community sport policy: understanding the variety of voluntary club types and their attitudes to policy" (2012) 5 *International Journal of Sport Policy and Politics* 397

<sup>67</sup> Berth Danermark and others, *Explaining Society Critical Realism in the Social Sciences* (2<sup>nd</sup> edn, Routledge 2019), p.130

<sup>68</sup> *Ibid*, p.130

The unit of analysis for the research is not strictly the organisation nor the individual. It is instead the events and processes surrounding incorporation behaviour (taking place in the realm of the actual). As a consequence, the research attempts to understand those causal mechanisms affecting organisational decision-making through empirical evidence drawn from the AWRC and their constituent members.

From the identification of pertinent mechanisms, critical realism then asks if a theory or even a collection of theories can account for the causal mechanisms understood as relevant to the relevant events, in this case, AWRC engagement with the incorporation policy.

Whereas the place of causal mechanisms in the creation of events in the layer of the actual provided for an intelligible delineation, the place of context was less clear. Considerations of how context and causality intertwined provided for a difficult relationship for the researcher to grasp. Engagement with the critical realist literature however suggested such issue was common and had been described as the realist researcher's "quandary".<sup>69</sup> Defining what should be categorised as context and causal mechanism respectively thus became a problematic issue which the researcher felt required some form of delineation, even if such matter appeared unsettled within the literature.<sup>70</sup> Such issue is perhaps best exemplified for the research by considering the role of the legal context. There appeared, for example, elements of the legal context which could have the potential to cause, or at the least contribute, to decisions to incorporate. As stated at section 1.2, several engagements with the unincorporated association have relied upon the state of the law as potential drivers for incorporation. In this sense the law, applicable to all entities and therefore seemingly contextual in nature, could equally be considered causative. The researcher ultimately concluded that distinguishing between context and mechanism was beneficial yet appreciated that it was useful to do so primarily for analytical reasons alone. Accepting the arguments of Shaw et al, there appeared strong logical reasoning in appreciating that context can be viewed as a collection of causal mechanisms depending

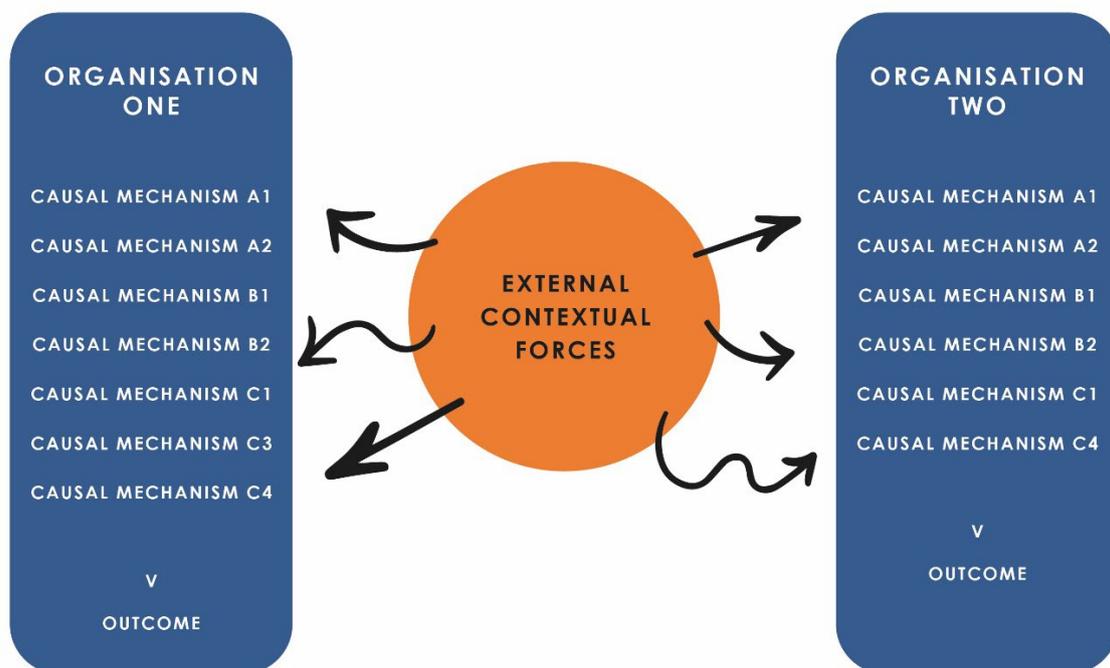
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<sup>69</sup> Sonia Dalkin and others, 'What's in a mechanism? Development of a key concept in realist evaluation' (2015) 10 Implementation Science 1

<sup>70</sup> James shaw and others, 'Mechanisms, contexts and points of contention: operationalizing realist-informed research for complex health interventions' (2018) 18 BMC Medical Research Methodology 178

upon the research focus and the chain of reasoning.<sup>71</sup> For these reasons, context within this study is interpreted as those influences deemed common to all participants, with the national legal context as discussed at chapter 2 being one such example. Though it is accepted such interpretation is not without difficulty, conceiving of context in such a manner appreciates the enmeshment of the terms whilst concurrently delineating the concepts in a manner that is analytically beneficial from a research perspective.

In appreciation of the above, the research conceives of the *context + mechanism = outcome* formula typical to applied critical realist studies in the following graphical manner.



*A = Causal mechanisms present in a particular circumstance.*

*B & C = Further causal mechanisms present in particular circumstances changing or inhibiting the effect of causal mechanisms.*

*External causal powers common to both circumstances effecting the internal relationship between mechanisms for example a more competitive amateur sports environment.*

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<sup>71</sup> Ibid, p.179

*Figure 1.3: Causation from a critical realist perspective.  
Developed from Kempster & Parry.<sup>72</sup>*

Figure 1.3 is not only beneficial in terms of understanding the place of context but also goes some way to understanding the limits of critical realist claims to causative understandings. As figure 1.3 indicates, outcomes are defined not just by differing causal mechanisms but also the effects of causal mechanisms upon one another. Given this interaction is complex and context contingent critical realism conceptualises the ceiling of causative claims to be causal tendencies.<sup>73</sup> Mechanisms may *tend* to produce certain outcomes however one must appreciate such tendencies are the product of interactions between reinforcing or conflicting mechanisms and context.<sup>74</sup> For this reason critical realism cannot provide for claims to generalisability in the same way positivist research for example can and must be limited to discussions of causal tendencies accordingly.

Despite limitations upon generalisability, critical realism, for the reasons as detailed above, was understood to provide for a suitable metatheoretical perspective from which to develop the research. Further specifics as to how critical realism influenced the development of this thesis will be provided for within the chapters which follow. It is however sufficient to state at this stage, that the metatheoretical perspective's appreciation that the actualisation of causal influences underpinning behaviour are often context contingent, proved useful in explanation of AWRC behaviour. By appreciating that context affects actualisation, the decision-making processes reviewed from a critical realist perspective was understood to sufficiently account for the individuality of organisational circumstance, whilst seeking unifying theories capable of assisting in knowledge development.

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<sup>72</sup> Steve Kempster and Ken Parry, 'Critical realism and grounded theory' in Paul Edwards, Joe O'Mahoney and Steve Vincent (eds), *Studying Organisations Using Critical Realism: A Practical Guide*. (Oxford University Press 2014), p.90

<sup>73</sup> Bhaskar and Critical Realism (n 55)

<sup>74</sup> Ibid

## 1.4 Thesis structure

Following this brief introduction, the thesis comprises a further 8 chapters. The research in its entirety attempts to engage with three specific objectives:

1. To develop an understanding as to why AWRC engage with the incorporation policy.
2. To develop an understanding as to how AWRC engage with the incorporation policy.
3. To evaluate the utility of the incorporation policy to AWRC.

Given the research began life as an endeavour to facilitate understandings as to why AWRC had engaged with the incorporation policy, those chapters preceding the empirical element focus specifically upon developing knowledge in this regard alone. Engagement with those reasons why clubs may or may not incorporate as drawn from chapter 2 and chapter 3 contributed to evaluative objectives of the research. However, through the development of the research objectives during initial qualitative endeavours, such evaluative process was significantly enriched.

Chapter 2 first engages with the law and asks how the legal context may contribute to understandings of why clubs may or may not incorporate. Literature advocating the transformation of not-for-profit organisations away from the unincorporated association have largely relied upon formalistic legal arguments and it is therefore to such arguments which the thesis first turns. The chapter begins the thesis by exploring why the unincorporated association is perhaps legally unsatisfactory for sports clubs with a specific focus upon AWRC. Through this exercise, the chapter presents the more doctrinal element of this primarily empirical research.<sup>75</sup> The chapter does not however provide for a detailed legal analysis of the intricate development of the unincorporated association, nor the alternative company limited by guarantee. The research engages with relevant legal developments but does so with the objective of increasing understanding of how the law may fit amongst a potential multitude of influences affecting AWRC engagement with matters of incorporation. The chapter's first section as a consequence is structured around several occasions within the last few decades in

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<sup>75</sup> Gareth Davies, "The relationship between empirical legal studies and doctrinal legal research" [2020] *Erasmus Law Review* (forthcoming)

which AWRC members, committee members, or trustees, have faced personal liability as a consequence of their club's use of the unincorporated association legal form. Building from these exemplary cases the chapter details how incorporation may affect those issues of liability considered pertinent to AWRC specifically. The chapter then widens in scope considering how the legal context outside of formal case law and statute may further contribute to causal commentary.

Understanding that AWRC behaviour may not be the product of exclusively legal explanations, chapter 3 reviews literature relevant to voluntary sports clubs and organisational decision-making more broadly. Black contended that drawing conclusions based solely upon the legal paradigm has the effect of neglecting the reality of organisational life.<sup>76</sup> If in decision making law is not always determinative, as Black argues, decisions perhaps should be considerate of bureaucratic or organisational norms, political and economic pressures, and the world views of individuals relevant to the decision-making.<sup>77</sup> The thesis accepts Black's contentions and seeks as a consequence to enrich understandings of AWRC engagement with the incorporation policy with reference to concepts and theoretical perspectives outside the traditional parameters of legal scholarship. Consistent with a critical realist approach to extant literature, the review therefore seeks to identify theories, synthesise commentary upon context, and distinguish potential mechanisms. Such process seeks to provide a "head start",<sup>78</sup> regarding causal understandings. In turn, engagement with literature in such a manner affords the opportunity to begin identification of those theories which may possess greater explanatory power than rival perspectives.<sup>79</sup>

Chapter 4 begins methodological discussions and introduces the sequential nature of the empirical research design. The thesis, though primarily qualitative in nature, utilised quantitative analysis as a

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<sup>76</sup> Julia Black, "New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making." (1997) 19 *Law & Policy* 51, p.51

<sup>77</sup> *Ibid*, p.53

<sup>78</sup> Joe O'Mahoney and Steve Vincent, 'Critical Realism as an Empirical Project: A Beginner's Guide' in Paul Edwards, Joe O'Mahoney and Steve Vincent (eds), *Studying Organisations Using Critical Realism: A Practical Guide*. (Oxford University Press 2014), p.13

<sup>79</sup> Berth Danermark and others, *Explaining Society Critical Realism in the Social Sciences* (2<sup>nd</sup> edn, Routledge 2019)

means of understanding organisational features of AWRC and their potential role in understandings of incorporation engagement.

Chapter 5 then seeks to present the findings from the quantitative element of the study. Based on a statistical analysis of survey data, the chapter sought to identify any statistical relationships capable of framing the research development and legitimating further qualitative exploration.

Chapter 6 thereafter moves to detail those issues of method relevant to the more dominant qualitative strand of the research. Given qualitative means have been acknowledged as capable of assisting policymakers and practitioners in understanding and improving matters of organisational governance,<sup>80</sup> the thesis relied more heavily on the qualitative element as a means of developing causative commentary. The chapter outlines how reflexivity following completion of the quantitative analysis further played a prominent role in decisions relating to the direction of the research both as regards the research objectives and the methods by which those objectives were addressed. Through engagement with pilot studies, chapter 6 details how the research focus evolved to include considerations of how clubs engage with the incorporation policy as well as why.

Chapter 7 presents the qualitative strand of the research by way of thematic analysis. Interviews were utilised at this stage of the research owing to the ability of qualitative methods to provide a rich depth to those issues underpinning organisational behaviour.<sup>81</sup> The qualitative data was sourced from interviews with committee members and directors of unincorporated and incorporated clubs respectively. The term executive body is used by the thesis when referring to clubs' authoritative decision-making group whether that be managing committees or boards of directors. The qualitative analysis was performed through the identification and later amalgamation of codes drawn from the data sourced from executive body interviewees. The analytical process was thereafter progressed through a synthesis of themes, and a reconceptualisation of the findings with regard to existing theory.

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<sup>80</sup> Olivier Roche, *Corporate Governance & Organisational Life Cycle* (Cambria Press 2009), p.183

<sup>81</sup> Aaron Smith, Daniel Evans and Hans Westerbeek, "The Examination of Change Management Using Qualitative Methods: A Case Industry Approach" (2005) 10 *The Qualitative Report* 96

Chapter 8 puts forward a conceptual explanatory model based on a holistic consideration of extant theory and empirical data. The model seeks to illuminate those causal mechanisms affecting organisational responses to the incorporation policy. The chapter provides for a consideration of causal mechanisms in a manner appreciative of connected forces and provides due regard to the place of context in its assessment of the utility of the incorporation policy. The chapter ultimately advocates an explanatory model underpinned by an institutional logics perspective as capable of elucidating issues of how and why clubs may engage in the incorporation policy in the manner as presented within the thesis.

Chapter 9 finally outlines the theoretical and practical contributions of the study. Thereafter, the chapter moves to comment as to the benefit of incorporation to clubs, discuss how the thesis may assist future research and legitimises potential policy development. Finally, chapter 9 provides for an appreciation of the study's practical and theoretical limitations.



## Chapter 2: Legal considerations

*“Would you bet your house on the chance that nothing untoward will ever happen to your rugby club? If you are a committee member and your club is an unincorporated club you may be doing just that.”<sup>1</sup>*

As discussed at section 1.2, scholarly engagement with why not-for-profit entities should incorporate has often relied on arguments pertaining to the legal context and the personal legal risk common law and statutory treatment of unincorporated associations provide for more specifically. The research begins with a consideration of the situation as it relates to the laws of England and Wales and in particular focuses on those matters understood to be relevant to AWRC.

As stated, arguments that the law’s treatment of unincorporated associations should drive incorporation have largely focused on the not-for-profit sector as a whole. Chapter 2 attempts to narrow the focus and consider how consequences of incorporation may affect issues of personal liability in circumstances specifically pertinent to AWRC. Following this assessment of how the risks of personal liability may change on account of incorporation, the chapter extends consideration to the impact of the legal context beyond formalistic rules.

The research considers the legal context to include not only formal law and associated sanctions but also norms regarding the use or non-use of law, ideas about compliance with, and meanings of the law, and more broadly ideas and norms evolving out of the law.<sup>2</sup> By interpreting law in such a way, the thesis adheres to empirical scholarship investigating organisational responses to legal

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<sup>1</sup> England Rugby, ‘Club Management Reference Guide’ (englandrugby.com)

<<https://www.englandrugby.com/dxdam/5c/5cda1276-9815-402c-8fc3-9c2a885ae379/Club%20Management%20Ref%20Guide%202019.pdf>> Accessed 12<sup>th</sup> April 2021

<sup>2</sup> Lauren Edelman, “Law at Work: The Endogenous Construction of Civil Rights” in Laura Nielsen & Robert Nelson (eds) *Handbook of Employment Discrimination Research Rights and Realities* (Springer, 2005), p.339

developments. Edelman and Stryker, considering law's role in shaping organisational behaviour, for example, argued that a narrow focus on formal law has the potential to miss a great deal when attempting to understand law's place as an influencing force.<sup>3</sup> Black further noted that beyond law's detailed doctrinal provisions, the law may operate as a less tangible but no less significant influence upon decision-making.<sup>4</sup> Law conceived in this way is argued to enable a consideration of the values and norms attached to the law by those traditionally outside of the legal system, such as the focal entities of this study.<sup>5</sup>

This chapter's findings ultimately support existing legal scholarship that the law's treatment of unincorporated associations should compel entities using such form to give serious consideration to incorporation. Away from formalistic arguments, the chapter draws attention to how perceptions of the legal context as afflicted by a claims culture may serve as a further driver of AWRC incorporation. The chapter however in its final sections appreciates that the consequences of incorporation may not be without detriment. In order to give due regard to the potential influence of any such inhibiting forces, the chapter concludes that the use of concepts and theoretical tools lying outside of the legal paradigm appear necessary in constructing a comprehensive understanding of AWRC behaviour.

## 2.1 A legal exploration

As can be taken from section 1.2, the research presupposes there is a problem with regard to the law's treatment of unincorporated associations. This problem is understood to be rooted in the law's unwillingness to afford a separate legal personality to unincorporated associations and the consequences of personal liability flowing from this. Chapter 2 seeks to explore in more depth these problems and asks how incorporation may impact upon such issues.

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<sup>3</sup> Ibid

<sup>4</sup> Julia Black, "New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making." (1997) 19 *Law & Policy* 51, p.83

<sup>5</sup> Ibid

McGregor-Lowndes and Hannah noted how the legal problems connected with the use of the unincorporated association only really arise when there is a dispute of some kind.<sup>6</sup> The chapter's first section is therefore structured around three instances of formal dispute specifically involving AWRC. The review of selected case law is utilised as a means of highlighting the effects of incorporation in circumstances which have been shown as particularly relevant to the types of organisation in question. Through an engagement with such case law, the chapter's first section structures a discussion as to what incorporation may mean for legal liability in matters of contract, employment, and tort.<sup>7</sup>

Being a primarily empirical thesis, the chapter does not claim nor have the capacity to provide for an exhaustive detailing of every legal implication incorporation affords. Indeed, given the research seeks to move beyond exclusive legal arguments for incorporating, to detail each formal legal consequence was considered to be excessive of the resources which may usefully be directed to the issue.<sup>8</sup> The chapter therefore makes selective use of formal law in the first instance and latterly those ideas and norms associated with law, to further appreciate how features of the legal context may contribute to understandings of engagement with the incorporation policy. As a means of anchoring the analysis which follows, the chapter provides for a brief definitional introduction to both the unincorporated association and the structure advocated as a more suitable alternative under the incorporation policy, the company limited by guarantee.

## 2.2 Unincorporated associations

*"[Unincorporated Associations represent] the most anomalous group of human beings known to the law."*<sup>9</sup>

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<sup>6</sup> Myles McGregor-Lowndes and Frances Hannah, 'Unincorporated associations as entities: A matter of balance between regulation and facilitation?' (2010) 28 Company and Securities Law Journal 197, p.213

<sup>7</sup> McGregor-Lowndes and Hannah described issues of tort and contract alongside problems surrounding the ownership of property as the "usual suspects" as regards the legal difficulties faced by entities utilising the unincorporated association form. Ibid, p.210

<sup>8</sup> See Chapter 3.

<sup>9</sup> *Feeney & Shannon v MacManus* [1937] IR 23 (Johnstone J)

As stated at chapter 1, the most common type of structure utilised by voluntary sports clubs is the unincorporated association.<sup>10</sup> Lawton LJ's description of the unincorporated association is that which is most often recognised as capable of defining what an unincorporated association is;

*“Two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and on what terms and which can be joined or left at will. The bond of union between the members of an unincorporated association has to be contractual.”<sup>11</sup>*

More succinctly Warburton stated that “whenever several people join together to carry out a mutual purpose, other than for a profit, an unincorporated association comes into being.”<sup>12</sup> Getting to grips with the conceptual nature of an unincorporated entity in the first instance however is far from an intellectually simple task. Mr Justice Gowans' attempt to provide clarity to the nature of the unincorporated association is a welcome analogy from which to understand the legal form.

*“In a broad sense a sporting club is like a crowd which is interested in some operation or some incident. In ordinary language one says of such a crowd, although it had been seen some hours before, that “crowd is still there”, when in fact the individuals constituting it may be entirely different persons and it is only the object of their interest that has remained the same. Because the object of interest has remained unchanged, that appears to give the crowd*

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<sup>10</sup> David Ashton, Paul Reid and Ian Snaith., *Ashton & Reid on Clubs and Associations* (3<sup>rd</sup> edn, Bloomsbury Professional 2020), p.8

<sup>11</sup> *Conservative central office v Burrell* [1982] EWCA Civ 2 [1982] 2 All ER 1. (Lawton LJ)

<sup>12</sup> Jean Warburton *Unincorporated Associations: Law and Practice* (Sweet & Maxwell 1986). By way of comparison, in those circumstances where individuals join together in the pursuit of profit, the alternative partnership structure is created. The partnership serves, at least for a group of individuals, as the most basic legal form for those wishing not to utilize a structure possessing a distinct legal personality. See Geoffrey Morse and Thomas Braithwaite, *Partnership and LLP Law* (9<sup>th</sup> edn, OUP 2020), p.3

*a continuing identity which it in fact does not possess.*<sup>13</sup>

Justice Gowans may have utilised a simpler analogy, comparison to a company for example, given such an entity may also be described as a fiction, with individuals joining and leaving throughout its potential perpetual existence. However, Justice Gowans reference to a crowd of individuals is more fitting than any reference to a company as an appropriate comparator. Drawing a distinction between companies and unincorporated associations is important owing to the somewhat binary approach the law of England and Wales has taken to incorporated entities, examples being limited companies, and unincorporated entities, such as the majority of sports clubs utilising the unincorporated association.<sup>14</sup> The distinguishing feature between the two legal forms is the conferment of legal personality on the former but not the latter.<sup>15</sup> As Beloff et al state “the essence of an unincorporated (organisation) is that its legal identity is no more than that of the sum of the individuals who are its members.”<sup>16</sup> It is as a consequence those individual members for the time being to whom the law most regularly turns to, in consideration as to who should be legally responsible for matters of engagement with third party organisations (under contract for example) and individuals (such as employees).<sup>17</sup>

The lack of separate legal personality has led to the consideration of unincorporated associations as “creatures of contract.”<sup>18</sup> Consistent with Justice Gowans’ crowd analogy, understanding such associations as creatures of contract, namely, as a group of individuals bound to one another by contractual responsibilities, is accepted generally as the manner through which such associations

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<sup>13</sup> *Carlton Cricket and Football Social Club v Joseph* [1970] VR 487 (Gowans J)

<sup>14</sup> Despite this research focussing upon sports clubs, the unincorporated association is utilised by a diversity of organisations across the heterogenous third sector. See Scottish Law Commission, *Discussion Paper on Unincorporated Associations* (Scot Law Com DP No 140 2008)

<sup>15</sup> It is this lack of legal personality which means that it is more often than not legally incorrect to state that unincorporated associations can hold property, employ staff, or be held liable for breach of contractual obligations.

<sup>16</sup> Michael Beloff and others, *Sports Law* (Hart Publishing 2012), p.26

<sup>17</sup> This is as a consequence of such associations possessing no legal existence aside from those members from which they are composed. See *Steele v Gourley and Davies* (1886) 3 TLR 772.

<sup>18</sup> Ashton & Reid on Clubs and Associations (n 10), p.8. Beloff et al. further state there are probably hundreds of unincorporated clubs, *Sports Law* (n 16), p.35

should be viewed.

*“Membership of a club or association is primarily a matter of contract. The members make their payments, and in return they become entitled to the benefits of membership in accordance with the rules.”<sup>19</sup>*

As Beloff et al suggest, there can be considered within an unincorporated association to exist a “horizontal matrix of contracts binding each member to all the other members. There cannot in such a case be a “vertical” contract binding each member to the club itself, for the club itself has no legal existence.”<sup>20</sup> The existence of unincorporated associations as simply groups of fluid individuals linked by a matrix of horizontal contracts, translates into a circumstance whereby such associations are not only unable to fulfil roles as employers and contract signatories, but also may not be named as parties to proceedings nor hold any nature of property in their own name.<sup>21</sup>

*Table 2.1: Features of unincorporated associations and companies limited by guarantee.*

	UNINCORPORATED ASSOCIATION	COMPANY LIMITED BY GUARANTEE
EXECUTE CONTRACTS	INDIVIDUAL MEMBER(S)	COMPANY
OWN LAND	INDIVIDUAL MEMBER(S)	COMPANY
SUE AND BE SUED	INDIVIDUAL MEMBER(S)	COMPANY

One may question the practicality of such a form if its users are unable to carry out these most basic organisational functions. Potentially requiring hundreds of members to sign a contract or own a piece

<sup>19</sup> *Re Sick and Funeral Society of St John’s Sunday School* [1973] Ch 51 (Ch) p.59 (Megarry J)

<sup>20</sup> Sports Law (n 16), p.35

<sup>21</sup> The situation is however not absolute as will be discussed at section 2.4.4 and 2.5.

of land is of course unrealistic. In these circumstances such organisations must look therefore to representatives to perform such duties on behalf of the memberships. As regards ownership of property, unincorporated associations most often turn to trustees. In matters of contract, those forming the managing committee, or often a single representative on behalf of the managing committee, are the individuals who regularly contract on behalf of the club and its constituent members.

Conceptually, those individuals contracting and holding property on behalf of the association should perhaps be considered as no more than representatives of memberships at large. However, the manner in which the law has developed as regards issues of liability suggest those representative positions carry a great deal more responsibility and risk than perhaps all utilising the unincorporated form may realise.<sup>22</sup> An argued to be disadvantage of the unincorporated association, the law has seemingly concluded that “the responsibility for transactions and activities carried on by the club rests normally with the managing committee. It is they to whom creditors or injured persons will look for payment of the club’s debts or compensation for injuries suffered on club premises.”<sup>23</sup> It is therefore the prerogative of the prospective claimant to seek redress not only from the organisation’s assets but potentially from those individual members’, and particularly committee members’, personal savings or family homes.<sup>24</sup> It is perhaps therefore misleading to say the unincorporated association is problematic for organisations, rather it is problematic for those individuals who comprise and head such organisations.

### 2.3 Companies limited by guarantee

If a lack of legal personality is taken to be the most problematic feature of unincorporated associations, it quite logically flows that use of a legal form with the benefit of a legal personality separate from its constituent members would naturally be required. The option of obtaining the benefits associated with the use of a legal form possessing a separate legal personality has been open

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<sup>22</sup> Scottish Law Commission, *Unincorporated Associations* (Scot Law Com No. 2017 2009)

<sup>23</sup> Ashton & Reid on Clubs and Associations (n 10), p.10

<sup>24</sup> *Rowlands and Rowlands v Ynysybwl RFC* [2010] Western Mail, 22 April 2010.

to sporting organisations since 1844.<sup>25</sup> In contrast with a number of other jurisdictions<sup>26</sup> however, England and Wales have been argued not to possess an incorporated form which caters specifically to non-profit member-interest entities.<sup>27</sup> The charitable incorporated organisation, created as a consequence of the 2011 Charities Act,<sup>28</sup> was formed to cater specifically for the needs of those entities operating in the charitable sector yet has been seen as perhaps somewhat unsuitable for the types of clubs under consideration. Not-for-profit member-interest clubs do not always satisfy the requirements for consideration as a charity, or alternatively may wish to avoid the requisite external scrutiny use of the charitable form provides for.<sup>29</sup> The community interest company available prior to 2012 perhaps represented a more suitable legal form for member-interest clubs.<sup>30</sup> Rather than a distinct legal form, the community interest company represents a type, or perhaps a species of company.<sup>31</sup> The community interest company may as a consequence be either limited by shares or guarantee. A criticism of the form however remained that similar to the disadvantages associated with operating as a charity, use of the community interest company subjected an organisation to a further layer of independent regulation. Such regulation could be avoided by utilising the original company limited by shares option, or the more popular amongst sports clubs' company limited by guarantee.<sup>32</sup>

In comparison to the position relevant to companies limited by shares, the consideration expected of an individual joining a company limited by guarantee may be preferable given the requirement simply

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<sup>25</sup> John Turner, "The development of English company law before 1900" (2017) Queen's University Centre for Economic History Working Paper Series 1/2017

<<https://www.econstor.eu/bitstream/10419/149911/1/877815712.pdf>> Accessed 12 September 2021 p.17

<sup>26</sup> Unincorporated Associations (n 22), p.12

<sup>27</sup> Discussion Paper on Unincorporated Associations (n 14)

<sup>28</sup> Charities Act 2011, s 5.

<sup>29</sup> England Rugby, 'Detailed guidance for clubs wishing to register as a charity' (englandrugby undated)

<[https://www.englandrugby.com/dxdam/fb/fbc5f299-bfa5-4e92-a90d-05f8ff29625a/Detailed\\_Guidance\\_on\\_Charitable\\_Status.pdf](https://www.englandrugby.com/dxdam/fb/fbc5f299-bfa5-4e92-a90d-05f8ff29625a/Detailed_Guidance_on_Charitable_Status.pdf)> Accessed 4<sup>th</sup> September 2020

<sup>30</sup> Companies (Audit, Investigation and Community Enterprise) Act 2004, Part 2 (ss 26-63)

<sup>31</sup> Stuart Cross, 'The community interest company: More confusion in the quest for limited liability' (2004) 55 Northern Ireland Legal Quarterly 302, p. 306

<sup>32</sup> The community interest company is subject to company law generally, as the name suggests. However, the community interest company is also subject to a regulator which undertakes a role similar to that of the charity commission in terms of oversight. Though less robust in its regulation than its comparator charity commission, the office of the regulator of community interest companies holds the authority to investigate entities utilising the structure and the conduct of the individuals responsible for their actions and omissions. See Department for Business, Energy & Industrial Strategy, *Office of the Regulator of Community Interest Companies: Leaflets* (Department for Business, Energy & Industrial Strategy 2017)

to promise to make a payment to the company's funds should the company ever be wound up. Such guarantee is most often a nominal amount and represents in the majority of cases the ceiling of potential personal loss.<sup>33</sup> The transformation of an organisation from an unincorporated association to a company limited by guarantee thus affords the opportunity for clubs to utilise a structure built on limited liability (with liability capped to the value of the guarantee), rather than unlimited personal liability synonymous with the use of the unincorporated alternative.<sup>34</sup> Importantly for the research, the WRU identified the company limited by guarantee as a means of mitigating those risks of personal liability flowing from use of the unincorporated association.<sup>35</sup> The following section highlights how the use of the company structure, and in particular the limited liability it affords, may affect the legal standing of those individuals involved in amateur rugby.

## 2.4 A comparative exercise

The following somewhat comparative exercise was conducted as a means of understanding how incorporation may affect personal liability in circumstances thought relevant to AWRC. The endeavour simultaneously provided for the emergence of subthemes which in turn contributed to potential understandings of club receptiveness to the incorporation policy.

Rather than a comparative legal analysis in its most traditional sense, the chapter compares how legal issues deemed pertinent to AWRC are dealt with under the respective unincorporated and incorporated regimes. Facilitating the comparison, section 2.4 builds around three instances of case law specifically involving AWRC and begins with a consideration of contractual liability.

### 2.4.1 Issues of contract

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<sup>33</sup> The consequential lack of share capital disincentivising wealth accumulation has accordingly been seen to fit comfortably with the non-profit ethos of community sport. Ashton & Reid on Clubs and Associations (n 10), p.19

<sup>34</sup> The member who provides such guarantee does not become a partial owner of the company, as would a shareholder, but obtains a contingent liability, and as a result, obtains a right to vote. It is perhaps easiest therefore to conceive of such members as guarantors. Ashton & Reid on Clubs and Associations (n 10), p.16

<sup>35</sup> Welsh Rugby Union 'Incorporation' (Community.wru.wales, undated)  
<<https://community.wru.wales/media/?search=incorporation>> accessed 19<sup>th</sup> March 2019

Consideration is first given to the case of *Michael John Construction Limited v St. Peters Rugby Football Club represented by Robert Matthews, on behalf of himself and all other members of the club as at 15<sup>th</sup> October 2003*.<sup>36</sup> The case is informative from the research perspective for the findings as to who amongst members of an unincorporated club should liability be attributed to under contract. The substantive outcome of the case which favoured the claimant is by contrast of little consequence. Ashton et al state that there are four general propositions one needs to be mindful of when considering contractual liability in the context of an unincorporated club's dealings with third parties:

1. The club is not a legal person.
2. No contract can exist without principal parties.
3. Whether the member can be held personally liable for contracts purporting to have been made on behalf of the club depends on the law of agency.
4. The member's liability is normally limited to his entrance fee (if any) and his subscriptions.<sup>37</sup>

Before considering how the first exemplary case engages with the above issues, a brief description of the facts are provided. *Michael John Construction Limited v St Peter's Rugby Football Club* involved a claim for unpaid works which arose from the commissioning of the claimant for the purposes of destruction of the clubhouse of St. Peter's RFC, being a rugby club situated in Cardiff. The dispute was referred to an arbitrator on three occasions and on each occasion the arbitrator identified different individuals as liable for payment. The Court ultimately determined that the decision of the arbitrator in the second instance, namely, that the contract signatory alongside the trustees at the time of the contract's signing were personally liable, was preferable.<sup>38</sup> To untangle why HHJ Wilcox arrived at such conclusion regard must be had as to how matters of agency have developed in circumstances pertaining to unincorporated associations.

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<sup>36</sup> [2007] EWHC 1857 (TCC). Hereafter referred to as *Michael John Construction Limited*.

<sup>37</sup> Ashton & Reid on Clubs and Associations (n 10), p.261

<sup>38</sup> *Michael John Construction Limited v St Peters Rugby Football Club* (n 36)

The “nub of the problem”,<sup>39</sup> as it was described by Ashton et al., is that in circumstances where an individual enters into a contract on behalf of a non-legal person (such as an unincorporated association) that individual may be held to have contracted in a personal capacity.<sup>40</sup> It remains however the role of the courts to determine who, if anyone, the signatory may have contracted on behalf of. If the signatory is the agent, the court must discern who is the principal. Though an individual may be considered factually to contract on behalf of a non-legal person (such as an unincorporated club), the law’s lack of recognition of such entities means a court must decide which individual, or group of individuals, the signatory is contracting on behalf of at law and who as a consequence should be liable.

As representatives of the club at large, one may naturally assume that the signatory contracts on behalf of each individual member. Determination of liability within *Bradley Egg Farm Limited v Clifford*<sup>41</sup> however provided for a different conclusion. *Bradley Egg Farm* established that as a starting point, the management committee entrusted with the affairs of the club are prima facie personally liable as regards those liabilities arising from contract.<sup>42</sup> Scott LJ, focussing upon matters of party intention, stated as follows:

*“What is the function of the law? Surely (in such circumstances) it is to imply an intention on the Plaintiff’s part to make their contract with a person or persons to whom alone in the circumstances of the case, the law regards as responsible.”*<sup>43</sup>

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<sup>39</sup> Ashton & Reid on Clubs and Associations (n 10), p.262

<sup>40</sup> *Bradley Egg Farm Ltd. v Clifford* [1943] All E.R.378 (CA). In the matter of *Michael John Construction Limited* the signatory upon the contract Mr. Matthews was not entitled to the protection afforded to signatories under the general rules of agency, namely, that the agent avoids personal liability once a contractual relationship has been established between principals. Mr. Matthews faced personal liability as he had signed the contract in his own name and had failed to declare on behalf of whom he was signing. *Michael John Construction Limited v Golledge and others* [2006] EWHC 71 [2006] TCLR3 (TCC), para 74. The principle that one must ensure they identify who they are signing on behalf of was affirmed recently in the case of *Gregor Fiske Limited v Bernard Carl* [2021] EWCA Civ 792.

<sup>41</sup> *Bradley Egg Farm Ltd. v Clifford* [1943] a All E.R.378 (CA)

<sup>42</sup> Ibid

<sup>43</sup> Ibid (Scott LJ)

Bennett J dissenting, argued that liability should fall upon the group of persons comprehended by the association's name.<sup>44</sup> Indeed, previous to *Bradley Egg Farm* only actual authorisation or ratification by a committee would lead to the committee members being held personally liable.<sup>45</sup> Following *Bradley Egg Farm*, the position of committee members departed more clearly from that of the general membership, with a presumption of liability placing committee members in a seemingly more legally precarious position. *Davies v Barnes Webster & Sons Ltd.*<sup>46</sup> heard some 68 years later provided for a reconsideration of this issue, which, usefully for the purposes of this study, related to circumstances involving a rugby club. Mr Justice Mann, presiding over the claim stated;

*“The basic position is that prima facie members of unincorporated associations, such as this club, 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. 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. But the general starting point is of course that that is not their intention. A member of a club is prima facie not liable for more than his or her subscriptions or other regular dues.”*<sup>47</sup>

In synthesising the judgments of *Bradley Egg Farm*, *Davies*, and *Michael John Construction*, an understanding of unincorporated associations as “creatures of contract” bound by a common constitutional document comes to the fore. *Bradley Egg Farm* introduced the aforementioned presumption which *Davies* can be seen to have followed. *Davies* however provided for a restatement as to the importance of agency under contract as the appropriate starting point in determining such issues. *Davies* reaffirmed that a presumption may apply in the absence of constitutional

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<sup>44</sup> *Bradley Egg Farm Ltd. v Clifford* (n 41) (Bennett J)

<sup>45</sup> Contractual Responsibility in Non-Profit Associations (n 31), p.642

<sup>46</sup> *Davies v Barnes Webster & Sons Ltd.* [2011] EWHC 2560 (Ch) [2011] 6 WLUK 722

<sup>47</sup> *Ibid* [16] (Mann J)

documentation. However, exactly who was personally liable under the relevant contract in *Davies* was considered in the first instance to turn on the constitution of the club and the acts of authority and ratification which had occurred.<sup>48</sup> In *Davies*, without evidence to the contrary, the club's rules defining the committee members as the appropriate principals was adhered to.<sup>49</sup> In *Michael John Construction*, the following constitutional clause was that which resulted in liability being considered as properly conferred upon the trustees at the time of the contract's execution.

*“The management committee may appoint no more than four and no less than two trustees from within its ranks or from among life members. Such Trustees, when duly authorised by resolution of the Management Committee, shall have the power to sign and execute on behalf of the club all deeds and documents without incurring any personal liability in respect hereof.”*<sup>50</sup>

The power provided by the constitution to trustees for the signing and execution of deeds and documents was that which made the signatory, although not himself a trustee at that time, an agent for the trustees under the general principles of contractual agency. HHJ Wilcox agreeing with the arbitrator's finding stated that “Since Mr. Matthews (as signatory) was acting as agent for the trustees he was personally liable as were the trustees as his principals.”<sup>51</sup>

For unincorporated associations, identifying the relevant principal, being the individual or group of individuals from whom the agent derives their power, is thus often a considerable source of contention as regards litigated matters, as identified by Ashton et al and detailed at the beginning of this section.

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<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> *Michael John Construction Limited* (n 36), para 23. The reference to protection from personal liability does not have the effect of binding third parties given the clause formed part of the club constitution only. As a consequence, this clause relates to intra-club issues of personal liability.

<sup>51</sup> Ibid, para 25

What can be taken from this relevant case law is that although it may be the managing committee who are prima facie personally liable under contract, regard must be had to the constitutional document and instances of authorisation. Findings of personal liability are as a consequence highly fact sensitive and it is not beyond the realms of possibility that general memberships maybe considered as relevant principals. *Cokerell v Aucompte*,<sup>52</sup> heard by the court of common pleas, provided for an outcome in which, owing to the association's rules conferring to the committee authority to contract on behalf of the membership, it was the members at large who were found personally liable for the obligations under those contracts, having been judged to represent the relevant principals. As Flannigan noted, it is important to recognise that the presumption as to the identity of the principal is simply that, a presumption, and should not be taken to represent an absolute rule.<sup>53</sup>

#### **2.4.2 Post incorporation position**

Consideration of how incorporation may affect issues of liability of the type relevant to *Michael John Construction* requires engagement with two matters, the identity of principals and considerations of authority. Beginning with the issue of identifying principals provides for an appreciation of how incorporation serves to improve the position at law for trustees of the kind relevant to *Michael John Construction*, managing committee members under *Davies*, and general memberships in the case of *Cokerell*. In the first instance, quite simply, issues of agency and principal are less important as a company may contract in its own name.<sup>54</sup> The conferment of a separate legal personality allows companies to legitimately assume the position of party and signatory.<sup>55</sup> The law need not seek to determine responsible individuals from whom agents derive their power, given the company is capable of fulfilling these roles. With the company capable of contracting, issues of principal identification may fall away. Personal liability of the type described in the previous section for those

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<sup>52</sup> *Cokerell v Aucompte* [1857] 140 E.R. 489

<sup>53</sup> Contractual Responsibility in Non-Profit Associations (n 31), p.646

<sup>54</sup> Section 2.2 and 2.3.

<sup>55</sup> Companies Act 2006, s 43.

relevant committee members, and/or general members judged to be principals, could as a consequence not materialise should a club make use of the company limited by guarantee structure. The satisfaction of any claimant's judgment for breach of contract, for example, would therefore be limited to the assets of the company and the assets of the company alone.

The benefit for those individuals finding themselves potentially liable as principals is thus clear as regards the unincorporated association/company limited by guarantee comparison. The benefit however is not so absolute for individual signatories acting on behalf of clubs, such as Mr. Matthews in the *Michael John Construction* circumstance above. An individual signatory to a contract, such as a director of a company limited by guarantee, would be afforded the protection of limited liability, but would only escape all issues of personal liability if the signatory is judged to have held the requisite authority to act. Generally, the laws of agency provide for a circumstance in which the contract of the agent is the contract of the principal.<sup>56</sup> If the agent is considered to possess the requisite authority, then they themselves drop out of the transaction, incurring neither rights nor liabilities.<sup>57</sup> Should a signatory company director, for example, act outside the constraints of their authority however, then the company on whose behalf they contract, or in more limited circumstances the third party, may legitimately pursue such a director personally for associated loss.<sup>58</sup> Any signature to a contract should therefore be preceded by a careful deliberation of the signatory's authority whether in the context of an unincorporated association or a company limited by guarantee, if matters of personal liability are to be avoided.

### 2.4.3 Contractual conclusions

Engagement with contractual issues of liability brings forth an appreciation that incorporation may

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<sup>56</sup> Hugh Beale, *Chitty On Contracts* (33<sup>rd</sup> edn, Sweet & Maxwell 2019)

<sup>57</sup> Ashton & Reid on Clubs and Associations (n 10), p.265

<sup>58</sup> By way of brief example should a director enter into a contract pledging payment of £100,000.00, when such director has the authority under the articles of association only to contract to a limit of £40,000.00, the company will remain liable to the third party for the entire sum. The director however may need to account to the Company personally for any consequential loss incurred as a result of acting in such an *ultra vires* manner. Companies Act 2006, s 40 (5).

mean different things for different types of club member. Section 2.4.1 highlighted how the presumption of liability translates into a circumstance whereby unincorporated club committee members face a greater legal risk of personal liability in comparison with those forming the general membership. Incorporation is understood to effectively negate risks of personal liability for the general membership. For those decision-makers moving from committee members to company directors the change of legal form however may provide for a different affect. For decision-makers, more likely to assume positions of contract signatories than general members, the benefit of incorporation is somewhat less pronounced with the risk of personal loss still looming albeit in a reduced and differing form. As stated, any decision of a director which is deemed inappropriate in that it goes beyond prescribed powers, may afford the company a right of personal recovery against any such director. Possibilities of personal liability are thus consistent across both forms in this regard, albeit it would be the company alone, and not any third party, which would most likely have the right of recovery against the director for associated losses post incorporation. The continuity of such risk serves to reinforce the importance of authorisation and compliance with constitutional documents for decision-makers operating under either the unincorporated or incorporated form.<sup>59</sup>

Rather than serving as a panacea for issues of personal liability, discussions of contract raise the first instance of an appreciation that incorporation may reduce, rather than eliminate, the risks of such liability materialising. Alternatively, incorporation may be understood to often internalise rather than exclude those risks of personal loss.

#### **2.4.4 Issues of employment**

Navigating those legal risks and responsibilities connected to matters of employment has been identified as particularly hazardous for unincorporated associations. Warburton stated that should such organisations decide they require an employee, this alone should compel consideration of

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<sup>59</sup> The importance of the constitutional document to unincorporated associations has been reaffirmed recently in the case of *Rahman v Ashikmiah* [2021] EWHC 324 (Ch), [2021] 2WLUK 281

moving away from the use of the unincorporated form.<sup>60</sup> Such caution is perhaps unsurprising given *Affleck v Newcastle Mind*<sup>61</sup> established that in the ordinary course of events, those individuals comprising an unincorporated association's managing committee are to be considered the proper employers for the purposes of a claim. Such determination may be considered logical if one frames the employee/employer relationship as grounded in contract. The manner in which employment law, in essence, implies extra contractual obligations upon employers entering into such contracts however is perhaps that which makes matters of employment so problematic for unincorporated entities.

As stated in the introductory chapter, the unincorporated association form is often utilised by groups seeking to establish structures with minimal effort.<sup>62</sup> Juggling workplace health and safety obligations, abiding by acceptable disciplinary procedures and everything in between, can therefore perhaps be considered somewhat onerous for the types of groups most often attracted to the simplicity of the unincorporated form.<sup>63</sup> Although the courts have been traditionally reluctant to involve themselves in the internal affairs of unincorporated associations,<sup>64</sup> employees such as club coaches and stewards operate inside such organisations yet are distinct from members in their ability to claim against their employer "clubs" on account of matters relevant to their employment.

The chapter's second exemplary case relates to an employment tribunal claim which gained the attention of Welsh media outlets.<sup>65</sup> The managing committee of Ynysybwl RFC were held personally liable for compensation flowing from a successful constructive unfair dismissal claim by Mr. and Mrs. Rowlands, formerly the club's bar stewards. As a means of securing their judgment of £85,133.00, it was reported that the successful claimants placed a land registry charge on the club

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<sup>60</sup> Unincorporated Associations: Law and Practice (n 12), p.92. Warburton's sentiments have been echoed by other prominent analysts such as Ashton et al, Ashton & Reid on Clubs and Associations (n 10), p.327

<sup>61</sup> *Affleck v Newcastle Mind* [1999] UKEAT 537/98/1003 [1999] ICR 852

<sup>62</sup> See section 1.1

<sup>63</sup> The Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004. ACAS, 'Code of Practice on disciplinary and grievance procedures' (*ACAS*, Undated) <<https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html>> Accessed 6<sup>th</sup> January 2021

<sup>64</sup> Unincorporated Associations: Law and Practice (n 12), p.76

<sup>65</sup> Wales Online, 'Tribunal award row could finish Ynysybwl RFC' *Wales Online* (28 April 2010) <<https://www.walesonline.co.uk/news/local-news/tribunal-award-row-could-finish-1924734>> Accessed 12<sup>th</sup> September 2019

treasurer's personal residence. The outcome of the claim in turn was reported by the WRU as an example of the legal precarity individual committee members assume when their clubs make use of the unincorporated form.<sup>66</sup>

*Rowlands and Rowlands v Ynysybwl RFC*<sup>67</sup> can be seen to represent an extension of those features of contractual liability as outlined in the previous section. Club committee members assuming the role of principals under the employment contract therefore should be understood as subject to those same personal liability consequences on occasions of breach as those individuals comprising the managing committee in the *Bradley egg farm* circumstance. *Rowlands* however further introduces a sub-theme regarding the law's treatment of unincorporated associations from a legal person's perspective, that of inconsistency. Somewhat in contrast to the jurisprudence as it relates to unincorporated associations generally, and as outlined previously, the employment tribunal have allowed for claims to proceed which name the unincorporated association itself as the relevant respondent. The tribunal appear to have preferred the policy argument of remaining accessible and not overtly formal, over the consistency a lack of recognition of unincorporated associations as entities which may be sued affords. The Employment Appeal Tribunal in the case of *Nazir v Asim*<sup>68</sup> found that in circumstances of employment it is acceptable for the unincorporated association to be named as the appropriate Respondent.

*“Firstly, employment tribunals are to a large extent concerned with claims by employees against their employers. As we have said, the management committee of the Unincorporated Association will generally have engaged an employee in the name of the Unincorporated Association. Whether or not this is the case, we do not think a management committee has any cause for complaint if an employee brings proceedings in the name of the Unincorporated Association. Secondly, in tribunal proceedings the time limits for*

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<sup>66</sup> Welsh Rugby Union 'Club Structure Incorporation' (Presentation, Welsh Rugby Union Undated) <<https://d2cx26qpfwuhvu.cloudfront.net/wru/wp-content/uploads/2018/11/01124859/ClubStructureIncorporation.pdf>> Accessed 12<sup>th</sup> January 2019.

<sup>67</sup> *Rowlands and Rowlands v Ynysybwl RFC* (n 24)

<sup>68</sup> *Nazir v Asim* [2010] UKEAT/332/09 [2010] I.C.R. 1225

*commencement of proceedings are generally strict: if proceedings started in the name of a Unincorporated Association were liable to be dismissed, there would be potential for procedural delay if not injustice. Thirdly, undue formality is to be avoided in tribunal proceedings (see for example rule 14(2) of the Employment Tribunal Rules). Fourthly, as we have said, employees generally cannot be expected to know about the special legal position of unincorporated associations.<sup>69</sup> These matters are relevant to the overriding objective of dealing with cases justly; and therefore to be taken into account in construing the Rules.”<sup>70</sup>*

Regardless of the tribunal’s more relaxed approach to the naming of unincorporated associations as parties to actions, this should provide little solace to managing committee members hoping to avoid personal liability. For all intents and purposes, it is, as consistent with the position under contract, the management committee who remain most at risk of personally liability should compensation be awarded.

What *Rowlands*, as well as the employment context more widely construed brings into focus, is the contortions the law seemingly must perform to perpetuate the fallacy that the unincorporated association is a non-entity. Mr Justice Morison seemingly admitting as much in *Affleck*<sup>71</sup> stated “it is a fact that the law and reality have departed from time to time in the context of an unincorporated association.” Morison J was addressing the issue of continuity of employment and the difficulties this poses for management committees which are often highly changeable on account of their voluntary status.<sup>72</sup> Deliberation of how the variance of committee membership should properly be accounted for as regards determination of liability was obiter. However, the Employment Appeal Tribunal’s

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<sup>69</sup> Reference to the argument that employees cannot be expected to know about the “*special legal position of unincorporated associations*” substantiates suggestions that the legal treatment of unincorporated associations fails to accord with general understandings of such entities existence. McGregor-Lowndes and Hannah’s arguments that these associations indeed exist in the eyes of the public is thus seemingly reinforced by the manner in which the Tribunal in *Nazir* addressed the issue of respondent identification. Unincorporated associations as entities: A matter of balance between regulation and facilitation? (n 6), p.206

<sup>70</sup> *Nazir v Asim* (n 68) [70] (Richardson J)

<sup>71</sup> *Affleck v Newcastle Mind* (n 61), [854]

<sup>72</sup> Graham Cuskelly and Alistair Boag ‘Organisational commitment as a predictor of committee member turnover among volunteer sport administrators: results of a time-lagged study’ (2001) 4 Sport Management Review 65

suggestion that individuals are employed by the relevant management committee, from time to time as may be composed, was felt to be a pragmatic solution reflecting the intentions of employees.<sup>73</sup>

Despite claims of pragmatism, to utilise the constructive dismissal circumstance as was relevant to the case of *Rowlands*, such a claim can be substantiated by reference to several decisions of the employer over a protracted period of time. In circumstances where the composition of the managing committee changes, practical issues may arise as to the identification of who should face personal liability and what is an equitable apportionment. The Employment Appeal Tribunal in *Affleck* acknowledged that difficult questions were likely in the event the applicants were successful but deliberately chose to circumvent such issues within the relevant judgment. The Employment Appeal Tribunal stated that “compensation will no doubt be awarded if that eventuality arises and it will be awarded against the members of the executive committee who were on the committee at the relevant time.”<sup>74</sup> Quite what the relevant time should be interpreted as is unclear. Given several potential claims in the employment context may span significant time periods, the tribunal were perhaps wise from a resource perspective to avoid such considerations. The Employment Appeal Tribunal did nevertheless appreciate that it “might well become necessary for the members of the executive committee to dispute between themselves as to who bears responsibility for the consequences of any unlawful act which has occurred.”<sup>75</sup> In reaching such a conclusion, the potential liability managing committee members may face in such circumstances remains uncertain.

Consideration of personal liability from an employment viewpoint builds upon understandings of liability drawn from the preceding section discussing issues of contract. Viewing the employment relationship from the contractual perspective, it flows that the managing committee as prima facie principals of employment contracts may most often face personal liability on the occasion of breach.

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<sup>73</sup> *Affleck v Newcastle Mind* (n 61), [855]

<sup>74</sup> *Ibid*, [857]. The Employment Appeal Tribunal in *Affleck v Newcastle Mind* appreciated that there was no easy answer to the question of employee continuity in the context of the unincorporated association. The Employment Appeal Tribunal relied upon what the employee would have assumed when they began their employment as justification for the conclusion that liability should fall upon the management committee from “time to time as may be composed”. However, such a construction appears to infer knowledge that the employee understands unincorporated associations’ lack a distinct legal personality.

<sup>75</sup> *Ibid* (Morison J)

Legal responsibilities of employers are vast and therefore the above has provided for a very limited consideration of how the unincorporated association legal form provides difficulties for clubs in a position to perhaps remunerate coaches and stewards. Consideration of the case law within this subsection has however furthered arguments that the treatment of unincorporated associations fails to accord with general understandings of such entities' existence.<sup>76</sup> In turn, considerations of employment law draw attention to arguments that not only should personal liability be a concern for managing committee members but that their potential exposure cannot easily be defined.

#### **2.4.5 Post incorporation position**

Incorporation from an employment perspective can be seen as providing an opportunity for simplification. In avoidance of the issues of continuity, for example, the employment contract may define the employer as the club itself and thus for incorporated entities questions of who should be interpreted as the proper employer for the purposes of a claim provides for little problem.<sup>77</sup> Flowing from this, any claim against an individual personally, for unfair dismissal as was the case in the *Rowlands* circumstance for example, would fail as per sections 94 and 98 of the Employment Rights Act 1998.<sup>78</sup>

As was the case under contract, use of an incorporated legal form should not however lead individuals involved with the management of organisations to believe that the limited liability incorporation affords provides absolute protection from risks of personal liability. Though perhaps far removed from the circumstances in which AWRC operate, Dr. Caneiro's employment tribunal claims against both Chelsea Football Club and Jose Mourinho personally, provide for an example of how instances of personal liability may manifest in circumstances where clubs utilise the company form. Though Dr. Caneiro's claims of constructive unfair dismissal related specifically to the employer company club, the remarks of Mr. Mourinho deemed to constitute discriminatory behaviour occasioned a separate

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<sup>76</sup> See section 1.1

<sup>77</sup> Ashton & Reid on Clubs and Associations (n 10), p.328. In this sense the simplification mirrors those consequences relevant to contractual considerations as explored in section 2.4.2.

<sup>78</sup> Employment Rights Act 1998

action against the manager personally.<sup>79</sup> For those individuals assuming decision-maker roles at AWRC post incorporation, the risk of being held personally liable on account of findings of discriminatory behaviour apply equally.<sup>80</sup>

Consideration of matters of employment have shown once more that risks of personal liability may again be mitigated through the action of incorporation. Nevertheless, the analysis reinforces arguments that the protection of limited liability remains conditional upon decision-makers acting appropriately.

#### **2.4.6 Employment conclusions**

Consideration of how the law has approached issues of liability in the employment context has led to an appreciation of how those contractual principles considered at section 2.4.1 transfer into more nebulous circumstances. The section has also provided initial evidence of an inconsistency as regards treatment of unincorporated associations across differing areas of law, to be developed later within this chapter. The continuing threat of personal liability in the employment context contributes to the argument raised at 2.4.3 that incorporation should not be considered as an unqualified right to limited liability. Post incorporation, it is again evident that for decision-makers in particular, the benefit of limited liability, though considerable, is not as comprehensive as may be the case for those individuals comprising general memberships. In particular instances, and for particular individuals, the threat of personal liability continues, albeit in reduced and differing forms. Despite this, considerations of the

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<sup>79</sup> BBC News, 'Chelsea doctor Eva Carneiro settles dismissal case' (bbc.co.uk, 7<sup>th</sup> June 2016) <<https://www.bbc.co.uk/news/uk-england-36472713>> Accessed 4<sup>th</sup> February 2019 and Haroon Siddique and Robert Booth, 'Eva Carneiro settles constructive dismissal claim with Chelsea' (theguardian.com, 7<sup>th</sup> June 2016) <<https://www.theguardian.com/football/2016/jun/07/jose-mourinho-unexpectedly-turns-up-at-employment-tribunal-eva-carneiro>> Accessed 29<sup>th</sup> January 2019

<sup>80</sup> Equality Act 2010 s.109. *Timis v Osipov* brought those possibilities of personal liability owing to discriminatory acts into line with whistleblowing claims. As was the case in the *Timis* circumstance directors therefore need to be wary of personal liability claims pertaining to detriment suffered by employees as a result of the making of a protected disclosure. *Timis v Osipov* [2018] EWCA Civ 2321 [2019] I.C.R. 655

employment context affirm arguments that incorporation should be strongly considered for clubs employing staff of any description.

#### 2.4.5 Issues of tort

The majority of academic and legislative attention afforded to the intersection of amateur sport and law has related to issues of tort. Specifically, issues of negligence have been taken to have the widest application and are those matters most likely to be of concern to sports clubs.<sup>81</sup> Although an action in negligence may constitute a number of differing claims, for amateur sport, issues of personal injury have represented the focus of legal intervention and commentary.<sup>82</sup>

For rugby, the most obvious starting point as regards discussions of personal liability is perhaps those claims arising from the playing of the game. The physical, often collision centric nature of the sport carries with it a substantial risk element of injury for those participating.<sup>83</sup> For amateur sport, the law's relationship with risk can be considered one in which balance is ultimately sought. Lady Justice Smith in the much-discussed *Scout Association v Barnes* case stated that “the law of tort must not interfere with activities just because they carry some risk.”<sup>84</sup> Lord Justice Jackson further stated that “it is not the function of the law of tort to eliminate every iota of risk.”<sup>85</sup> Such comments however do not serve to expel the court's jurisdiction in any way but rather brings attention to the manner in which the court seeks to properly account for policy objectives. Jackson LJ in this regard continued that it therefore remains the “function of the law of tort to deter negligent conduct and to compensate those who are the victims of such conduct.”<sup>86</sup>

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<sup>81</sup> Ashton & Reid on Clubs and Associations (n 10), p.277

<sup>82</sup> Steve Greenfield and others, ‘Reconceptualising the standard of care in sport: The case of youth rugby in England and south Africa’ (2015) 18 Potchefstroom electronic law journal. 2184, p.2184

<sup>83</sup> Mark James and David McArdle, “Are you experienced? Playing cultures, sporting rules and personal injury litigation after *Caldwell v Maguire*” (2005) 13 The Tort Law Review 193, p.202

<sup>84</sup> *Scout Association v Barnes* [2010] EWCA Civ 1476 [2010] WLUK 743, [49] (Smith LJ)

<sup>85</sup> *Ibid* [34] (Jackson LJ)

<sup>86</sup> *Ibid*

Deterrence of negligent conduct turns on an appropriate finding of fault. With that considered, to whom a claimant may bring an action against for personal injury suffered as a result of participation within a sanctioned game, requires a fact specific consideration. As Beloff et al. note “the law of tort imposes negative obligations on certain classes of persons for the protection of other classes of persons.”<sup>87</sup> The chapter’s third exemplary case of *Vowles v Evans*<sup>88</sup> provides for an example of the way the courts have addressed issues of liability in a rugby specific context and specifically how the courts have identified the appropriate class of persons who should bear those negative obligations.

*Vowles v Evans* related to a claim under the tort of negligence argued to have occurred in a game played at Llanharan RFC in the County of Rhondda Cynon Taff. The claimant sought compensation from several potential defendants arising from an injury sustained during a collapsed scrum which resulted in the claimant’s tetraplegia. Following the replacement of the starting loose head prop, the claimant played alongside a prop inexperienced in the position. Despite the substitute prop having played the position very infrequently, and had in any case not played the position for a number of years, the substitute prop is understood to have stated he would “give it a go.”<sup>89</sup> The claimant, playing as hooker, considered the injury he sustained to have arisen from the negligence of allowing the inexperienced substitute prop to scrummage.

The claimant sought to recover damages from the referee of the match (David Evans), the Welsh Rugby Union Limited, Morgan Davey and Keith Taylor. The latter two individuals named as the 6<sup>th</sup> and 7<sup>th</sup> defendants in the proceedings, were sued both on their own behalf as well as on behalf of all other members (except the claimant) of the club. Of particular interest to the current research Morland J. at first instance stated as follows;

*“There is no evidence before me that either in a personal capacity or as officers of the club the sixth or seventh defendants had under the rules of the club or otherwise assumed any duty*

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<sup>87</sup> Sports Law (n 16), p.44

<sup>88</sup> *Vowles v Evans* [2003] EWCA Civ 318 [2003] 1 W.L.R. 1607

<sup>89</sup> *Vowles v Evans & ors* [2002] EWHC 2612 (QB) [12] (Morland J)

*of care or represented that they owed any duty of care to club members while playing in matches. There is nothing in the club rules which suggest that the club through its members assumed or represented any such duty to individual members in such circumstances.”<sup>90</sup>*

Morland J, referred to Ralph Gibson LJ’s judgment handed down in *Owen v Northampton Borough Council Local Government Review*<sup>91</sup> in support of his conclusions:

*“(i) At common law an unincorporated members club or its officers or committee members owe no duty to individual members except as provided by the Rules of the organisation.*

*(ii) An individual member of a members club may assume a duty of care to another member or be found to owe such a duty according to ordinary principles of law and in those circumstances the fact of common membership of the association will not confer immunity from liability upon the member sued.*

*(iii) Whether or not such a duty is held to exist will depend upon all the circumstances of the case*

*(iv) Each participant in a game of Rugby owes a duty to each other player to exercise in the course of the game all care that is objectively reasonable in the circumstances to avoid injury occurring to another player.*

*(v) The laws of Rugby are neither definitive of the existence of a duty nor of its extent. Breach of a law does not necessarily mean a breach of a duty but is part of the relevant circumstances to be taken into consideration in deciding whether a duty exists and if so to what extent.*

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<sup>90</sup> Ibid [82] (Morland J)

<sup>91</sup> *Owen v Northampton BC* [1992] 156 L.G. Rev.23 (CA)

*(vi) In judging whether a breach of duty occurred the threshold for liability is inevitably high.*"<sup>92</sup>

The eventual determination of Morland J found the referee liable to payment of damages given his control over the game and his omission to ensure the game was controlled safely.<sup>93</sup> The lack of control of the game as an activity was that which was deemed influential in the finding of liability against the referee and not the committee members named in the proceedings. On appeal, the appellant sought to rely on the Australian High Court's decision in *Agar v Hyde*.<sup>94</sup> Although the Court of Appeal found that the facts of *Agar* were too markedly different from the facts of *Vowles* for the Appellant to derive assistance, the below referenced passage, seemingly endorsed by the Court of Appeal, provides for a useful insight into associated issues relevant to considerations of committee member liability.

*"After all, opposing players can already sue each other for intentionally and negligently inflicted injuries; they can sue the referee for negligent failure to enforce the rules; and the sports administrator that dons the mantle of occupier assumes well established duties of care towards players, spectators (and in the case of golf clubs) neighbours. A duty of care is not negated merely because participation in the sport is voluntary."*<sup>95</sup>

Of particular interest to the research is the notion that if the injury had emerged as a consequence of the state of the land, rather than the activity taking place, the outcome in *Vowles* may have been less favourable for the committee members of the unincorporated club at the time. It should first be stated that as regards unincorporated associations and the determination of liability in circumstances relating to the occupation of land, it is useful to hold in one's mind that unincorporated associations may be

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<sup>92</sup> *Vowles v Evans* (n 88)

<sup>93</sup> *Vowles v Evans & ors* (n 89), [42] (Morland J)

<sup>94</sup> *Agar v Hyde* [2000] 173 A.L.R. 665 (HCA)

<sup>95</sup> *Agar v Hyde* [1998] 45 NSWLR 487 [513]

best thought of as the aforementioned horizontal matrix of individual contracts.<sup>96</sup> The horizontal nature of such entities translates into a circumstance whereby an injured member is as much an occupier of land as any other member.<sup>97</sup> As a consequence, the injured member cannot usually sue other members for losses sustained as a result of the condition of said land. This principle however is not absolute and should special responsibilities arise from a member holding a particular position or a different member agreeing to undertake a specific responsibility, for example, then a member sustaining loss may legitimately claim against those individuals.<sup>98</sup>

Outside of those instances where members fill the roles of both claimant and defendant, issues of tortious liability emerging from the condition of land often raise legal questions as to the identity of occupiers. Who are the occupiers at law however is again a question of fact. An unincorporated association's inability to own land provides for a circumstance in which the responsibility at law for owning such property frequently falls upon nominated individual trustees. If an association's premises are vested in trustees, it is probable that they will be the proper defendant for purposes of a non-members claim.<sup>99</sup> Should a visitor thus be injured by a tile falling from an unmaintained wall in a clubhouse, it is likely that the trustees owning such property in law, for the benefit of the members, would be liable for any injury suffered by a claimant. Though such liability is prima facie held by the trustees, situations have arisen in which liability has been attached to others. *Brown v Lewis*,<sup>100</sup> concerning issues of liability in a footballing context, gives a useful example of how an unincorporated club's committee members should be mindful not only of any responsibilities as to the condition of relevant land and property for the sake of their members but also for visiting non-members. In *Brown v Lewis*<sup>101</sup> a collapsed football stand at Blackburn Rovers' Ewood Park, resulted in injury to a number of individuals and a consequential claim against the club's committee

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<sup>96</sup> Section 2.2.

<sup>97</sup> Unincorporated Associations: Law and Practice (n 12), p.74

<sup>98</sup> *Prole v Allen* [1950] 1 All E.R. 476. *Prole v Allen* provides for an example whereby an organisations member, injured as a consequence of falling down unlit stairs, could pursue only their fellow member who had been given the specific responsibility to see that the premises were in a fit state.

<sup>99</sup> Unincorporated Associations: Law and Practice (n 12)

<sup>100</sup> *Brown v Lewis* [1896] 12 T.L.R. 455

<sup>101</sup> *Ibid*

members.<sup>102</sup> *Brown* provides for an example of those determinations of personal liability based on the assumption of responsibility individuals or groups of individuals, in this case the committee, have undertaken specifically for the condition of certain premises. Although the findings of *Vowles v Evans* may placate trustee and committee member concerns as to their liabilities for personal injuries sustained as a result of issues arising from the game itself, *Brown v Lewis* draws attention to the extant personal liability risk for matters pertaining to the conditions of premises, whether they be clubhouses, stands, or pitches.

#### 2.4.6 Post incorporation position

Blackburn Rovers' incorporation of 1897, a year following the judgment in *Brown v Lewis*, supports suggestions that concerns of personal liability may drive organisations to incorporate. By way of comparison with *Brown v Lewis*, *Sutton v Syston Rugby Football Club Limited*<sup>103</sup> heard over one hundred years later, determined the rugby club itself operating as a limited company, to be the relevant occupier for the purposes of the action. As a consequence, any discussions as to personal liability of club committee members or trustees involved in the maintenance of the pitch, which, as argued by the claimant in that case, was insufficiently maintained and causative of his injury, were negated.

How a sports club may benefit from incorporation as regards matters of tort is however perhaps deficient without discussion of an as yet neglected but salient aspect of liability in the sporting context, the doctrine of vicarious liability. The previous section discussed personal liability in the context of injuries arising from non-deliberate acts. However, through engagement with intentional torts, issues of vicarious liability and how incorporation may impact upon the doctrine's effects may be considered.

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<sup>102</sup> In the *Brown v Lewis* circumstance, the committee of the football club were found personally liable owing to their duty to provide a usable stand. The committee's instruction of a contractor, deemed inadequate for the purposes of repairing the structure and consequentially causative of the collapse, resulted in personal liability being conferred upon the individual members of that committee.

<sup>103</sup> *Sutton v Syston Rugby Football Club Ltd* [2011] EWCA Civ 1182 [2011] 10 WLUK 517

Discussions of vicarious liability in the context of unincorporated associations have most regularly focused upon matters of historical sexual abuse and religious organisations.<sup>104</sup> In depth consideration of these issues were considered beyond the scope of this review. Nevertheless, a rugby specific example of how vicarious liability may unfold in a circumstance in which the defendant club had incorporated, is useful as a means of evaluating the impact of incorporation in circumstances pertinent to AWRC. The case of *Gravil v Carroll & Redruth RFC*<sup>105</sup> provides for an opportunity to consider how risks of personal loss flowing from issues of vicarious liability may be improved by way of incorporation. The case related to a claim brought by a player of Halifax RFC (Mr. Gravil) who was punched and caused injuries, by an opposing player (Mr. Carroll), employed on a semi-professional basis by Redruth RFC. It was traditionally the case that an employer was deemed vicariously liable for the torts of his employee committed in the course of his employment.<sup>106</sup> In the *Gravil* circumstance, the Court of Appeal found that despite the player's employment contract stipulating clearly that the player shall not "physically assault or verbally abuse match officials, opponents, spectators, colleagues", the claimant could hold the second defendant Redruth RFC company vicariously liable for the damages awarded.

The finding of *Gravil* in spite of the contractual clauses suggested vicarious liability to be of considerable scope in this context. The importance of mitigating associated risks of personal liability flowing from such issues therefore initially reinforced arguments for advocating the importance of utilising legal forms conferring limited liability. However, the court in *Gravil* were at pains to convey the judgment related only to instances where players were remunerated. With this in mind it was contemplated whether the amateur nature of the organisations engaged by the research meant issues of vicarious liability were inconsequential.

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<sup>104</sup> Phillip Morgan, 'Vicarious Liability on the Move' (2013) 129 *The Law Quarterly Review* 139, p.139

<sup>105</sup> *Gravil v Carroll* [2008] EWCA Civ 689 [2008] I.C.R 1222.

<sup>106</sup> Paul Giliker, 'Analysing institutional liability for child sexual abuse in England and Wales and Australia: Vicarious Liability, Non-delegable duties and statutory intervention' (2018) 77 *Cambridge Law Journal* 506, p.515

*“It was only some ten years ago that clubs like Halifax and Redruth began to employ their players. We agree with the trial judge that until then no question of vicarious liability on the part of such clubs could have arisen”.*<sup>107</sup>

Recent developments of the doctrine of vicarious liability however serves to question whether the court’s statements in *Gravil* would be repeated today. Morgan has argued that the non-payment of players may be insufficient to protect clubs from claims of vicarious liability<sup>108</sup> notwithstanding the possibility that clubs do, or perhaps will in the future, seek to pay their players.<sup>109</sup> Morgan considers the “oddity” that may arise whereby clubs may pay a handful of players, with the rest remaining amateur.<sup>110</sup> In such circumstances vicarious liability following *Gravill* seems a possibility as regards the former but not the latter, despite both categories of player wearing the same kit and playing on the same team.<sup>111</sup> Whether such a position could be sustained if subject to litigation today seems questionable.

Morgan’s arguments are however not confined to criticisms of the oddity as stated above. His criticism extends further to how the development of vicarious liability may disproportionately affect sports clubs utilising the unincorporated form. Morgan argued first that post *Mohamud v WM Morrison Supermarkets PLC*<sup>112</sup> there was likely to be broader liability for on-pitch acts.<sup>113</sup> Ensuring

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<sup>107</sup> *Gravil v Carrol* (n 105), [10] (Clarke MR)

<sup>108</sup> Phillip Morgan, ‘Vicarious liability and the beautiful game – liability for professional and amateur footballers’ (2018) 38 *Legal Studies* 242, p.252

<sup>109</sup> Simon Thomas, “Welsh rugby’s dirty open secret: an investigation into the illegal payments that threaten the game’s future.” *Wales Online* (20<sup>th</sup> April 2020) <<https://www.walesonline.co.uk/sport/rugby/rugby-news/welsh-rugbys-dirty-open-secret-18120721>> Accessed 20<sup>th</sup> May 2021

<sup>110</sup> Vicarious liability and the beautiful game – liability for professional and amateur footballers (n 108)

<sup>111</sup> *Ibid*, p.252

<sup>112</sup> *Mohamud v WM Morrison Supermarkets PLC* [2016] UKSC 11

<sup>113</sup> Vicarious liability and the beautiful game – liability for professional and amateur footballers (n 108), p.250. Morgan argued that post *Mohamud* liability for off-pitch incidents such as “informal post-match discipline administered by teammates, for instance, against a player who refused to pass the ball, or who stole another’s goal, is now likely to be within the scope of vicarious liability.” The Supreme Court’s decision in *WM Morrison Supermarkets plc v Various Claimants* [2020] UKSC 12 [2020] A.C.989 and the reframing of vicarious liability to ensure the motive of the tortfeasor is taken into account, specifically, whether the individual is acting with a motive to assist the organisation or the individual themselves, may serve to reduce the likelihood of such findings as proposed by Morgan. Nevertheless, incidents of player-to-player discipline including specifically matters of post-match initiations, under the guise of team building, have been highlighted as a problematic area for rugby in particular and should therefore not be dismissed as inconsequential. Phil Goodlad, “Howe of Fife: ‘No place in rugby for extreme initiations’, says Colin Gregor” (BBC Scotland, 3<sup>rd</sup> November 2017) <<https://www.bbc.co.uk/sport/rugby-union/41856336>> Accessed 9 December 2018

players remain unremunerated non-employees may serve to protect incorporated clubs from vicarious liability however the situation as it relates to unincorporated associations appears somewhat more precarious. Morgan argues that Lord Phillips' words in *Various Claimants v The Catholic Child Welfare Society and Others* (referred to as *CCWS* from hereon in), being that there exists a proposition that an unincorporated association may be vicariously liable for its members, may be problematic.<sup>114</sup> Morgan concluded that in light of the findings of the court in *CCWS*<sup>115</sup> as regards stage one of the vicarious liability test, namely that vicarious liability could be established by the actions of a member of an unincorporated association, and the development of the close connection test by *Mohamud*, the law of vicarious liability specific to unincorporated associations was unnecessarily wide for amateur sporting organisations and too easily triggered in comparison with other forms of vicarious liability.<sup>116</sup> Morgan considered the state of affairs post *CCWS* to require a tightening of vicarious liability as it relates to amateur sports clubs operating as unincorporated associations and the actions of their members.<sup>117</sup> The development of the doctrine by way of *BXB v Watchtower*<sup>118</sup> perhaps does not constrain vicarious liability in the manner in which Morgan suggested was perhaps necessary.<sup>119</sup> With that being the case, Morgan's comments should therefore remain a cause for concern for individuals comprising management committees when utilising the unincorporated association given the contended breadth of vicarious liability. As Morgan himself states, the development of the law here alone should prompt consideration of incorporation.<sup>120</sup>

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<sup>114</sup> Morgan has questioned whether the authority relied upon does indeed provide evidence for a category of vicarious liability specific to unincorporated associations or whether Lord Phillips erred in his interpretation of the established akin to employment test. *Vicarious liability and the beautiful game – liability for professional and amateur footballers* (n 108), p.255

<sup>115</sup> *Various Claimants v Catholic Child Welfare Society* ('*CCWS*') [2012] UKSC 56 [2013] 2 AC 1

<sup>116</sup> *Vicarious liability and the beautiful game – liability for professional and amateur footballers* (n 108) pp.257-261.

<sup>117</sup> *Vicarious liability and the beautiful game – liability for professional and amateur footballers* (n 108), p.255

<sup>118</sup> *Trustees of the Barry Congregation of Jehova's Witnesses v BXB* [2021] EWCA Civ 356 [2021] 4 All E.R. 518.

<sup>119</sup> More recently *Blackpool Football Club Ltd v DSN* [2021] EWCA Civ 1352 [2021] 9 WLUK 85 favoured the club in consideration of whether a finding of vicarious liability was appropriate for the abusive actions of an argued to be affiliated scout of the organisation. The Court of Appeal finding in favour of the club however referenced heavily the independence of relationship between the scout and the club, and that the relevant tour, at which time the abuse was alleged, had little to do with the club itself.

<sup>120</sup> *Vicarious liability and the beautiful game – liability for professional and amateur footballers* (n 108), p.258

### 2.4.7 Comparative conclusions

This chapter seeks to understand how the legal context may contribute to explanations of club engagement with the incorporation policy. The focus upon case law as provided for in this first section demonstrates some of the legal consequences of incorporation relevant to AWRC. Although previous scholarship has advocated incorporation for not-for-profit entities generally on account of the law's treatment of the unincorporated form,<sup>121</sup> the above section has engaged more specifically with the types of legal risk believed relevant to the study's participant clubs. In conclusion, the analysis supports arguments that the law in its current form leaves individuals involved with clubs in a less precarious legal position post incorporation.<sup>122</sup> In terms of causative commentary, consideration of case law supported arguments that the legal context incentivises a transformation of legal form to the company limited by guarantee.

The analysis has however further given rise to sub-themes, with the first being incorporation should not be considered as a panacea capable of eliminating all risk of personal loss. For club decision-makers assuming directorships in particular, minimizing risks of personal liability requires diligence. Consistent with Fershee's arguments, the thesis agrees that limited liability should not be seen to attach automatically when utilizing incorporated forms.<sup>123</sup> A further recognition of a misalignment between legal and factual "reality", an appreciation that the benefit of incorporation from a personal liability perspective is not equal for all club members, and finally recognition that an inconsistency of legal treatment is evident as regards the law's treatment of unincorporated associations from a legal person's perspective, complete the sub-themes emerging from section 2.4. This final subtheme is developed more substantively within the following section. Section 2.5 expands upon notions of inconsistency and begins to engage with why this lack of regularity may be particularly problematic

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<sup>121</sup> See for example *Unincorporated Associations: Law and Practice* (n 12) Ashton & Reid on Clubs and Associations (n 10)

<sup>122</sup> *Vicarious liability and the beautiful game – liability for professional and amateur footballers* (n 108), p.243

<sup>123</sup> Joshua Fershee, 'The Benefits and Burdens of Limited Liability' (2021) 22 *Transactions: The Tennessee Journal of Business Law* 313, p.313

for the clubs relevant to the research. In doing so, the chapter begins to develop a more contextual appreciation of law's role and its potential effects upon decisions of incorporation.

## 2.5 Norms of inconsistency

The title of this section may be considered something of a misnomer. However, the section builds upon the preceding comparative analysis to highlight how the inconsistency of law's treatment of unincorporated associations may prove particularly problematic for the entities under consideration. Gray and James note that regarding legal obligations VSC often struggle to keep abreast of the relevant laws and latest developments to which they are bound to abide by.<sup>124</sup> As evidenced by the sub-theme of inconsistency emerging from section 2.4.3,<sup>125</sup> understanding legal obligations and potential exposure when utilising the unincorporated association is confused by the lack of intellectual consistency by which the law treats such entities from the legal persons perspective.

*“Unincorporated associations have been a problem for the law. They are analogous to partnerships, and not yet partnerships; analogous to corporations, and not yet corporations; analogous to joint tenancies, and yet not joint tenancies; analogous to mutual agencies, and yet not mutual agencies.”*<sup>126</sup>

Although the chapter has already briefly discussed issues of consistency, by widening the scope of consideration, if only superficially, a greater appreciation can be gained of that which led Tyre to his conclusions that the law's treatment of unincorporated associations can be described simply as “a mess”.<sup>127</sup> Although in depth consideration of criminal liability for unincorporated associations is

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<sup>124</sup> Andy Gray and Sarah James, “The Legal Dimension” in Leigh Robinson and Dick Palmer (eds) *Managing Voluntary Sport Organisations* (Routledge 2010), p.199

<sup>125</sup> First discussed at Section 2.4.3

<sup>126</sup> Kimberly Davison, “Cox v The Evergreen Church: Liability Issues of the Unincorporated Association, is it time for the legislature to step in” (1994) 46 *Baylor Law Review* 231, p.231

<sup>127</sup> Colin Tyre, “Persons Unknown” *Law Society of Scotland* (19 January 2009)

<<https://www.lawscot.org.uk/members/journal/issues/vol-54-issue-01/persons-unknown>> Accessed 12<sup>th</sup> February 2021.

beyond the scope of the thesis, a brief engagement is appropriate in order to draw attention as to the varied manner with which the law treats the unincorporated association. In doing so this section reinforces why a more settled legal framework as available under the incorporated alternative is perhaps preferable.

In *R v RL and JF* (“the *RL* case”) the Court of Appeal in consideration of whether a golf club itself could be liable for prosecution stated as follows;

*“there is no doubt that several statutes do make specific provision for the criminal liability of unincorporated associations. However, on inspection, these provisions vary so greatly that there is no settled policy which can be discerned from them, and we find it impossible to draw from them any general proposition that there is a form of enactment which is to be expected if an unincorporated association is to be criminally liable.”*<sup>128</sup>

The position appears therefore that from a criminal perspective, unincorporated associations may be criminally liable, and by logical development, possess legal personality in some circumstances, and in others they may not. Despite the Court of Appeal’s comments of impossibility as to general propositions, the law has not satisfactorily addressed this confusing state of affairs.<sup>129</sup> It is however not simply criminal law which suffers from such issues. Criminal law’s treatment of unincorporated associations provides for something of a microcosm of the law’s treatment of unincorporated associations more widely; in most circumstances they do not have legal personality but, at times, the case may be otherwise. For example, although unincorporated clubs can be considered generally to have no legal personality, *Worthing Rugby Football Club Trustees v IRC*<sup>130</sup> established that tax liabilities fall on the clubs themselves, rather than its individual members, managing committees, or trustees. Trade Unions have been considered to hold quasi-corporate status which, despite their use of

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<sup>128</sup> *R v RL and JF* [2008] EWCA (Crim) 1970 [2009] 1 All E.R. 786 [22]

<sup>129</sup> *Ibid*

<sup>130</sup> *Worthing Rugby Football Club Trustees v Inland Revenue Commissioners* [1987] 1 W.L.R 1057 (CA)

the unincorporated legal form, means they are capable of suing and being sued contrary to the general position at law.<sup>131</sup>

As was first introduced at section 1.2 of the thesis and subsequently developed thereafter,<sup>132</sup> the jurisprudence as it relates to law's treatment of unincorporated associations lacks an intellectual consistency which has been argued to have led to confusion even for those lawyers attempting to clarify the legal position.<sup>133</sup> If Gray and James are correct in their conclusions that clubs fail to keep abreast of relevant rules they are bound to abide by,<sup>134</sup> then the use of a legal form subject to conflicting legal treatment appears particularly unsuitable for these traditionally resource constrained organisations. By giving consideration to VSC literature specifically commenting upon how clubs engage with their legal obligations and responsibilities, a richer understanding may perhaps be provided for as regards law's role in decisions relating to AWRC choices of legal form.

Appreciating the inconsistencies in the law provides some insight as to the problems which the unincorporated form may provide for. Nevertheless, such appreciation is still grounded in analysis of formal law. Consistent with more pluralistic understandings as advocated previously, the chapter moves to consider a less formalized but perhaps no less impactful element of the legal context, the potential effects of a claims culture.

## 2.6 A more litigious environment

The case of *Sutton*,<sup>135</sup> as discussed at section 2.4.6, proved useful to the research not only as a demonstrative tool for purposes of understanding how personal liability in matters of tort may be transformed through incorporation. Rather, the case provided also for an insight into how norms and ideas arising from and about the law may contribute to explanations of club engagement with the incorporation policy. The Court of Appeal in *Sutton* gave regard to section 1 of the Compensation Act

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<sup>131</sup> Trade Union and Labour Relations (Consolidation) Act 1992. s 10

<sup>132</sup> See Section 2.4.6

<sup>133</sup> Ross Anderson, 'Unincorporated associations reform' (2009) 13 *Edinburgh Law Review* 507

<sup>134</sup> *The Legal Dimension* (n 124), p.199

<sup>135</sup> *Sutton v Syston Rugby Football club Ltd* (n 103)

2006, being a statutory instrument directed at mitigating the effects of a supposed “litigation crisis” and “compensation culture” (that is “claims culture”).<sup>136</sup> Section 1 of the 2006 Act states as follows;

*“A court considering a claim in negligence or breach of statutory duty may, in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions against a risk or otherwise), have regard to whether a requirement to take those steps might –*

*(a) Prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or*

*(b) Discourage persons from undertaking functions in connection with a desirable activity.”*

Longmore LJ’s concluding remarks in *Sutton* provided for an appreciation of the wider context within which the decision was made and the balancing act the courts are invited to undertake between individual and public interests:

*“I recognise that this will be a great disappointment to Mr. Sutton but hope that he can appreciate that this court has to look at the case from a wider perspective than just his own injury and must not be too astute to impose duties of care which would make rugby playing as a whole more subject to interference from the courts than it should be.”<sup>137</sup>*

The Compensation Act 2006 referred to in *Sutton*, as well as the later Social Action, Responsibility and Heroism Act 2015, have been interpreted as efforts to address the negative impact a claims

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<sup>136</sup> A compensation culture refers to an unnecessary tendency to look to the courts when things go wrong. A litigation crisis in turn relates to an attitudinal change which has resulted in undesirable levels of formal dispute. Kevin Williams, ‘Medical rescue, litigation and compensation culture: a legal perspective.’ (DPhil Thesis, Sheffield Hallam University 2012)

<sup>137</sup> *Sutton v Syston Rugby Football club Ltd* (n 103) [18] (Longmore LJ)

culture may be having upon the willingness of individuals and organisations to host and engage with “socially desirable” activities or to act for the benefit of society more widely.<sup>138</sup> Counsel for the defendant referee within the *Vowles* case argued a finding of liability against his Client had potential to discourage referees, executive body members, and players from participating in the sport on account of the increased risks of personal liability a finding against the defendant may provide for.<sup>139</sup> The Court of Appeal explicitly rejected this argument. One may question however whether the 2006 and the 2015 acts may have impacted upon the court’s decision should similar facts emerge today.

Criticisms of the Compensation Act 2006<sup>140</sup> by commentators such as Williams described the legislative actions to combat the effects of a claims culture as an “unnecessary solution to a non-existent problem.”<sup>141</sup> The veracity as to whether a claims culture is indeed gripping the nation has been questioned previously,<sup>142</sup> and Williams contemplates whether the feeling has simply been the product of a media-driven urban myth.<sup>143</sup> Despite questions as to the existence of a claims culture, concluding that the issue represents a non-existent problem is argued to be premature.

Accounting for the effects of a claims culture was considered to be of potential relevance for the research given acceptance of its existence is appreciated to promote organisational decision-making which is legally defensive in nature.<sup>144</sup> Bies and Tylor noted how “litigation paranoia” may provide for circumstances where legal considerations predominate competing concerns in matters of organisational decision-making.<sup>145</sup> Incorporation has been understood specifically as one such

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<sup>138</sup> Compensation Act 2006 s1. Social Action, Responsibility and Heroism Act 2015 s2

<sup>139</sup> *Vowles v Evans & ors* (n 89)

<sup>140</sup> Jonathan Hyde, “Ridiculous” heroism bill clears Lords Hurdle” *Law Gazette* (7<sup>th</sup> January 2015) <<https://www.lawgazette.co.uk/law/ridiculous-heroism-bill-clears-lords-hurdle/5045846.article>> Accessed January 6<sup>th</sup> 2020.

<sup>141</sup> Kevin Williams, “Legislating in the echo chamber?” (2005) 155 *New Law Journal* 1938. The shift in obligation from “may have regard to” under the 2006 Act to “must have regard to” under the 2015 Act, in terms of how Courts are directed to approach questions of what should constitute the standard of care, may give a strength to the 2015 legislation which Williams felt perhaps was lacking under the 2006 Act.

<sup>142</sup> Richard Lewis, Annette Morris and Ken Oliphant, “Tort Personal Injury Claims Statistics: Is there a compensation culture in the United Kingdom.” (2006) 14 *Torts Law Journal* 158

<sup>143</sup> Kevin Williams, ‘Medical rescue, litigation and compensation culture: a legal perspective.’ (DPhil Thesis, Sheffield Hallam University 2012)

<sup>144</sup> David Oswald and others, “An exploration into the implications of the “compensation culture” on construction safety” (2018) 109 *Safety science* 294, p.294

<sup>145</sup> Robert Bies and Tom Tyler, “The “litigation mentality” in organizations: a test of alternative psychological explanations” (1993) 4 *Organisation Science* 352, p.361.

example of a defensive reaction to fears of litigation.<sup>146</sup><sup>147</sup> Despite uncertainty as to the legitimacy of a claims culture existing within the UK, what appears to hold more weight is the argument that a perception is evident as to its existence.<sup>148</sup> Reference to VSC specific literature suggests perceptions as to the existence of a claims culture are prominent within such entities and their decision-making bodies. Cuskelly, Auld and Hoye<sup>149</sup> concluded that there appears a growing sense of apprehension and unease regarding the possible exposure to personal liability amongst those individuals involved in facilitating the continuation of amateur clubs. The authors further stated that as a response to perceived higher levels of litigation VSC had attempted to implement more administrative and complex organisational structures.<sup>150</sup> Concerns of litigation have further been viewed as an “obstacle to becoming more involved” for volunteers,<sup>151</sup> and arguments have been put forward within the UK, as elsewhere,<sup>152</sup> that the context of a more litigious environment requires appropriate attention, given its potential to disincentivize volunteer participation. Should anxieties of personal liability indeed be the force which the likes of Cuskelly, Auld and Hoye suggest,<sup>153</sup> then legally entrenched ideas of a claims culture may exacerbate concerns of personal liability. In turn, this may provide for a further instance whereby the legal context may encourage incorporation on account of the limited liability the company form affords. Whilst Cuskelly, Auld and Hoye themselves stop short of specific reference to incorporation, McGregor-Lowndes and Hannah by contrast have suggested specifically that the fear of

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<sup>146</sup> Andrew Passey & Mark Lyons, "Regulating Third Sector Organisations; The views of Incorporated Associations in NSW" (2009) 15 *Third Sector Review* 85

<sup>147</sup> Medical rescue, litigation and compensation culture: a legal perspective (n 143)

<sup>148</sup> Tort Personal Injury Claims Statistics: Is there a compensation culture in the United Kingdom (n 142). Lord David Young, 'Common Sense Common Safety' (2010)

<<https://www.gov.uk/government/publications/common-sense-common-safety-a-report-by-lord-young-of-graffham>> accessed 19<sup>th</sup> November 2019. Richard Ford, 'Time to end blame culture, say Grayling' *The Times* (London, 21<sup>st</sup> July 2014) < [www.thetimes.co.uk/article/time-to-end-blame-culture-says-grayling-kbtqlwjpp8n](http://www.thetimes.co.uk/article/time-to-end-blame-culture-says-grayling-kbtqlwjpp8n)> Accessed 12<sup>th</sup> March 2019.

<sup>149</sup> Graham Cuskelly, Russell Hoye and Chris Auld. *Working with Volunteers in Sport: Theory and Practice*. (Routledge 2006)

<sup>150</sup> Ibid

<sup>151</sup> John Mahoney, "Volunteer Protection Act: What does it mean for you?" (1998) 16 *Nonprofit World* 36, p.36

<sup>152</sup> Melanie Oppenheimer "Rights and protection of volunteer workers: some preliminary considerations" (2001) 6 *Australian Journal on Volunteering* 139

<sup>153</sup> *Working with Volunteers in Sport: Theory and Practice* (n 148)

liability represents a specific driver for not-for-profit incorporation, at least in an Australian and non-sport specific context.<sup>154</sup>

With the law confusing as to its treatment of unincorporated associations and a perception of an increasing claims culture perhaps making decisions to mitigate legal risk more attractive, the legal context considered to this point provides for an understanding of why clubs may decide to incorporate. Given the numerous issues regarding the law's treatment of unincorporated associations, this study is, as was referred to in chapter 1, unsurprisingly not the first commentary highlighting the problems connected with the use of the unincorporated form. Despite wide recognition as to the flaws of the unincorporated association, incorporation has not always been seen as a fitting alternative. Challenging conclusions that the company limited by guarantee represents a fitting answer to the unincorporated association "problem", the Scottish Law Commission concluded that a statutory overhaul as regards the law's treatment of unincorporated associations was necessary. The question therefore for the research on consideration of the commission's report was why not incorporation by way of the company limited by guarantee, and what was it which led the Scottish Law Commission to advocate a solution other than incorporation. The chapter thus turns to the Commission's report in an attempt to understand how the legal context may perhaps provide a different perspective of incorporation to that outlined within the chapter to this point.

## 2.7 Limited liability, benefits and burdens

To meet the objective of mitigating the risk of personal loss for individuals involved in amateur sport, transitioning from the unincorporated association to the company limited by guarantee represents but one option. Other legal forms conferring limited liability are available as discussed earlier in the thesis but are widely regarded as less suitable than the company limited by guarantee owing to matters of comparatively greater regulation.<sup>155</sup> Away from discussions of legal form, insurance could perceivably provide a practical alternative to the protection conferred by limited liability. Sustaining

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<sup>154</sup> Unincorporated associations as entities: A matter of balance between regulation and facilitation? (n 6), p.202

<sup>155</sup> Section 2.3.

adequate insurance is an important consideration for any organisation and the AWRC considered within this research are no different in this regard.

The availability of insurance is often referred to as a means of addressing risks of personal liability connected to the use of the unincorporated association. There remains however concerns as to the ability of insurance to provide for the desired and necessary coverage. Morgan noted how many activities conducted by voluntary organisations do not require mandatory insurance.<sup>156</sup> Any additional requirement for mandatory insurance in any event has a cost consequence that may exclude communities and individuals of lesser means from contributing to civil society.<sup>157</sup> Morgan further considers the issue that there are simply risks that sports clubs may not be able to insure against such as those relating to intentional torts and particularly the deliberate inflicting of injury.<sup>158</sup>

Further issues relate to clubs ensuring they possess the appropriate types of insurance. As England Golf noted, it is common for amateur clubs not to have employment law insurance, which, giving the findings of section 2.4.4, may be particularly problematic.<sup>159</sup> This is not to say insurance has no role to play. However, if it is accepted that insurance premiums are costly for unincorporated associations<sup>160</sup> and compliance with terms of coverage complex,<sup>161</sup> whether VSC of the type considered here are in a position to purchase, and importantly thereafter abide by the terms of such insurance policies to enable effective coverage, may be questionable. The Scottish Law Commission specifically considered the appropriateness of insurance for mitigating the personal liability risks connected with the use of the unincorporated association. Their first finding accepted insurance was available to unincorporated associations, albeit under the fictitious premise that such associations

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<sup>156</sup> Phillip Morgan, “Judgment-Proofing Voluntary Sector Organisations from Liability in Tort” (2020) 6 Canadian Journal of Comparative and Contemporary Law 220, p.237

<sup>157</sup> Ibid, p.237

<sup>158</sup> Vicarious liability and the beautiful game – liability for professional and amateur footballers (n 108), p.244

<sup>159</sup> England Golf, ‘How to improve your governance: Club incorporation guide’ (EnglandGolf.org, Undated) <<https://www.englandgolf.org/governance/club-governance/how-to-improve-your-governance/>> Accessed 28<sup>th</sup> March 2021.

<sup>160</sup> Unincorporated associations as entities: A matter of balance between regulation and facilitation? (n 6), p.220. Working with Volunteers in Sport: Theory and Practice (n 148), p. 55. Judgment-Proofing Voluntary Sector Organisations from Liability in Tort (n 155), p.237

<sup>161</sup> Working with Volunteers in Sport: Theory and Practice (n 148), p.61

existed as entities separated in law from their constituent members.<sup>162</sup> The commission's discussion paper however referenced problems with the costs of insurance, the withdrawal of cover at short notice and increasing numbers of exclusions as barriers for unincorporated associations to purchase insurance considered as fit for purpose.<sup>163</sup>

Ultimately the commission chose not to advocate insurance sector reform as a solution to the difficulties of liability faced by unincorporated association members. Neither however, as mentioned, did the commission advocate use of the company limited by guarantee. Those questions of why the commission advocated statutory reform rather than a promotion of the existing company limited by guarantee thus proved of interest to the thesis given the potential of the corporate form to seemingly mitigate several of the problems connected to the use of the unincorporated association.<sup>164</sup>

The Scottish Law Commission quite pointedly concluded that the UK had been "left behind" in reforming the law as it relates to unincorporated associations.<sup>165</sup> In section 2 of the report, the commission considered problems arising from utilizing a form lacking a distinct personality and ultimately concluded that to leave the law in its present state would be unsatisfactory.<sup>166</sup> The commission considered several of those problems regularly referred to in discussions as to the detriments of the unincorporated form such as liabilities under contract but also referenced issues relating to a lack of understanding as to what the use of the unincorporated form meant for individual members. Acknowledging these issues, the commission's report was primarily directed at finding

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<sup>162</sup> Unincorporated Associations (n 22), p.80

<sup>163</sup> Discussion Paper on Unincorporated Associations (n 14) See also Unincorporated Associations: Law and Practice (n 12)

<sup>164</sup> Despite Scotland representing a separate legal jurisdiction to England and Wales, the Scottish Law Commission's report references the UK given the ability to action statutory reform as it relates to the law's treatment of unincorporated associations and legal personality is the reserve of the UK Parliament. Given the similarity of treatment under the respective jurisdictions as a consequence of this point, those findings of the Scottish Law Commission are instructive to the position as it relates to England and Wales.

<sup>165</sup> Discussion Paper on Unincorporated Associations (n 14), para 3.10. It should not however be concluded that the law pertaining to unincorporated associations elsewhere has been settled for decades. In 2009, the American Bar Association described the legal position of unincorporated associations as a "hodge podge of common law principles and statutes giving rise to legal problems." American Bar Association, 'Revised Uniform Unincorporated Nonprofit Association Act' (National Conference of Commissioners on Uniform State Laws 2008). McGregor-Lowndes and Hannah have further described the problematic nature of Australian law pertaining to small non-profit organisations utilizing the unincorporated legal structure. Unincorporated associations as entities: A matter of balance between regulation and facilitation? (n 6)

<sup>166</sup> Unincorporated Associations (n 22), p.13

solutions to legal risks of personal liability affecting those smaller unincorporated entities perhaps struggling with financial and bureaucratic responsibilities.<sup>167</sup> Beginning with an evaluation of the existing status quo, the commission cited a lack of congruence between public expectations and the potential personal liability arising from involvement with an unincorporated association as a justification for reform. In this sense, the commission can be seen to be advocating legal development on the basis of what “law is meant to look like”, at least from the perspective of those individuals belonging to such unincorporated associations.<sup>168</sup> The disparity between member understandings of potential liability and the position at law was considered as particularly disconcerting given the commission’s engagement with interested parties supported third sector commentators concerns that perceptions of a compensation culture were prevalent.<sup>169</sup>

The Scottish Law Commission concluded their report with support for an automatic conferment of legal personality upon unincorporated associations.<sup>170</sup> As a means of addressing the problems presented by the use of the unincorporated association, the commission proposed a solution based on the American “RUUNAA” model,<sup>171</sup> in which legal personality is automatically conferred upon not-for-profit unincorporated entities possessing certain limited organisational features. The effect of such a proposed legislative development was to be the creation of a new type of legal form being a Scottish Association with Legal Personality or SALP in short.

Seemingly rejected by the commission, incorporation by way of company limited by guarantee appears to provide for many of the benefits drawn from the automatic conferment of legal personality without the complexities associated with creating a new legal form or new type of existing legal form. Limited liability, more coherent legal treatment, and greater alignment between public perceptions and legal reality all appear possible through use of the company limited by guarantee. As Fershlee

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<sup>167</sup> Ibid, p.45

<sup>168</sup> New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making (n 4), p.83

<sup>169</sup> Third Sector, ‘Opinion: Hot issue – Are legal concerns affecting volunteer numbers?’ (Third Sector 2005) <<https://www.thirdsector.co.uk/opinion-hot-issue-legal-concerns-affecting-volunteer-numbers/article/620049>> Accessed 1<sup>st</sup> June 2019

<sup>170</sup> Unincorporated Associations (n 22), p.81

<sup>171</sup> Revised Uniform Unincorporated Nonprofit Association Act (“RUUNAA”) 2008.

wrote however, though it is usually wise and justifiable to utilise a limited liability form, there is a tendency to focus on the benefits without due regard being provided to corresponding burdens incorporated forms provide for.<sup>172</sup> Though not engaging with the matter directly, reference was made by the commission to the company limited by guarantee through discussions of the available options at the time. All options were described by the commission as “unduly burdensome.”<sup>173</sup>

The commission expanded upon such commentary in deliberation of the problems associated with an opt in model as regards conferment of legal personality upon unincorporated associations;

*“We observed that the disadvantage of a system of voluntary registration in order to obtain legal personality is that, like incorporation, it subjects associations to an administrative burden which they can presently avoid by deciding not to incorporate.”*<sup>174</sup>

As well as potentially increasing administrative burdens upon organisations, which have been described as already struggling to manage legal obligations, the commission’s discussion paper preceding the law commission’s report makes reference to incorporation not necessarily being suitable for all clubs and associations.<sup>175</sup> The rationale behind this conclusion was that incorporation subjected not-for-profit entities to a regime of formalities not exclusively developed for their regulation and needs.<sup>176</sup>

If the formalities of utilizing the company limited by guarantee form make its use unsuitable for smaller not-for-profit entities, it was considered appropriate to engage with what those features may be. The recent Criminal Finances Act 2017 seemingly obliges incorporated entities to ensure reasonable procedures are in place to prevent facilitation of tax evasion. It would seem however such

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<sup>172</sup> The Benefits and Burdens of Limited Liability (n 123), p.313

<sup>173</sup> Unincorporated Associations (n 22), para 3.1

<sup>174</sup> Ibid, para 3.20

<sup>175</sup> Discussion Paper on Unincorporated Associations (n 14), para 2.28

<sup>176</sup> Unincorporated Associations (n 22), para 2.28

obligations do not extend to those entities retaining the use of the unincorporated alternative.<sup>177</sup> Given the recency of this legislative development the act has not been considered for its perhaps disincentivizing effect upon incorporation. The WRU have however recognized other increased administrative disadvantages of operating as a company limited by guarantee. Obligations to file accounts, provide annual returns and ensure accurate directors' details are maintained with companies house constitute those responsibilities thought to discourage incorporation.<sup>178</sup> Passey and Lyons argued that filing accounts represented the minimum requirement for incorporation yet engagement with how such responsibilities have been interpreted by not-for-profit entities suggest such obligations indeed may serve to disincentivize incorporation.<sup>179</sup> Woodward observed that only 39 percent of respondent not-for-profit companies felt disclosing public accounts through filing requirements was appropriate and that smaller companies in particular resisted such measures.<sup>180</sup> McGregor-Lowndes and Hannah further referenced how small not-for-profit organisations perceived the production of formal accounts and maintenance of registers as “regressive compliance costs.”<sup>181</sup>

Such responsibilities may not only be discouraging from a resource perspective but for those individuals expected to ensure compliance, the consequences of failing to do so may also serve to disincentivize the use of the company form. A failure to file company accounts or annual returns constitutes a criminal offence which may be punishable by a fine of up to £5,000.00 and which directors could be held personally responsible for.<sup>182</sup> An inability to insure against such regulatory fines may further prove discouraging for those club decision-makers seeking a transformation of legal form to avoid risks of personal loss.<sup>183</sup>

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<sup>177</sup> Criminal Finances Act 2017

<sup>178</sup> Welsh Rugby Union ‘Club Structure Incorporation’ (Presentation, Welsh Rugby Union Undated) <<https://d2cx26qpfwuhvu.cloudfront.net/wru/wp-content/uploads/2018/11/01124859/ClubStructureIncorporation.pdf>>

<sup>179</sup> Regulating Third Sector Organisations; The views of Incorporated Associations in NSW (n 145)

<sup>180</sup> Susan Woodward “Not-for-Profit Motivation in a For-Profit Company Law Regime: National Baseline Data.” (2003) 1 International Journal of Civil Society Law 37, p.66

<sup>181</sup> Unincorporated associations as entities: A matter of balance between regulation and facilitation? (n 6), p.202

<sup>182</sup> The Legal Aid, Sentencing and Punishment of Offenders Act 2012.

<sup>183</sup> England Golf, ‘How to improve your governance: Club incorporation guide’ (EnglandGolf.org, Undated) <<https://www.englandgolf.org/governance/club-governance/how-to-improve-your-governance/>> Accessed 28<sup>th</sup> March 2021.

The conclusions of the WRU that reporting requirements may constitute a disadvantage to incorporation thus appear corroborated, at least in part, by reference to the general not-for-profit literature.<sup>184</sup> The union's identification of compliance with directors' duties constituting a further disadvantage may also be legitimized through reference to not-for-profit empirical engagements.<sup>185</sup> Referring once more to Cuskelly, Auld and Hoye's analysis of VSC, the authors noted that many volunteer directors of incorporated entities are unable to understand the legal implications of their assumption of directorships and the potential exposure to litigation on a personal level they assume for a failure to properly carry out their responsibilities as directors.<sup>186</sup> This perhaps is unsurprising given the assumption of a directorship has been recognised generally as undertaking an onerous responsibility at law.<sup>187</sup> Given the perhaps resource constrained nature of volunteer contributors, the appropriateness of the company form may, as identified by the WRU, be undermined by the diligence a directorship requires.

Those general duties expected of directors in the performance of their role are outlined between sections 171 and 177 of the Companies Act 2006.

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<sup>184</sup> Andrew Twaits, providing a further example noted that "small organisations will simply not have sufficient resources to enable officers to contract in specialist accounting, legal, and other advice to enable them to properly discharge their statutory and fiduciary obligations to the organisation." Andrew Twaits, 'The Duties of Officers and Employees in Non-Profit Organisations' (1998) 16 Bond Law Review 313

<sup>185</sup> Regulating Third Sector Organisations; The views of Incorporated Associations in NSW (n 145)

<sup>186</sup> Working with Volunteers in Sport: Theory and Practice (n 148), p.65

<sup>187</sup> Deborah Healey, 'Governance in Sport: Outside the Box?' (2012) 23 The Economic and Labour Relations Review 39

*Table 2.2: General directors duties*

SECTION 171	DUTY TO ACT WITHIN POWERS
SECTION 172	DUTY TO PROMOTE THE SUCCESS OF THE COMPANY
SECTION 173	DUTY TO EXERCISE INDEPENDENT JUDGEMENT
SECTION 174	DUTY TO EXERCISE REASONABLE CARE, SKILL & DILLIGENCE
SECTION 175	DUTY TO AVOID CONFLICTS OF INTEREST
SECTION 176	DUTY NOT TO ACCEPT BENEFITS FROM THIRD PARTIES
SECTION 177	DUTY TO DECLARE INTEREST IN PROPOSED TRANSACTION OR ARRANGEMENT

The above represents a codification of the previous common law duties expected of company directors. With that being the case, the consequences of breach follows the pre Companies Act 2006 position at common law. Remedy for a breach of the duty to exercise reasonable care, skill and diligence remains damages. The breaches of the other duties however, and consistent with the pre-act position, remain an injunction, setting aside of a transaction, restitution and account of profits, restoration of company property and equitable compensation. As can be seen, a breach of any of these duties may therefore provide for a circumstance in which a company is entitled to seek financial compensation from a director considered to have fallen below what the law may consider an appropriate standard.

This risk of personal liability post incorporation may serve as an example of a disincentivizing force given the prescriptive, if not onerous nature of the duties. Coupled with the potential for limited understanding both of what a directorship requires of individuals and those consequences of failing to reach such standards,<sup>188</sup> the legal context considerate of this point provides for a more balanced judgement as to the benefits of incorporation.

The initial section of the chapter outlined how for those willing to assume decision-maker roles within AWRC, the ultimate objective of incorporation, being the minimizing of those occasions of personal

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<sup>188</sup> Section 2.7

loss, requires a diligence and a maintenance of appropriate behaviour. Consideration of directors' duties and the potential for personal loss emerging from any breach further provides insight into how the legal context may disincentivize the use of the company limited by guarantee form on account of the continuation of potential personal liability for club decision-makers. Critical to understanding why such responsibilities may be particularly problematic for AWRC however seemingly requires an appreciation of the capacities of clubs to manage organisational changes on account of incorporation, such as those associated with the assumption of directorships. To facilitate such progression the thesis moves to consider VSC specific literature engaging with matters of strategic decision-making and management of organisational change.

## 2.8. Conclusions

Chapter 2 set out to explore how the legal context may contribute to understandings of club behaviour as regards engagement with the incorporation policy. Section 2.4 attempted to develop existing legal arguments as to the unsuitability of the unincorporated association in a manner which spoke more directly to the type of organisation considered by the research. The comparative exercise did however provide for conclusions that risks of personal liability, at least for club decision-makers, should be understood as reduced and modified rather than extinguished.

The comparative exercise alongside section 2.5 supported further criticisms of the law's treatment of unincorporated associations as intellectually incoherent.<sup>189</sup> Furthermore should perceptions as to the existence of a claims culture be substantiated, as introduced at section 2.6, then the problems of AWRC utilising a legal form built upon personal liability may be even more acute. The combination of these factors were considered to incentivize incorporation.

On consideration of the Scottish Law Commission's report however it became apparent that caution should be exercised before arriving at conclusions that legal arguments alone may drive AWRC

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<sup>189</sup> Discussion Paper on Unincorporated Associations (n 14), p.20

decision-making regarding matters of legal form.<sup>190</sup> By appreciating the continuing nature of personal liability alongside increased regulatory responsibilities for club decision-makers, one may better appreciate those forces which may serve to dilute the benefits of incorporation.

Chapter 2 has attempted to develop legal commentary pertaining to incorporation in a manner which focuses upon those issues deemed particularly relevant to sports clubs and AWRC in particular. The chapter has provided for a balanced consideration of incorporation sensitive both to its advantages and detriments. Consideration of legal arguments exclusively is understood by the research however to offer a narrow perspective as to those potential forces contributing to AWRC engagement with the incorporation policy.

In an attempt to mitigate what was considered in the introduction to be a limitation of the relevant literature, chapter 3 therefore progresses to consider the viability of those theoretical perspectives applied in explanation of VSC behaviour generally, and their capacity to enrich understandings of AWRC choices of legal form.

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<sup>190</sup> See Chapter 2.



## Chapter 3: Literature review

The introduction to Chapter 2 referenced Black's argument that law beyond detailed doctrinal provisions may prove impactful. As first considered within the introductory chapter however Black further appreciated that law may not be determinative at all. Black contended that drawing conclusions based solely upon the legal paradigm may neglect the reality of organisational life.<sup>1</sup> Interpreting the law as one set of norms competing with others that derive from alternative systems, encourages a flexible understanding of decision-making sensitive to, but not constrained by, the legal paradigm. In order to broaden understandings of those legal and non-legal forces which may affect organisational decision-making in the research circumstance, chapter 3 moves on from potential legal centric explanations of club behaviour to consider ideas, theories, and norms from relevant literature concerning organisational decision-making and voluntary sports clubs.

Though existing literature is not revered within critical realism in a manner akin to other philosophical paradigms, it nevertheless can prove a useful tool for research development. Literature reviews as a consequence are recognised as at the least capable of providing some benefit.<sup>2</sup> McAvoy and Butler observed that within applied critical realist research the use of theory is a contentious and often divisive issue.<sup>3</sup> Nevertheless, the authors do suggest that in specific circumstances an understanding of prior theory may prove useful.<sup>4</sup> Utilising literature to identify potential theories and causal forces which can then be put "on trial"<sup>5</sup> through empirical exploration, is recognised as particularly worthwhile where there is uncertainty as to what will be observed.<sup>6</sup> Given the under researched area

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<sup>1</sup> Julia Black, "New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making." (1997) 19 *Law & Policy* 51, p.51

<sup>2</sup> Joe O'Mahoney, "Critical Realism as an Empirical Project" in Paul Edwards, Joe O'Mahoney and Steve Vincent (eds), *Studying Organisations Using Critical Realism: A Practical Guide*. (Oxford University Press 2014), p.14

<sup>3</sup> John McAvoy and Tom Butler, 'A Critical Realist Method for Applied Business Research' (2018) 17 *Journal of Critical Realism* 160, p.163

<sup>4</sup> *Ibid*, p.163. McAvoy and Butler make specific reference to the benefit of engaging with prior theory for PhD students and early career researchers.

<sup>5</sup> *Ibid*, p.164

<sup>6</sup> *Ibid*, p.163

of enquiry, the use of prior theory to build possible causative explanations was as a consequence deemed appropriate.<sup>7</sup>

Critical realism, perhaps owing to the fact that methodological choices are taken to depend on the nature of the object under study,<sup>8</sup> need not necessarily begin with rigid ideas of appropriate research questions and designs, but may progress towards identifying suitable choices on account of relevant prior theory.<sup>9</sup> Consistent with the traditions of critical realism however it is simultaneously appreciated that prior theory is limited. Primarily this is owing to the assumption amongst critical realists that extant theory may not provide a credible answer to the questions posed by the research. The limitations a critical realist researcher must acknowledge when utilising prior theory are drawn from the following principles:

- a. Theories may be fallible.
- b. Mechanisms may not be actualised.
- c. Context may not permit study.

Though A is a simple concept, critical realism's commitment to the recognition of interplay amongst causal powers means that in certain situations causal mechanisms may cancel out one another's effects. Linked to this is the role of context. Context, as discussed, is noted as being capable of triggering the actualisation of causal mechanisms.<sup>10</sup> This is considered to be dependent upon whether certain causal mechanisms negate the influence of others, or whether specific external contextual forces impact upon the manner in which causal mechanisms become actualised. Remaining mindful

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<sup>7</sup> Ibid

<sup>8</sup> Andrew Sayer, *Realism and Social Science* (Sage 2000), p.19

<sup>9</sup> Alison Edgley, Theodore Stickley, Stephen Timmons and Andy Meal, "Critical realist review: exploring the real, beyond the empirical" (2016) 40 *Journal of Further and Higher Education* 316

<sup>10</sup> See Section 1.3.

as to the role of context, including, but not limited to the legal context, was thus considered an important analytical step in the interpretation of data in light of prior theory.<sup>11</sup>

### 3.1 A critical realist review

A critical realist review attempts to build knowledge from potential theories of benefit by synthesising diverse yet commensurable studies.<sup>12</sup> A review of this kind encourages a consideration of varied types of evidence, often outside the strict parameters of individual disciplines, as a means of maintaining an openness to novel explanations of potentially multifaceted phenomena.<sup>13</sup> Given critical realist reviews have been noted as particularly adept at understanding *why* a particular state of affairs are as they are,<sup>14</sup> the critical realist review appeared well placed to assist in the project's development. However, the critical realist review's preference for innovation and particularly variety comes at the cost of the systematicity of more structured approaches. As Edgley et al note "the pathway (of such a review) is created as a direct result of the researcher's critical choices, while the destination similarly cannot be known until it is reached."<sup>15</sup> An element of subjectivity as to those areas of interest which appear pertinent to the researcher provides for a circumstance in which any review should be appreciated as interpretive and not a definitive endpoint as regards assessment of all relevant existing works.<sup>16</sup> Owing to this more subjective quality, questions of how to organise material within a critical realist literature review in a logical fashion is appreciated as one of the more testing challenges of a critical realist project.<sup>17</sup> As a means of attempting to provide a measure of structure to the review, the thesis reverts to McAvooy and Butler's guidance. These authors advocate engagement with the literature in a

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<sup>11</sup> Critical Realism as an Empirical Project (n 2), p.14

<sup>12</sup> Chitu Okoli, "Critical Realist Considerations for Literature Reviews" (2015) SSRN <<https://ssrn.com/abstract=2700524>> accessed 13 August 2018

<sup>13</sup> Critical realist review: exploring the real, beyond the empirical (n 9), p.316. Pawson had previously argued that a critical review attempts to move away from chasing the primary research that bears the title of a particular subject. Ray Pawson, *Evidence-based policy a realist perspective* (Sage Publications 2006), p.78

<sup>14</sup> Critical realist review: exploring the real, beyond the empirical (n 9), p.326

<sup>15</sup> Ibid, p.326

<sup>16</sup> Maria Grant and Andrew Booth, 'A typology of reviews: an analysis of 14 review types and associated methodologies' (2009) 26 Health Information Library Journal 91, p.97

<sup>17</sup> Critical realist review: exploring the real, beyond the empirical (n 9), p.317

manner which serves the objective of identifying plausible mechanisms and even, if possible, the development of a *potential* causal framework.<sup>18</sup> It remains incumbent on the researcher to engage with the relevant literature to identify and discuss theories of interest, understand how relevant works may contribute to research design and most crucially discern plausible mechanisms and those events which may indicate their activation. Nevertheless, such an approach provides for a destination from which to work towards. Engagement with the literature in this way provides an opportunity to mitigate what McAvoy and Butler describe as researchers “fumbling in the dark” as projects progress.

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Over the remainder of this chapter, the review will attempt to consider existing theories to assist in the project’s development and synthesise plausible mechanisms by way of engagement with relevant if yet diverse literature. To assist in identification of pertinent literature, the chapter initially attempts to classify the type of decision incorporation represents. Section 3.4 thereafter turns to consider those theories and associated models which may provide a “head start” in efforts at understanding causation.<sup>20</sup>

### 3.2 Voluntary sports clubs

It was appreciated that literature dedicated to AWRC decision-making is, unsurprisingly, extremely limited. Research has sought to engage with the professional element of the game within Wales<sup>21</sup> however direct reference to research engaging with the amateur sector is notable only for its absence. With a paucity of specific literature, the review moved to consider what was deemed the next most appropriate field for consideration. Primary research and secondary sources engaging with voluntary sports clubs/organisations, or community sport organisations, as they are more commonly referred to

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<sup>18</sup> A Critical Realist Method for Applied Business Research (n 3), p.165

<sup>19</sup> Ibid, p.163

<sup>20</sup> Critical Realism as an Empirical Project (n 2), p.13

<sup>21</sup> Clive Norling “An investigation into the strategy-creation process in small nonprofit organisations (senior Welsh Rugby Clubs) 1990-2000.” (DPhil thesis, Cardiff University 2013)

in North America,<sup>22</sup> were ultimately determined as an appropriate starting point.<sup>23</sup> Literature relating to VSC was considered appropriate owing to the fact such works have included reference to amateur rugby clubs specifically.<sup>24</sup>

Voluntary sports clubs have been defined as “non-profit, voluntary organisations that provide many of the recreational and competitive sport opportunities we enjoy in our communities.”<sup>25</sup> The non-profit and voluntary nature of these entities provides for a point of difference between firstly, the for-profit sector, and secondly, non-profit organisations reliant upon paid staff.<sup>26</sup> The marked differences are important as numerous scholars have noted the divergence of attitudes,<sup>27</sup> structures,<sup>28</sup> and motivations<sup>29</sup> between the respective categories of organisations. Despite a somewhat traditionally neglected area of academic enquiry, the last 30 years have seen a significant development in the attention afforded to VSC, and especially within a UK context. Research has engaged with many different aspects of Voluntary Sport Club existence with empirical investigations into policy

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<sup>22</sup> For the purposes of this thesis, the term Voluntary Sports Clubs or “VSC” as abbreviated is utilised.

<sup>23</sup> It has been accepted that these terms are synonymous and may be used interchangeably. Alison Doherty and Katie Misener, “Community Sport Networks” in Matthew Nicholson and Russell Hoye (eds) *Sport and Social Capital* (1<sup>st</sup> edn Routledge 2008)

<sup>24</sup> See for example Spencer Harris, Kate Mori & Mike Collins “Great Expectations: Voluntary Sports Clubs and Their Role in Delivering National Policy for English Sport” (2009) 20 *Voluntas* 405. Graham Cuskelly, Russell Hoye & Chris Auld. *Working with Volunteers in Sport: Theory and Practice*. (Routledge 2006) Andrew Adams, “Between modernization and mutual aid: the changing perceptions of voluntary sports clubs in England” (2011) 3 *International journal of Sport Policy and Politics* 23. Celia Brackenridge, “. . . so what? Attitudes of the voluntary sector towards child protection in sports clubs” (2002) 7 *Managing Leisure* 103

<sup>25</sup> Alison Doherty & Katie Misener, ‘Community Sport Networks’ in Matthew Nicholson and Russell Hoye (eds) *Sport and Social Capital* (1<sup>st</sup> edn, Routledge 2008), p.114.

<sup>26</sup> Voluntary sport clubs may employ paid workers or managers such as bar stewards or coaches but as stated in the introduction to be classed as voluntary they need to rely significantly upon volunteers as part of their workforce and/or leadership. Phillip Morgan, “Judgment-Proofing Voluntary Sector Organisations from Liability in Tort” (2020) 6 *Canadian Journal of Comparative and Contemporary Law* 220, p.223

<sup>27</sup> Great Expectations: Voluntary Sports Clubs and Their Role in Delivering National Policy for English Sport (n 24)

<sup>28</sup> Ineke Deelen, Dick Ettema and Carlijn B.M Kamphuis, “Sports participation in sport clubs, gyms or public spaces: How users of different sports setting differ in their motivations, goal, and sports frequency” [2018] *PLoS ONE* 13(10) 1

<sup>29</sup> Geoff Nichols and others, “*Motivations of Sport Volunteers in England: A review for Sport England*” (2016)

implementation,<sup>30</sup> autonomy,<sup>31</sup> board structure<sup>32</sup> and relationships with national sporting bodies<sup>33</sup> representing works of particular interest to the thesis.

### 3.2.1 Policy implementation

Chapter 2 suggested that although legal arguments may encourage incorporation it is perhaps organisational capacity/willingness, or a lack thereof, which may account for those reasons why clubs resist incorporation. To effectively engage with such potential forces, it was considered necessary to focus upon the club as a receiving entity. Such focus led for an emphasis to be placed on bottom-up understandings of organisational behaviour in response to externally devised policy. Of those varied matters considered by VSC scholars, it was first VSC's amenability to externally crafted policy which was considered relevant. Often such research has investigated the relationships between political bodies and clubs, with the latter often playing the role of vehicles to the achievement of political objectives.<sup>34</sup>

Understanding organisational change in the context of delivering political objectives became the focus of several scholars using a variety of theoretical concepts.<sup>35</sup> A response to top-down approaches

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<sup>30</sup> Eivind Skille, "Understanding sport clubs as sport policy implementers" (2008) 43 *International review for the sociology of sport* 181

<sup>31</sup> Heinz-Dieter Horch, "Does Government Financing have a Detrimental Effect on the Autonomy of Voluntary Associations? Evidence from German Sports Clubs" (1994) 29 *International Review for the Sociology of Sport* 269

<sup>32</sup> Russell Hoye, "Leadership within Australian Voluntary Sport Organisation Boards" (2006) 16 *NonProfit Management & Leadership* 297

<sup>33</sup> *Great Expectations: Voluntary Sports Clubs and Their Role in Delivering National Policy for English Sport* (n 24)

<sup>34</sup> Andrew Adams, "Between modernization and mutual aid: the changing perceptions of voluntary sports clubs in England" (2011) *International Journal of Sport Policy and Politics* 3 p.33. Alex Donaldson, Susan Leggett & Caroline Finch, "Sports policy development and implementation in context: Researching and understanding the perceptions of community end-users" (2011) 47 *International Review for the Sociology of Sport* 743. Josef Fahlen, Inger Eliasson & Kim Wickman "Resisting self-regulation: an analysis of sport policy programme making and implementation in Sweden" (2015) 7 *International journal of sport policy and politics* 391.

<sup>35</sup> *Between modernization and mutual aid: the changing perceptions of voluntary sports clubs in England* (n 34), p.33. Josef Fahlen, Inger Eliasson and Kim Wickman "Resisting self-regulation: an analysis of sport policy programme making and implementation in Sweden" (2015) 7 *International Journal of Sport Policy and Politics* 391. Richard Garrett, "The response of voluntary sports clubs to Sport England's Lottery funding: cases of compliance, change and resistance" (2004) 9 *Managing Leisure* 13. *Great Expectations: Voluntary Sports Clubs and Their Role in Delivering National Policy for English Sport* (n 24). Geoff Nichols and others, 'The

promoting organisational rationality and homogenisation, bottom-up analysis provides for a more agential focused understanding of organisational behaviour. Skille's use of translation theory, for example, in which public policy was actively imported and fused with existing sport club values, provided a contrast with more deterministic accounts relying upon diffusion and seeking explanations in organisational homogeneity.<sup>36</sup> Skille's work was extended thereafter by Stenling who sought to amalgamate translation theory with Glynn's organisational identity concept.<sup>37</sup> In doing so, Stenling developed the notion that a policy has one set of values and objectives, the recipient clubs contain their own values and objectives, and policy evaluation is best facilitated by appreciating a blending of the two is often evident.<sup>38</sup> More recently still, Skille and Stenling together have sought to move bottom-up perspectives of policy implementation outside of considerations specific to the club as implementing entities and to the effects of local communities upon policy implementation.<sup>39</sup>

Where perhaps the incorporation policy differs from the majority of existing research however is its voluntary nature and the organisational change the transformation of legal form represents. In regard to the former, Clenk et al noted how "no studies have explored how VSCs deal with external input emerging from advisory programs in which clubs participate voluntarily."<sup>40</sup> Clenk et al's observations that club engagements with advisory input were becoming more frequent were utilised to justify calls

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relationship between types of sports club and English government policy to grow participation' (2012) 4 International journal of sport policy and politics 187.

<sup>36</sup> Eivind Skille, "Understanding sport clubs as sport policy implementers" (2008) 43 International review for the sociology of sport 181

<sup>37</sup> Mary Ann Glynn, 'Beyond constraint: How institutions enable identities' in Royston Greenwood and others (eds) *The Sage Handbook of Organisational Institutionalism* (Sage 2008).

<sup>38</sup> Cecelia Stenling and Josef Fahlen, 'Same Same, but different? Exploring the organisational identities of Swedish voluntary sports: possible implications of sports clubs' self-identification for their role as implements of policy objectives' (2014) 51 International Review for the Sociology of Sport 867

<sup>39</sup> Eivind Skille and Cecilia Stenling, 'Inside-out and outside-in: Applying the concept of conventions in the analysis of policy implementation through sport clubs' (2018) 53 International Review for the Sociology of Sport 837

<sup>40</sup> Christopher Clenk, Benjamin Egli & Torsten Schlesinger, "Exploring how voluntary sports clubs implement external advisory inputs" (2017) 22 Managing Sport and Leisure 70, p.72. Despite the aforementioned incentives or pressures to move away from the unincorporated association form, whether or not to incorporate is ultimately a voluntary decision. Nevertheless, it is certainly questionable as to whether it is indeed the case that no studies have explored club decision-making in circumstances where participation is voluntary, see for example, Thomas May, Spencer Harris & Mike Collins, "Implementing community sport policy: understanding the variety of voluntary club types and their attitudes to policy" (2012) 5 International Journal of Sport Policy and Politics 397

for further research to understand the pertinent features and conditions surrounding issues of policy implementation in this context.<sup>41</sup>

As alluded to within the introduction to the thesis, the legal nature of the incorporation policy provides a further point of difference which perhaps disconnects the present research from those somewhat analogous VSC studies of organisational change previously undertaken.<sup>42</sup> In Clenk, Egli and Schlesinger's research, as is the case for most other studies, the clubs were encouraged by their national governing body to facilitate organisational change themselves. In the incorporation policy circumstance, the type of organisational change (namely the transformation of legal form) was facilitated and outsourced to third party professional organisations. Requisite transfers of land, for example, legitimated engagement of professional actors to achieve incorporation however such feature does provide for a point of difference from the extant literature. The manner in which the responsibility for achieving legalistic organisational change was, in essence, taken out of the club decision makers hands in the incorporation circumstance, initially drew focus to the decision alone of why or why not incorporate, rather than for example, how the change was undertaken.<sup>43</sup>

### **3.2.2 Decision-making**

The review therefore focused on understanding the organisational decision of why or why not incorporate. Different types of decision naturally invoke different responses in varying organisational contexts. For the research it was therefore deemed appropriate to attempt to classify the type of decision incorporation represented. The researcher ultimately concluded incorporation should be classified as a strategic decision. Strategic decisions, according to Mintzberg, Raisinghani and Theoret

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<sup>41</sup> Consequentially, Clenk et al's statements go some way to legitimising the potential benefits of the investigations of the present research to the existing VSC literature.

<sup>42</sup> See section 1.2.

<sup>43</sup> Theoretically at least there remained the possibility that incorporation need not involve any professionals and that the clubs may facilitate the change of their own volition and means. Later qualitative research however reinforced expectations of a reliance upon the WRU and other professional organisations as facilitators of the transformative process, see chapter 7.

are simply decisions which are important,<sup>44</sup> though Mintzberg goes on to expand that strategic-decisions are characterised by novelty, complexity and open-endedness.<sup>45</sup> Harrison and St. John furthering Mintzberg's analysis, suggest that a characteristic of strategic decision-making is that such occasions cannot be dealt with by reference to precedent.<sup>46</sup> Eisenhardt and Zabracki provide for a slightly more elaborate definition, identifying strategic decisions as those which are important "in terms of the actions taken, the resources committed, or the precedents set."<sup>47</sup> The decision as to whether to incorporate appears most appropriately therefore to fall within the category of a strategic decision, as described within this section, given the outcome of the decision can be taken to have profound effects.<sup>48</sup> As was stated in *Gaiman v National Association for Mental Health* "the conversion of a club into a limited company, is no mere formality, but a change of substance."<sup>49</sup>

Ahmed et al noted how analysis of strategic decision-making was somewhat eclectic in nature yet had primarily been undertaken in relation to larger corporations.<sup>50</sup> The chapter attempts to move such considerations on from engagement with large corporations, and in doing so seeks out those theories which may assist in understanding how small voluntary organisations action strategic decision-making of the type incorporation represents.

### 3.3 A question of professionalism

Categorising whether or not to incorporate as a strategic decision had the effect of providing a focus to the potential theories of interest to the study. It was appreciated however that by accounting for the findings as drawn from chapter 2, those potential theories of interest could be refined further. Section 2.7 introduced arguments that resistance to the company limited by guarantee may be explainable by

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<sup>44</sup> Henry Mintzberg, Duru Raisinghani and Andre Theoret, "The structure of "unstructured" decision processes" (1976) 21 Administrative Science Quarterly 246, p.246

<sup>45</sup> Ibid, p.250

<sup>46</sup> Jeffrey Harrison and Caron St. John, *Strategic Management of Organisations and Stakeholder: Theory and Cases*. (West Publishing 1994)

<sup>47</sup> Kathleen Eisenhardt and Mark Zabracki, "Strategic Decision Making" (1992) 13 Strategic Management Journal 17, p.17

<sup>48</sup> George Cunningham, "Removing the Blinders: Towards an Integrative Model of Organisational Change in Sport and Physical Activity" (2002) 54 Quest 276, p.282

<sup>49</sup> *Gaiman v National Association for Mental Health* [1971] Ch. 317, p.355 (Megarry J)

<sup>50</sup> Anwar Ahmed, Henry Bwisa and Romanus Otieno, "Strategic Decision Making: Process, Models and Theories" (2014) 5 Business Management and Strategy. 78, p.82

concerns as to the greater diligence expected of directors and the increased organisational formality required by the company structure. Preliminary engagements with the VSC literature highlighted how issues of organisational professionalisation had come to represent a prominent theme in recent VSC scholarship. Slack et al. noted how professionalisation had provided for systemic change in sport over the last two decades<sup>51</sup> whilst Horch and Schutte concluded that professionalisation is always a prominent contributor to matters of organisational change of voluntary entities.<sup>52</sup> As will be outlined at chapter 4, and consistent with accepted practice within the VSC literature, formalisation and professionalisation may be conflated. Within this thesis the term professionalisation is utilised.

Section 3.3.2 outlines in greater detail why incorporation can, and it is argued should, be considered a professionalising process and how such classification served to help mould the development of the literature review. First however an introduction is provided to what professionalisation is understood to represent within a voluntary sports club context.

### 3.3.1 A modernising agenda

Professionalisation<sup>53</sup> of voluntary sports clubs should perhaps first not be seen as an issue exclusive to amateur sport but perhaps a part of a wider societal turn.<sup>54</sup> As Finlayson noted the scrutiny of sports volunteering and VSC has become a key part of a modernising state structure.<sup>55</sup> Successive governments' enthusiasm for a more formal third sector have been argued to have moved provision of

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<sup>51</sup> Trevor Slack, Terri Byers and Alex Thurston, *Understanding Sport Organisations: Applications for Sport Managers* (3<sup>rd</sup> edn, Human Kinetics 2020) p.244

<sup>52</sup> Does Government Financing have a Detrimental Effect on the Autonomy of Voluntary Associations? Evidence from German Sports Clubs (n 31), p.103

<sup>53</sup> Hill et al. have recently suggested that although professionalisation and formalisation are very closely related, the concepts can be distinguished. It is however accepted by the authors that interpretations of what constitutes professionalisation have been subject to significant interpretation. Simon Hill and others 'Around the kitchen-table with Bourdieu: understanding the lack of formalization of professionalization of community sports clubs in New Zealand' (2021) 24 (2) *Sport in Society* 115, p.118. The research, consistent with Nichols and James's 2008 interpretation considers formalisation and professionalisation to be capable of being used interchangeably Geoff Nichols & Matthew James "One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support" (2008) 13 *Managing Leisure*.

<sup>54</sup> Andrew Adams and John Deane, "Exploring Formal and Informal Dimensions of Sports Volunteering in England" (2009) 9 *European Sport Management Quarterly* 119, p.124

<sup>55</sup> Alan Finlayson, *Making Sense of New Labour* (Lawrence and Wishart 2003)

resources to non-profit entities from a ‘fund it and forget it’ approach,<sup>56</sup> to a view of funding as an investment that requires understanding of value for money.<sup>57</sup> In order to ensure value for money, funders require a more transparent use of funds and a tangible output from investment. The consequential increase in external oversight<sup>58</sup> has facilitated a downward pressure to adopt more professional organisational practices within the third sector.<sup>59</sup> 2018 correspondence between the Minister for Culture, Tourism and Sport and Sport Wales, for example, outlines that the department expects a “revised approach to measurement and evaluation, and insight and innovation to support the delivery of the new strategy.”<sup>60</sup> The letter goes on to state a commitment should be made to “supporting the sector to achieve a greater impact with public investment, to adapt, become more resilient, and demonstrate better its contribution to our national well-being goals and objectives.”<sup>61</sup> Though governments have represented a source of pressure regarding amateur sports professionalisation, national governing bodies such as the English and Welsh Cricket Board and the Amateur Swimming Association have been recognised as entities themselves intent on professionalising their constituent clubs.<sup>62</sup> Amateur rugby has seemingly neither avoided calls for modernising of organisational practices, with the WRU report in 2018 stating that “we need not only sustain them (the amateur clubs) but also help them move with the times and look to gain new revenue streams away from the core weekend business.”<sup>63</sup> Indeed, it was recognised as long ago as 2011 that amongst many general VSC there existed an “impetus to be an enlightened club or to move forward” in terms of providing a more commercially focussed entity.”<sup>64</sup>

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<sup>56</sup> Diana Leat, “Grant Making Foundations and Performance Measurement: Playing Pool?” (2006) 21 *Public Policy and Administration* 25, p.26

<sup>57</sup> Susan Ostrander, “The Growth of Donor Control: Revisiting the Social Relations of Philanthropy” (2007) 36 *Nonprofit and Voluntary Sector Quarterly* 356

<sup>58</sup> Andy Benson, “Hackney Advice Forum: taking back the power” 2010 (1) *Voluntary Sector Review* 233

<sup>59</sup> Stephen Elstub and Lynne Poole, “Democratising the non-profit sector: reconfiguring the state-non-profit sector relationship in the UK” (2014) 42 *Policy & Politics* 385

<sup>60</sup> Letter from Dafydd Elis-Thomas AM to Lawrence Conway of Sport Wales (9<sup>th</sup> February 2018)

<sup>61</sup> *Ibid*

<sup>62</sup> *Great Expectations: Voluntary Sports Clubs and Their Role in Delivering National Policy for English Sport* (n 24)

<sup>63</sup> Welsh Rugby Union ‘WRU Annual Report 2018’ (Welsh Rugby Union 2018)

<[https://d2cx26qpfwuhvu.cloudfront.net/wru/wp-content/uploads/2019/01/24003858/WRU\\_ARA\\_2018\\_master\\_111.pdf](https://d2cx26qpfwuhvu.cloudfront.net/wru/wp-content/uploads/2019/01/24003858/WRU_ARA_2018_master_111.pdf)> Accessed 22<sup>nd</sup> June 2019.

<sup>64</sup> *Between modernization and mutual aid: the changing perceptions of voluntary sports clubs in England* (n 34)

The modernisation agenda pushes VSCs, in very basic terms, to become more business-like. What constitutes a more “business-like approach” was considered broadly by Cuskelly and Auld<sup>65</sup> who recognised greater efforts at adherence to health and safety and safeguarding compliance as a marker of a club’s professionalisation.<sup>66</sup> Hwang and Powell, considering organisational change within the charities sector, suggested how professionalisation related to greater strategic planning, engagement with external financial auditors and greater use of evaluative processes.<sup>67</sup> More generally, professionalisation has been interpreted as “the adoption of a set of management practices which would normally be associated with an organisation managed by paid staff, including a formal division of labour into defined roles and systems to ensure consistent service at a competitive standard.”<sup>68</sup> Commentators such as Nicholas and Shepherd<sup>69</sup> and Reid<sup>70</sup> identified that VSC were experiencing increasing pressure to not only professionalise their practices but also concentrate on service delivery. The origin of such pressure as described by Nicholas and Shepherd however did not derive from governmental preferences, but rather stemmed from a need to replicate the experiences afforded by private sector operators keen on exploiting the sport as leisure market.<sup>71</sup>

An ability to replicate the service provided by private sector operators and generally mirror practices of organisations driven by remunerated staff, is unsurprisingly considered a testing task for an amateur club’s voluntary workforce. Increased administration, adherence to strict reporting

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<sup>65</sup> Working with Volunteers in Sport: Theory and Practice (n 24)

<sup>66</sup> A comparative policy has been rolled out across Welsh rugby with a safeguarding officer necessary within every club. Welsh Rugby Union, ‘WRU Safeguarding Policy’ (Welsh Rugby Union 2019), p.26. Hill, Kerr and Kobayashi have also identified legal compliance with health and safety requirements as necessitating organisational professionalisation. Simon Hill, Roslyn Kerr, and Koji Kobayashi ‘Around the Kitchen-table with Bourdieu: understanding the lack of formalization or professionalization of community sports clubs in New Zealand’ (2021) 24 Sport in Society 115, p.127

<sup>67</sup> Hokyu Hwang and Walter Powell, “The Rationalization of Charity: The Influences of Professionalism in the Nonprofit Sector” (2009) 54 Administrative Science Quarterly 268

<sup>68</sup> One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support (n 53), p.106

<sup>69</sup> Geoff Nichols and Michael Shepherd, ‘Volunteering in sport: the use of ratio analysis to analyse volunteering and participation’ (2006) 11 Managing Leisure 205

<sup>70</sup> Gavin Reid, ‘A fairytale narrative for community sport? Exploring the politics of sport social enterprise’ (2017) 9 (4) International Journal of Sport Policy and Politics 597, p.597

<sup>71</sup> Volunteering in sport: the use of ratio analysis to analyse volunteering and participation (n 69)

requirements,<sup>72</sup> the production of funding proposals,<sup>73</sup> and the keeping of accounts in a more structured manner, provide for a non-exhaustive description of what professionalisation may entail.<sup>74</sup> As Stebbins and Graham noted, the growth of professionalisation provides for circumstances whereby volunteers may require more specialist skills whether this relates to the making of national lottery applications, dealing with legislation, honing leadership qualities or updating technological skills.<sup>75</sup> Stebbins and Graham spoke of a “hegemonic redefinition of the voluntary sector” in which leisure was becoming a commodity to be bought and sold.<sup>76</sup> Stebbins and Graham, cautioning against an exclusively positive view of professionalisation, wrote that professionalising forces may develop an erosion of an obligation to volunteer and in doing so perpetuate the hegemonic notion that relations and endeavour must be mediated by the cash nexus.<sup>77</sup>

### 3.3.2 Incorporation and professionalisation

An ability to draw benefit from the literature relating to voluntary sports clubs’ engagement with professionalisation required however a classification of incorporation as a professionalising process. Professionalisation, as can be seen from the preceding section, requires entities to act in a more business-like fashion, to formalise management processes, to show greater stringency as regards legal compliance, and to satisfy reporting criteria. Consideration of the commentary associated with the benefits and detriments of incorporating for not-for-profit entities appears to substantiate arguments that incorporation may be considered a professionalising process.<sup>78</sup> The WRU suggest incorporation be undertaken to protect club members however the ancillary effects of incorporation provides for

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<sup>72</sup> Malin Arvidson and Fergus Lyon, “Social Impact Measurement and Non-Profit Organisations: Compliance, Resistance and Promotion” (2014) 25 *Voluntas: International Journal of Voluntary and Nonprofit Organisations* 869, p.872

<sup>73</sup> *Ibid*, p.873

<sup>74</sup> Carolyn Cordery and John Davies, “Professionalism versus amateurism in grass-roots sport: Associated funding needs” (2016) 21 *Accounting History* 98

<sup>75</sup> Robert Stebbins and Margaret Graham, *Volunteering as Leisure/Leisure as Volunteering* (Cabi 2004) p.203

<sup>76</sup> *Ibid*, p.204

<sup>77</sup> *Ibid*, p.204

<sup>78</sup> See Section 2.7.

greater administrative responsibilities, as acknowledged by the Union itself.<sup>79</sup> This may be specifically problematic given outside of Wales, McGregor-Lowndes and Hannah's engagements with small non-profit Australian organisations, and specifically those who are incorporated, acknowledged such entities struggle with red tape compliance costs that are considered highly regressive and a barrier to sustainability, or even existence.<sup>80</sup> Whilst complying with the filing of accounts for example may be seen as far from burdensome, as Passey and Lyons suggested such administrative duties may nevertheless prove irksome.<sup>81</sup> Passey and Lyons further argued that the primary reason amongst respondents for believing incorporation was unsuitable for their organisations, was the unsuitability of the legislative demands given their organisation's size, complexity, and/or mission.<sup>82</sup> Passey and Lyons finally concluded that concerns of respondents as to incorporation were grounded in the belief that the change would constitute an "administrative burden."<sup>83</sup> Additional codified responsibilities for decision-makers operating as directors under the company limited by guarantee's statutory regime, alongside mandatory filing and reporting requirements, accords with conclusions that the transformation of legal form does indeed provide for a need to formalise operations.

Engagement with literature exploring VSC responses to professionalising processes, as will be discussed at section 3.4, provides for similarities as to those arguments put forth against incorporation as introduced in the latter stages of chapter 2. In a manner perhaps absent from discussions of the disadvantages of incorporation, commentary upon VSC resistance to professionalisation more generally provides for a theoretical depth as to why such a resistance may manifest. By connecting commentary as regards the perceived disadvantages of incorporation with VSC resistance to professionalisation, a greater theoretically sensitive understanding may be gained as to those reasons why clubs may decide incorporation is or is not suitable.

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<sup>79</sup> Welsh Rugby Union 'Documents and Regulations' (Community.wru.wales, undated)

<<https://community.wru.wales/club/club-resources/documents-and-regulations>> Accessed 7<sup>th</sup> July 2020.

<sup>80</sup> Myles McGregor-Lowndes and Frances Hannah, 'Unincorporated associations as entities: A matter of balance between regulation and facilitation?' (2010) 28 *Company and Securities Law Journal* 197, p.199

<sup>81</sup> Andrew Passey & Mark Lyons, "Regulating Third Sector Organisations; The views of Incorporated Associations in NSW" (2009) 15 *Third Sector Review* 85, p.88

<sup>82</sup> *Ibid*, p.93

<sup>83</sup> *Ibid*, p.94

### 3.4. Theories of interest

In terms of understanding responses to professionalisation in amateur sporting contexts, scholarship traditionally looked to external forces for causative explanations.<sup>84</sup> Nichols et al. referenced general market competition, the influence of national governing bodies and government policy, as well as wider technological advancements as those reasons why clubs have been seen to professionalise.<sup>85</sup> As a means of accounting for organisational change in voluntary sport, institutional theory emerged as a regularly utilised theoretical perspective capable of exposing the effects of external causative forces.<sup>86</sup> In concert with the rise of institutionalism, resource dependency theory provided a means by which a greater depth may be afforded to the impact of external pressure. Resource dependency theory engages with an entity's numerous interorganisational relationships, pushing to understand how the resources held by the focal entity and its needs translate into observable behaviour.<sup>87</sup> By recognising that external pressures were amplified when resource deficits were apparent, the combination of institutionalism and resource dependency theory provided for a progression in thought as to how external pressures may best be demonstrated to effect organisational behaviour. Such insights appeared well placed for consideration given Passey and Lyons for example noted how 24% of respondents to their survey referenced their decision to incorporate as based on externally imposed needs.<sup>88</sup> Woodward, in turn, found that 33% of not-for-profit entities referenced the requirements of grant makers as an important factor in organisations choosing company structures.<sup>89</sup> As Stevens and Slack noted however the maturation of the field resulted in calls to consider organisational change in

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<sup>84</sup> Julie Stevens and Trevor Slack, 'Integrating Social Action and Structural Constraints Towards a More Holistic Explanation of Organisational Change' (1998) 33 (2) *International Review for the Sociology of Sport* 143, p.144

<sup>85</sup> Geoff Nichols and others, 'Pressures on the UK Voluntary Sport Sector' (2005) 16 *Voluntas International Journal of Voluntary and Nonprofit Organisations* 33

<sup>86</sup> Integrating Social Action and Structural Constraints Towards a More Holistic Explanation of Organisational Change (n 84)

<sup>87</sup> Lucie Thibault and Jean Harvey, 'Fostering interorganisational linkages in the Canadian Sport Delivery System' (1997) 11 *Journal of sport management* 45

<sup>88</sup> Regulating Third Sector Organisations; The views of Incorporated Associations in NSW (n 81), p.93

<sup>89</sup> Susan Woodward "Not-for-Profit Motivation in a For-Profit Company Law Regime: National Baseline Data." (2003) 1 *International Journal of Civil Society Law* 37. Regulating Third Sector Organisations; The views of Incorporated Associations in NSW (n 81), p.98

professionalising contexts from a less deterministic perspective.<sup>90</sup> A need to appreciate agency and the capabilities of organisations and individuals to operate in a manner undetermined by external pressures thus gained momentum. Stevens and Slack called for a recognition that internal organisational features may provide for alternative cogent explanations of observable behaviour. Referencing how decision-making processes, political power, and the characteristics of key organisational members may contribute to knowledge development, Stevens and Slack advocated a more integrated appreciation as regards the effects of external and internal forces regarding matters of organisational change in voluntary sport organisations.<sup>91</sup> Such an integrative progression appears logical not least owing to the arguments that VSC are traditionally autonomous entities.<sup>92</sup> Indeed, even within Nichols et al's detailing of potential explanations of professionalisation as outlined earlier in the section, the authors appreciated that the motivations and values of the volunteers within the club served to mediate how those externally developed pressures were experienced.<sup>93</sup> In an attempt to retain a holistic approach to potential causal mechanisms, the literature review engages with the following theories of interest deemed capable of giving due regard to potential internal and external causative influences.

1. Rational choice theory.
2. Bounded rationality.
3. Power and Politics.
4. Institutional theory.
5. Institutional logics.

Consideration begins with the most traditional theoretical conceptualisation of decision-making and a prominent force within organisational literature, rational choice theory.

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<sup>90</sup> Integrating Social Action and Structural Constraints Towards a More Holistic Explanation of Organisational Change (n 84)

<sup>91</sup> Ibid

<sup>92</sup> Eivind Skille and Reidar Safvenbom, 'Sport policy in Norway' (2011) 3 International Journal of Sport Policy and Politics 289

<sup>93</sup> Pressures on the UK Voluntary Sport Sector (n 85)

### 3.4.1 Rational choice model

Classical rational choice theory is regularly utilised as a starting point in discussions of what drives strategic organisational decision-making. The classical model of decision-making, rational choice theory originated from and came to dominate the field of economics, remaining a well-respected theory within the discipline today. Rational choice theory centres around the argument that “most behaviour can be explained by assuming that agents have stable, well-defined preferences, and make rational choices consistent with those preferences in markets that (eventually) clear.”<sup>94</sup>

Rational choice proponents thus argue that the behaviour of economic actors is perfectly rational.<sup>95</sup>

Ariely describes rational choice theory as a view of behaviour in which “we know all the pertinent information about our decisions, that we can calculate the value of the different options we face, and that we are cognitively unhindered in weighing the ramifications of each potential choice.”<sup>96</sup> Even if actors make a wrong choice occasionally, it is argued by Ariely that rational choice theory supposes that “we will quickly learn from our mistakes either on our own or with the help of market forces.”<sup>97</sup>

Any decision making, or perhaps more accurately, consistent decision making, which does not conform to this position, is considered as an anomaly. Rational choice theory thus provides for a behavioural model of “simplicity, elegance and testability” which came to dominate predictions about how societal actors respond to decisions including, specifically, those of a legal nature.<sup>98</sup>

A limitation of rational choice theory has however been argued to be its reliance upon the notion that decision-makers collect and analyse all pertinent information prior to execution. The practicality of obtaining all information relevant to a decision would of course, frequently, require an inordinate amount of time and intellectual capacity, both in terms of collection and review. Ariely’s observation

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<sup>94</sup> Daniel Kahneman, Jack Knetsch and Richard Thaler, “Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias” (1991) 5 *Journal of Economic Perspectives* 193, p.193

<sup>95</sup> Bojan Kristic and Milos Kristic, 'Rational Choice Theory and Random Behaviour' (2015) 61 *Ekonomika* 1, p.2

<sup>96</sup> Daniel Ariely, *Predictably Irrational: The Hidden Forces that Shape Our Decisions* (Harper Collins 2009), p.239

<sup>97</sup> *Ibid*, p.239

<sup>98</sup> Donald Langevoort, “Behavioral Theories of Judgment and Decision Making in Legal Scholarship: A Literature Review” (1998) 51 *Vanderbilt Law Review* 1499, p.1500

that rational choice theory presupposes that “we are cognitively unhindered in weighing the ramifications of each potential choice,”<sup>99</sup> has led to criticisms from social science perspectives that the traditional economic argument had failed to account for realism.<sup>100</sup> It is suggested by analysts engaging empirically with those individuals positioned at the heads of VSCs that such individuals do not have “all the pertinent information” available, and that they do not, and likely cannot, “calculate the value of different options” owing to restrictions of time, money and business acumen.<sup>101</sup> Those arguments outlined in chapter 2 as to the apparent struggles of VSC to understand the changing legal responsibilities incorporation provides for,<sup>102</sup> served to undermine the potential utility of rationalistic understandings of AWRC behaviour.<sup>103</sup>

Though an openness was therefore retained as to the possibility of rational decision-making processes existing within AWRC, the main tenets of the theory seemed ill-fitting with established VSC findings relevant to smaller non-profit entities. Conclusions that rational choice theory was not infallible and that rather, the constraining nature of everyday life required recognition was a concept applied to decision making by the likes of Herbert Simon. A body of work which represented challenges to rational choice theory, including Simon’s, developed and paid credence to the existence of a considerable number of so-called anomalies, which seemed ill suited to the traditional understanding of rational decision making. Such challenges led to the development of more empirically robust models based on behavioural theories to which the chapter now turns.

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<sup>99</sup> Predictably Irrational: The Hidden Forces that Shape Our Decisions (n 96)

<sup>100</sup> David Miller and Martin Starr, *Executive Decisions and Operations Research* (Prentice-Hall, Englewood Cliffs 1965)

<sup>101</sup> Torsten Schlesinger, Christoffer Klenk and Siegfried Nagel, 'How do sport clubs recruit volunteers? Analyzing and developing a typology of decision-making processes on recruiting volunteers in sport clubs' (2015) 18 Sport Management Review 193

<sup>102</sup> See section 2.7

<sup>103</sup> Although VSC’s are typically resource constrained, even within entities where one would expect a high level of skill and information, bias and heuristics associated with more behavioural models of decision-making have been observed. Cox and Munsinger noted that in the context of directors of for-profit organisations, when met with a multifaceted, inherently complex decision, the directors attempted to address the issue by simplifying the information relied upon and calling upon dissimilar past experiences. James Cox and Harry Munsinger, “Bias in the Boardroom: Psychological Foundations and Legal Implications of Corporate Cohesion. (1985) 48 Law and Contemporary Problems 83, p.88

### 3.4.2 Bounded rationality

Classical rational choice theory provides for an understanding of strategic decision making which is step-by-step, uniformed, linear and based on logical deduction. The notion that information relevant to all options and outcomes is collected and analysed, assessed with regard to pre-existing objectives, and ordered in a manner which results in a utility maximising decision, is one which is not universally accepted and, importantly, appeared ill-fitting with common features of VSCs.

Herbert Simon's more behavioural accounts of decision-making represented some of the earliest works seeking to challenge the pervasiveness of rational choice theory. Perhaps his most notable contribution during his formative explorations was his advocacy of "bounded rationality."<sup>104</sup> It should firstly be stated that identifying a departure from rationality is not the same as discovering irrationality.<sup>105</sup> The core belief of bounded rationality is perhaps best expressed by the notion that "human behaviour is intendedly rational but only limitedly so."<sup>106</sup> Though we may therefore strive for rationality as outlined within the classical theory, the reality remains, according to Simon, that constraints upon our decision-making, and primarily resource constraints, lead us to in essence settle, finding optimum solutions for a simplified world, or finding satisfactory solutions for a more realistic world.<sup>107</sup>

Examples of settling for what appears "good enough", or for that which is understandable, is an example of decision-making by heuristics. In contrast to the manner in which classical rational choice theory presupposes one's knowledge of all options and eventualities, decision-making by heuristic is quick, often without significant deliberation, and utilised as a resource conserving tool. Decision-

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<sup>104</sup> Alberto Alemanno and Alessandro Spina, "Nudging legally: On the checks and balances of behavioral regulation" (2014) 12 *International Journal of Constitutional Law* 429, p.433

<sup>105</sup> Behavioral Theories of Judgment and Decision Making in Legal Scholarship: A Literature Review (n 98), p.1506

<sup>106</sup> Oliver Williamson, "The Theory of the Firm as Governance Structure: From Choice to Contract" (2002) 16 *Journal of Economic Perspectives* 171, p.174

<sup>107</sup> Herbert Simon, "Rational Decision-Making in Business Organisations" (Nobel Memorial Lecture, Pennsylvania, 8 December 1978) <<https://www.nobelprize.org/uploads/2018/06/simon-lecture.pdf>> Accessed 7th April 2019

making as a consequence is less linear and structural and more emotive and visceral.<sup>108</sup> Langevoort noted that legal academics were somewhat late to grasp the implications of behavioural theory in comparison with other disciplines, yet concludes that this should not undermine its potential explanatory power within legal contexts.<sup>109</sup> Langevoort made reference to the ways in which hubris, loss-framing, and herd mentality<sup>110</sup> all have a part to play in commentary directed at understanding legal decision-making.<sup>111</sup> Specifically, Langevoort noted his expectation that behavioural explanations may be particularly apt in understanding organisational decision-making in sectors lacking high levels of fiscal competition.<sup>112</sup>

Addressing organisational responses to possibilities of legal liability specifically, Randall and Baker's empirical engagement with the decision-makers of Bunker Hill and findings of the use of heuristic based-decision making, provided what was thought to be a useful example from which the research could draw benefit.<sup>113</sup> Randall and Baker focussed on detailing how behavioural decision-making may manifest within organisations and how such decision-making processes may ultimately prove problematic.<sup>114</sup> Randall and Baker's investigation found that in attempting to minimise legal risk, company decision-makers relied on heuristic decision-making to arrive at a conclusion that an ultimately discriminatory protectionist policy was the best course of action to follow as a means of mitigating potential liability.<sup>115</sup> An attempt to mitigate liability therefore ultimately provided for an unintended and indeed unforeseen problem. Randall and Baker concluded that Bunker Hill decision-makers had in essence simply traded one form of potential liability for another.

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<sup>108</sup> Jonathan Levin and Paul Milgrom, "Introduction to Choice Theory" (*Stanford*, 2004) <<https://web.stanford.edu/~jdlevin/Econ%20202/Choice%20Theory.pdf>> Accessed 22nd October 2018, p.23

<sup>109</sup> Behavioral Theories of Judgment and Decision Making in Legal Scholarship: A Literature Review (n 98), p.1502

<sup>110</sup> Ibid, p.1523

<sup>111</sup> Although Langevoort was principally interested in instances of individual decision-making, he nevertheless engaged with how behavioural influences may impact on decision-making within organisational contexts. Ibid, p. 1516

<sup>112</sup> Behavioral Theories of Judgment and Decision Making in Legal Scholarship: A Literature Review (n 98), p. 1515

<sup>113</sup> Donna Randall & Douglas Baker, "The Threat of Legal Liability and Managerial Decision Making: Regulation of Reproductive Health in the Workplace" in Sim Sitkin and Robert Bies, *The Legalistic Organisation* (Sage 1994)

<sup>114</sup> Ibid

<sup>115</sup> Ibid

In contrast to rationalistic assessments of legal risk, Randall and Baker observed decision-making aligned to a greater degree with the more behavioural models as advocated by the likes of Herbert Simon and Tversky and Kahneman.<sup>116</sup> The problem as identified by Randall and Baker with utilising behavioural decision-making is that such a decision-making process gives an inflated sense of importance to the available information, resulting in a rejection of the need to look elsewhere for alternative and often more representative sources of knowledge.<sup>117</sup> Randall and Baker refer to this “availability” heuristic, being the inclination of decision-makers to “perceive, remember and employ information that is easily accessible”, as an example of decision-making concerned with liability showing a more behavioural construction.<sup>118</sup>

Despite not being explicitly engaged by Randall and Baker, the apparent willingness of the Bunker Hill decision-makers to base decisions on short conversations with scientists unconnected to their organisation<sup>119</sup> provides evidence of a potential further heuristic, a deference to authority. Instances of authority bias have been observed in legal contexts by way of deference to lawyers as regards settlement negotiations for example,<sup>120</sup> as well as within executive body decision-making.<sup>121</sup> Away from the legal context, Fahlen et al. when discussing the professionalisation of VSC, found that feelings of legitimacy towards external actors may prove influential in guiding decision-making in the direction as advocated by such actors.<sup>122</sup>

The prevalence of behavioural decision-making is acknowledged to persist on the basis that such processes provide a means of conserving resources. As alluded to earlier in this thesis, an

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<sup>116</sup> Amos Tversky and Daniel Kahneman, “The framing of decisions and the psychology of choice” in George Wright (eds) *Behavioral Decision Making*. (Springer, 1985), p.25

<sup>117</sup> The Threat of Legal Liability and Managerial Decision Making: Regulation of Reproductive Health in the Workplace (n 113), p.174

<sup>118</sup> Ibid, p.174

<sup>119</sup> Ibid, p.169

<sup>120</sup> Ian Weinstein, “Don’t Believe Everything You Think: Cognitive Bias In Legal Decision Making” (2003) 9 *Clinical Law Review* 783

<sup>121</sup> William Wilhelm, ‘Financial decision making: a study of board room decision-making dynamics’ (2012) 54 *Delta Pi Epsilon Journal* 27. More specifically, and as previously mentioned, Woodward’s 2003 consideration of why organisations incorporate, found that 87 per cent of not-for-profit entities stated the importance of following authoritative legal advice as to their eventual choice of legal form. See Section 1.2.

<sup>122</sup> Josef Fahlen, Cecilia Stenling and Ludvig Vestin, “Money talks – A qualitative analysis of the organisational change connected with the corporation formation of a voluntary sport club” (2008) 5 *Sport and Society* 153, p.156

acknowledgement exists within the VSC literature that resource constraint is a consistent and prominent influence driving organisational behaviour.<sup>123</sup> Behavioural decision-making, reliant upon the use of heuristics and grounded in bounded rationality, thus appeared well suited for consideration. Such a conclusion was reached both on the basis of the above literature and the prominence of resource constraint within VSC generally, now to be developed in a more substantive fashion.

What makes behavioural decision-making a particularly attractive explanatory theory for the research is the impetus the VSC literature has placed on the impact of resource constraint in managing issues of professionalisation. Central to this is the appreciation of such entities as reliant upon volunteers and the minimal resources such volunteers have to commit to their clubs. The justification for considering such theory's value in explanations of causality thus lies primarily in the manner in which the VSC literature has focussed upon how a lack of time, skill, personnel, and funding have come to characterise VSC actions and omissions.

In relation to non-financial issues of resource constraint, longer working hours are often cited as a reason for a squeeze on time as a resource available to VSC volunteers. Robinson and Godbey noted that perceptions of time constraints from paid work can lead to a feeling of entrapment owing to the endless economic and experiential expectations created by wider contemporary culture.<sup>124</sup> Robinson and Godbey's conclusions were first stated in 1999, though more recently research has suggested that the surge in the use of mobile devices has indeed increased time individuals feel they spend working.<sup>125</sup> Nichols and Collins noted in their 2005 study how longer working hours in particular had been recorded as a primary reason as to why individuals were opposed to the notion of taking on responsibilities in respect of club decision-maker roles.<sup>126</sup>

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<sup>123</sup> Section 2.5

<sup>124</sup> John Robinson and Geoffrey Godbey, *Time for Life: The Surprising Ways Americans Use Their Time* (Pennsylvania State University Press 2010)

<sup>125</sup> Ofcom, "A decade of digital dependency" (*Ofcom*, 2 August 2018) <[www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2018/decade-of-digital-dependency](http://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2018/decade-of-digital-dependency)> Accessed November 6<sup>th</sup> 2019.

<sup>126</sup> Geoff Nichols and Mike Collins, *Volunteers in sports clubs* (Leisure Studies Association 2005), p.36

Separate, but linked to pressures of employment, is the recognition of family commitments as barriers to volunteering.<sup>127</sup> The phenomenon of busier lives, as well as limiting the time forthcoming from existing volunteers, has been hypothesised as a reason for a dearth of new sports club volunteers capable and willing to carry out vacant roles within VSC.<sup>128</sup> The problem of recruiting and retaining long-term volunteers in the mould of rugby club decision-makers in particular is well-established in the UK across VSCs.<sup>129</sup> The issue however is not parochial with the likes of Germany<sup>130</sup> Switzerland<sup>131</sup> and Australia<sup>132</sup> reporting problems of volunteer attraction and retention. The problem with a limited number of voluntary decision-makers within clubs is that few individuals wear “several hats” in the assumption of numerous roles.<sup>133</sup> With responsibility concentrated within a small number of individuals, the ability of such decision-makers to substantively develop clubs has, in the manner which professionalisation requires, been considered to be limited.<sup>134</sup> As Nagel and Schlesinger noted there simply exists a difficulty in recruiting volunteers willing to do the more demanding and administrative tasks.<sup>135</sup> It has been noted by Miller and Starr that most organisations actively seek to relieve their managers of routine decisions so that greater resources can be directed towards critical organisational decisions.<sup>136</sup> Despite section 3.2 positing incorporation represents such a critical decision, the considered literature suggests Miller and Starr’s contentions may not apply to VSC circumstances. Without the benefit of being able to delegate for VSC decision-makers, more menial

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<sup>127</sup> Sport England, ‘Overcoming Barriers’ (Sportenglandclubmatters.com Undated) <<https://www.sportenglandclubmatters.com/planning-for-your-future/running-your-club-and-group/overcoming-participation-barriers/>> Accessed 2<sup>nd</sup> April 2021.

<sup>128</sup> Pressures on the UK Voluntary Sport Sector (n 85), p.44

<sup>129</sup> Volunteers in sports clubs (n 126)

<sup>130</sup> Pamela Wicker and Christoph Breuer, 'Scarcity of resources in German non-profit sport clubs' (2011) 14 *Sport Management Review* 188.

<sup>131</sup> Pamela Wicker and others, 'Does Club Size Matter: An Examination of Economies of Scale, Economies of Scope, and Organisational Problems' (2014) 28 *Journal of Sport Management* 266

<sup>132</sup> Graham Cuskelly, 'Volunteer participation trends in Australian sport' in Geoff Nichols and Mike Collins (eds) *Volunteers in sports clubs* (Leisure Studies Association 2005)

<sup>133</sup> Working with Volunteers in Sport: Theory and Practice (n 24), p.59

<sup>134</sup> Alex Donaldson, Susan Leggett and Caroline Finch, “Sports policy development and implementation in context: Researching and understanding the perceptions of community end-users” (2011) 47 *International Review for the Sociology of Sport* 743

<sup>135</sup> Torsten Schlesinger, Christoffer Klenk and Siegfried Nagel, 'How do sport clubs recruit volunteers? Analyzing and developing a typology of decision-making processes on recruiting volunteers in sport clubs' (2015) 18 *Sport Management Review* 193

<sup>136</sup> Executive Decisions and Operations Research (n 100)

organisational tasks must be undertaken concurrently alongside engagement with more strategic matters. Compounding such issue it has further been observed that decision-making in VSC are on occasions dominated by preferences for consensus.<sup>137</sup> Strategic decision-making, by consensus, alongside the completion of day-to-day tasks by volunteers, perhaps suggests that strategic decisions of club professionalisation may often not be the product of considered more rationalistic thought-out processes. The situation as it has emerged from the VSC literature is rather suggestive of circumstances in which strategic decision-making may be avoided on account of a lack of resources to engage with such issues.<sup>138</sup>

It is however not simply a lack of time and personnel which have been identified as constraining influences upon VSC development. It is also what those few contributors are capable of bringing to the roles. Byers stated “clubs are often individually weak and limited in capacity due to finances, facilities, and expertise.”<sup>139</sup> Issues of finances and facilities will be addressed later in the chapter. Problems of available expertise however further contribute to arguments of behavioural decision-making as a theory with potential explanatory qualities.<sup>140</sup> Schlesinger et al noted how the skills of voluntary decision-makers were crucial in actioning substantive organisational change within VSC.<sup>141</sup> Given the difficulties which not-for-profit entities are suggested to experience in attraction of volunteers with legal, financial, and management expertise,<sup>142</sup> issues of capacity to understand professionalising decisions and action that which is necessary thereafter were considered as potentially instructive regarding issues of incorporation.<sup>143</sup>

What such findings from the literature may mean for questions of incorporation were potentially diverse. Behavioural decision-making within legal and organisational contexts have recognised the

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<sup>137</sup> Jorge Soares, Abel Correia and Antonio Rosado “Political Factors in the Decision Making Process in Voluntary Sports Associations.” (2010) 10 *European Sport Management Quarterly* 5, p.26

<sup>138</sup> Peter Taylor, ‘Driving up participation: sport and volunteering’ in Sport England (ed) *Driving up participation: the challenge for sport* (Sport England 2004)

<sup>139</sup> Terri Byers, “Using critical realism: A new perspective on control of volunteers in sport clubs.” [2013] *European Sport Management Quarterly*, p.5

<sup>140</sup> How do sport clubs recruit volunteers? Analyzing and developing a typology of decision-making processes on recruiting volunteers in sport clubs (n 101)

<sup>141</sup> Ibid

<sup>142</sup> Not-for-Profit Motivation in a For-Profit Company Law Regime: National Baseline Data (n 89)

<sup>143</sup> Ibid

place of bias towards authority and a reliance upon information readily available. The extensive advocacy by the WRU of incorporation over a number of years may provide for a circumstance in which heuristic-based decision-making of the types discussed earlier in the section may facilitate acceptance of a change of legal form. By contrast, the latter engagement with more specific VSC literature is suggestive that the resource deficit within which clubs operate provides for a circumstance whereby consideration of proactive strategic decisions geared towards preventing future personal legal liability may be overlooked.

Rational choice theory's incompatibility with the research objectives from consideration of the literature appears clear. By contrast, behavioural decision-making appeared poised to assist in explanations of incorporation yet quite how such theory may manifest was unclear prior to the empirical investigation.

### 3.4.3 Power and politics

Issues of power and politics have been argued to directly relate to problems of resource constraint, shown to be a prominent feature of VSC behaviour as detailed in section 3.4.2.

*“Human resource scarcity (within voluntary sport organisations) in the form of individuals’ lack of time, loyalty, and skills (serves) to be a foundation for disagreement and dissension in sport organisations.”<sup>144</sup>*

Van Bussell and Doherty note that the reliance upon the efforts of motivated volunteer executive bodies cultivates environments in which self-interest, and by logical development power and politics, come to the fore.<sup>145</sup> Taylor considered matters of power and politics from an interorganisational perspective focussing upon the characteristics of what he termed “informal” clubs to demonstrate how

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<sup>144</sup> Michael Van Bussell and Alison Doherty, “An examination of the conflict process in nonprofit community sport boards” (2015) 15 *European Sport Management Quarterly* 176, p.186

<sup>145</sup> *Ibid*, p.178

power struggles may impact upon VSC behaviour.<sup>146</sup> Taylor spoke of informal clubs resistance to external assistance and how their preferences for concentrating upon the club's central focus (the sport) took precedence over considerations of organisational development.<sup>147</sup> Taylor contrasts informal entities resistance to external assistance construed as "interference" with formal voluntary sport clubs more likely to embrace external support geared towards organisational development.<sup>148</sup> Taylor appreciates that the reasoning behind clubs falling within formal or informal categories is unclear.<sup>149</sup> He nevertheless states that the explanations underpinning club type could lie with the composition of executive bodies and the power of individual decision-makers.<sup>150</sup>

In an attempt at contextualisation, an explanatory model of causation underpinned by theories of power and politics may seek to explore how differing viewpoints amongst powerful individuals and coalitions within AWRC may affect eventual decisions as to whether or not to incorporate. Supporting a focus upon such issues, Soares et al. had previously studied the role of power in VSC decision-making. Soares et al.'s empirical investigation supported Amis, Slack and Berrett's conclusion as to the pervasiveness of power within VSC noting "Power is at the heart of the matter and meeting, to take strategic decisions are both the occasion and the object of internal struggles."<sup>151</sup> If VSC are taken to imitate theatres in which power struggles dominate between those with divergent opinions as advanced by Soares et al.,<sup>152</sup> then this seemingly runs contrary to arguments of consensus decision-making as outlined within the preceding section.<sup>153</sup> Nevertheless, if incorporation is the change of substance as was suggested within the case of *Gaiman*<sup>154</sup> then some resistance to change and divergence of opinion within traditional entities of the type VSC represent at least seems plausible.<sup>155</sup>

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<sup>146</sup> Driving up participation: sport and volunteering (n 138), p.105

<sup>147</sup> Ibid, p.106

<sup>148</sup> Ibid, p.106

<sup>149</sup> Ibid, p.106

<sup>150</sup> Ibid, p.106

<sup>151</sup> Political Factors in the Decision Making Process in Voluntary Sports Associations (n 137), p.6

<sup>152</sup> Ibid, p.6

<sup>153</sup> See Section 3.4.2

<sup>154</sup> *Gaiman v National Association for Mental Health* (n 49) See also Section 3.2 above.

<sup>155</sup> Ornulf Seippel, 'Professionalization of voluntary sport organisations – a study of the Quality Club Programme of the Norwegian Football Association' (2019) 19 European Sport Management Quarterly 666

Conflict, or at the least divergence of opinions as regards incorporation, may be based upon conceptual arguments such as preferences for apparent discretion over transparency and for flexibility over rigidity. Seippel's 2019 empirical engagement for example suggested that choices with the effect of professionalising operations within clubs often represented an attempt by individuals or factions to concentrate power in organisations which have become loosely coupled.<sup>156</sup> Preferences of legal form however should perhaps not exclusively be considered as the product of abstract beliefs as to the running of organisations generally, but may also be driven by the self-interest of an organisation's individuals or its departments. In a further attempt at contextualisation, an AWRC treasurer may for example prefer to resist incorporation should they be the individual burdened with the annual production of accounts. Within the well documented constrained world of club decision-makers, the prospect of an individual subjecting themselves to further time commitments, or greater external scrutiny as a consequence of a professionalising process, may be perceived as an exercise in self-punishment.

Adams, providing commentary on areas of potential club division, outlined alternatively how generational differences within VSC have been observed to affect issues of club professionalisation, referring to empirical data which suggested key traditionalist administrators held significant power in the stifling of organisational development.<sup>157</sup> Byers et al., considering similar issues, refer to an example they encountered in which long-standing members of a committee had a particular view of what they considered their club to be, which was based primarily upon tradition.<sup>158</sup> The interpretations of the other club power brokers as to how they perceived the club was vastly different. Byers noted how this difference in perception resulted in significant conflict within the group of controlling decision-makers.<sup>159</sup> Substantiating the claims of the likes of Byers et al. and Adams, Soares et al observed VSC not to be unilaterally directed entities but rather a group of actors pursuing diverse interests whilst possessing different resources necessary to the decision-making body's functioning.<sup>160</sup>

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<sup>156</sup> Ibid, p.671

<sup>157</sup> Exploring Formal and Informal Dimensions of Sports Volunteering in England (n 54), p.136

<sup>158</sup> Using critical realism: A new perspective on control of volunteers in sport clubs (n 139), p.25

<sup>159</sup> Ibid, p.18

<sup>160</sup> Political Factors in the Decision Making Process in Voluntary Sports Associations (n 137), p.5

With these findings considered, it is somewhat understandable therefore that a few key individuals, possessing critical resources, could maintain the influence necessary to stifle a club's professionalisation, given the majority of work is often carried out by a limited number of individuals holding significant power.<sup>161</sup>

Seippel, in his empirical investigation of VSC responses to the Norwegian Football "Quality Club Programme (QCP)",<sup>162</sup> provided a contemporary analysis of how power may affect a club's governing body. Given incorporation has, as outlined earlier, been identified as a kind of external advisory input, Seippel's engagement with a similar issue, in an analogous context, was considered potentially assistive in identifying plausible explanations of AWRC decision-making.

Seippel, describing his findings stated;

*"what appears as the real driving force is a feeling of a lack of control (i.e predictability and stability) over the structural development of the organisation)..... Even though the clubs' reasons at first might appear vague, their motives are basically about control of one of the clubs' resource bases: volunteers."*<sup>163</sup>

Seippel identifies that the decision as to whether to participate in the professionalising QCP scheme relates to a perception that QCP offers an opportunity for executive members to regain power of the organisation. The decision is further legitimised on account of its impact upon the attraction and retention of the key resource of volunteers. This is a particularly interesting finding given Seippel's conclusions rely both upon arguments of mitigating resource deficits and power as a means of explaining organisational engagement with an externally devised policy of professionalising consequence.

Seippel advocates the use of more and different theories "to get at other sides of the phenomenon in question."<sup>164</sup> Seippel argues that in order to facilitate causative commentary in matters of VSC

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<sup>161</sup> Using critical realism: A new perspective on control of volunteers in sport clubs (n 139), p.220

<sup>162</sup> Professionalization of voluntary sport organisations – a study of the Quality Club Programme of the Norwegian Football Association (n 155)

<sup>163</sup> Ibid, p.677

<sup>164</sup> Ibid, p.679

professionalisation it is often necessary to utilise complex and diverse sets of theories.<sup>165</sup> In consideration of such commentary alongside those previous suggestions that an internal focus alone is often insufficient to achieve optimum understanding of organisational decision-making,<sup>166</sup> the chapter moves to engage with those theories describing how external influence may affect internal decisions.

### 3.4.4 Institutional theory

In terms of commentary as to how the external environment, and in particular interorganisational relationships may affect voluntary sports clubs, attention has often been drawn to the relationships between clubs and their respective national governing bodies.<sup>167</sup> A lack of policy engagement has been attributed to the disconnection between clubs and governing bodies responsible for their sport on a national basis.<sup>168</sup> However, in terms of facilitating transformations of legal form, criticisms of a lack of support regarding the incorporation policy appear perhaps unfounded.<sup>169</sup> In order to appropriately account for those external influences with the potential to affect decision-making relevant to incorporation, it appeared necessary to at least consider moving beyond arguments of disconnection. In order to facilitate such a progression, this section engages the often referred to institutional theory, as a means of exploring potential causative influences of an exogenous nature.<sup>170</sup>

Institutionalism has been considered a broad church of theories<sup>171</sup> however its defining feature is its focus on “social and cultural forces which shape similarity and stability among organisations in an organisational field.”<sup>172</sup> Institutional theory’s use of organisational fields rests upon a recognition of

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<sup>165</sup> Professionalization of voluntary sport organisations – a study of the Quality Club Programme of the Norwegian Football Association (n 155), p.669

<sup>166</sup> Leigh Robinson and others, *Routledge Handbook of Sport Management* (Routledge, 2012), p.xx

<sup>167</sup> Thomas May, Spencer Harris & Mike Collins “Implementing community sport policy: understanding the variety of voluntary club types and their attitudes to policy” (2012) 5 *International Journal of Sport Policy and Politics* 397

<sup>168</sup> Ibid

<sup>169</sup> See Figure 1.1

<sup>170</sup> Marvin Washington and Karen Patterson, “Hostile takeover or joint venture : Connections between institutional theory and sport management research” (2011) 14 *Sport Management Review* 1, p.1

<sup>171</sup> Robert Baldwin, Martin Cave and Martin Lodge. *Understanding Regulation: Theory, Strategy and Practice* (2<sup>nd</sup> edn, OUP 2012), p.53

<sup>172</sup> Berit Skirstad and Packianathan Chelladurai, “For “Love” and Money: A Sports Club’s Innovative Response to Multiple Logics.” 2011 (25) *Journal of Sport Management* 339, p.341

“a set of normative models and rules that influence organisational behaviour”.<sup>173</sup> Such normative models and rules according to institutional perspectives are considered to emerge from the organisational environment which organisations in turn react and respond to. Institutional theory is therefore inherently outward facing, seeking to consider the manner in which organisations respond to external influence from other entities operating within their immediate context.

Importantly for the present study, institutionalism is prominent within sports organisational literature<sup>174</sup> and furthermore has been applied in explanation of how organisations deal with decisions of a legal nature.<sup>175</sup> Black, making the case for the use of institutional theory within empirical legal research, notes the potential of the theory to add important insight to questions of decision processes and behaviours.<sup>176</sup> From a sporting perspective, institutional theory has long been considered to be appropriate for understanding organisational conduct owing to the ambiguity of goals, immeasurable efficiency, and heavy environmental structuration considered to represent prominent features of the sector.<sup>177</sup> Institutional theory argues that the more uncertainty an organisation faces, the more they will seek to adapt themselves to their environment in order to achieve legitimacy for their activities.<sup>178</sup> Organisations under the more modern iterations of institutional theory are understood to experience pressures to adapt themselves and homogenise.<sup>179</sup> Institutional theory focuses upon homogenisation perhaps owing to the focus this affords to the power of the organisational field as a conditioning force. As Hawley wrote in explanation of the homogenising effect of the organisational field “units

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<sup>173</sup> Lauren Edelman and others, “When Organisations Rule : Judicial Deference to Institutionalized Employment Structures” (2011) 117 *American Journal of Sociology* 888, p.897

<sup>174</sup> Hostile takeover or joint venture : Connections between institutional theory and sport management research (n 170)

<sup>175</sup> New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making (n 1)

<sup>176</sup> New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making (n 1), p.54

<sup>177</sup> Danny O’Brien and Trevor Slack, “An analysis of change in an organisational field: The professionalization of English Rugby Union” (2003) 17 *Journal of Sport Management* 417. Money talks – A qualitative analysis of the organisational change connected with the corporation formation of a voluntary sport club (n 122). Lisa Kikulis & Trevor Slack “Toward an Understanding of the Role of Agency and Choice in the Changing Structure of Canada’s National Sport Organisations” (1995) 9 *Journal of Sport Management* 135

<sup>178</sup> Christine Oliver, “Strategic Responses to Institutional Processes” (1991) 16 *The Academy of Management Review* 145

<sup>179</sup> Paul Dimaggio and Walter Powell, “The iron cage Revisited: Institutional Isomorphism and Collective Rationality in Organisational Fields” (1983) 48 *American Sociological Review* 147

subjected to the same environmental conditions as mediated by a given key unit, acquire a similar form of organisation.”<sup>180</sup> The conceptualisation of those organisational field influences resulting in homogenisation have been described as isomorphic pressures.

DiMaggio and Powell in their seminal work upon institutional theory categorised the types of isomorphic pressure which organisations experience as normative, coercive, and cognitive.<sup>181</sup>

DiMaggio and Powell originally defined the types of pressures as outlined below with each aspect of isomorphism according for a different form of pressure.<sup>182</sup>

- a. Normative isomorphism, associated with professionalisation.
- b. Coercive isomorphism that stems from political influence and the problems of legitimacy.
- c. Mimetic isomorphism resulting from standard responses to uncertainty.<sup>183</sup>

#### *Normative pressures.*

Normative influences relate to the pressures organisations face owing to what they feel is expected of them. Such norms were traditionally considered by DiMaggio and Powell as emanating from the professionalisation of individuals within organisations, with particular focus on those individuals leading such entities.<sup>184</sup> Similar educational backgrounds and expectations from professional bodies were considered to provide for the establishment of these norms facilitating homogeneity within

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<sup>180</sup> Amos Hawley, ‘Human Ecology’ in David Sills (ed) *International Encyclopaedia of the Social Sciences* (Macmillan 1968)

<sup>181</sup> Paul DiMaggio and Walter Powell, “The iron cage Revisited: Institutional Isomorphism and Collective Rationality in Organisational Fields” (1983) 48 *American Sociological Review* 147

<sup>182</sup> Ibid, p.150

<sup>183</sup> Occasions of isomorphic pressure are rarely confined to one particular type nor are they considered easily divisible. In Phelan et al’s research into not-for-profits effectiveness, for example, all three forms of isomorphic pressure were observed. Franci Phelan and others, ‘Adaptation of For-Profit Practices in a Nonprofit Foundation: Role of Isomorphic Pressures’ (2017) 1 *Academy of Management* <<https://journals.aom.org/doi/abs/10.5465/ambpp.2015.17047abstract>> Accessed 10<sup>th</sup> June 2019

<sup>184</sup> The iron cage Revisited: Institutional Isomorphism and Collective Rationality in Organisational Fields (n 181), p.152

organisational fields.<sup>185</sup> Issues of normative pressure construed in this way appeared ill-suited to explanations of AWRC incorporation on account of diversity in occupation amongst voluntary workforces.<sup>186</sup> Without a common professional body, formal training, or educational requirements, shared experience of the type usually required for findings of normative pressures appeared lacking.

### *Coercive pressures*

Coercive isomorphism is a result of formal and informal pressure from organisations within an entities organisational field.<sup>187</sup> Decisions taken as a result of coercive pressures are considered to be more rationalistic in nature. They often involve responding to incentives evident within the organisational environment and are linked to interorganisational relationships. Resource dependency theory is often associated with coercive pressure as the main tenet of the theory is that those organisation's reliant upon external bodies for a particular resource are, quite unsurprisingly, susceptible to pressure from such paymasters. Coercive pressures therefore represent the external face of power.

A 2013 report investigating VSC stated “accessing funds/sponsorship”, “generating sufficient income” and “increased facilities costs” were the major issues facing UK amateur sports clubs.<sup>188</sup> The same report found that a quarter of sports clubs at that time were running at a loss.<sup>189</sup> More contemporaneous engagements have found that the general situation is not improving at a rate which many would have hoped for, with Aiken and Harris commenting that small and medium-sized third

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<sup>185</sup> Rahat Munir, Sujatha Perera and Kevin Baird, ‘An Analytical Framework to Examine Changes in Performance Measurement Systems within the Banking Sector’ (2011) 5 *Australasian Accounting Business and Financial Journal* 93, p.105

<sup>186</sup> Caroline Ringuet-Riot and others, “Volunteer roles, involvement and commitment in voluntary sport organisations: evidence of core and peripheral volunteers” (2014) 17 *sport in society* 116, p.124. See also *Not-for-Profit Motivation in a For-Profit Company Law Regime: National Baseline Data* (n 89).

<sup>187</sup> *Money talks – A qualitative analysis of the organisational change connected with the corporation formation of a voluntary sport club* (n 122), p. 156

<sup>188</sup> Sport and Recreation Alliance, ‘Sports Club Survey 2013’ (Sports and Recreation Alliance 2013) <<https://www.sportandrecreation.org.uk/policy/research-publications/sports-club-survey-2013>> Accessed 15<sup>th</sup> July 2019, p.75

<sup>189</sup> *Ibid*, p.75

sector organisations face periodic funding crises.<sup>190</sup> The WRU's conditional funding structure may provide for evidence of an associated coercive isomorphic pressure in the research context.<sup>191</sup> As referred to at section 3.4.3 Byers suggested clubs are limited not just as a consequence of a lack of expertise but also due to finances and facilities.<sup>192</sup> The WRU's conditional funding structure for facilities grants on the basis of incorporation status, provides for a potential instance of coercive pressures which appreciate issues of resource constraint outlined comprehensively earlier.<sup>193</sup>

The likelihood of such a coercive pressure facilitating incorporation is supported by reference to Fahlen et al's empirical engagement with Bjorkloven's organisational change towards a more professionalising entity.<sup>194</sup> The organisational development considered by Fahlen et al. was wide ranging however included a transformation to a new corporate legal structure, albeit in a Swedish context.<sup>195</sup> Fahlen et al. concluded that the proposed cash injection, contingent upon undertaking the professionalising organisational change, was simply an opportunity too good to refuse.<sup>196</sup> The direct benefit to the research here is perhaps not quite comparable on the basis that the proposed injection in the Swedish context was of 22.5 million Krona (equating to well over a million pounds). Despite this, and perhaps only conceptually, the Bjorkloven circumstance does provide insight into the manner in which coercive isomorphic pressures have been evident in circumstances facilitating transformations of legal form.

#### *Mimetic pressures.*

Cognitive, otherwise referred to as mimetic pressures, relate to actions of emulation whereby organisations who are uncertain as to their environment seek to mimic other organisations within their

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<sup>190</sup> Mike Aiken and Margaret Harris, "The "hollowing out" of smaller third sector organisations?" (2017) 10 Voluntary Sector Review 333, p.333

<sup>191</sup> See figure 1.1

<sup>192</sup> Using critical realism: A new perspective on control of volunteers in sport clubs (n 139), p.5

<sup>193</sup> Figure 1.1 and Unincorporated associations as entities: A matter of balance between regulation and facilitation? (n 80), p.202

<sup>194</sup> Money talks – A qualitative analysis of the organisational change connected with the corporation formation of a voluntary sport club (n 122)

<sup>195</sup> Ibid

<sup>196</sup> Ibid

organisational fields. Fahlen et al. provide a description of mimetic isomorphism in a sporting context:

*“Mimetic isomorphism arises as a consequence of standardized ways of dealing with insecurity. When an organisation is facing problems which are hard to solve the solution is sought after in other, seemingly successful and legitimate organisations’ ways of conducting their activities.”*<sup>197</sup>

Randall and Baker in consideration of institutional pressures stated that “when faced with ambiguous goals, uncertainty about the relationship between means and ends, and limitations in knowledge and problem-solving skills, corporations often adopt the organisational structure and policies of those in their immediate environment.”<sup>198</sup> Randall and Baker combining considerations of heuristics with institutional theory, noted that the ambiguous legal environment which faced organisational decision-makers provided for a circumstance in which many organisations in the sector sought to mimic other companies’ protectionist policies.<sup>199</sup> The suggestion of a complex legal environment leading to a mimetic isomorphic response is an attractive possibility in relation to the current research given the uncertainty afforded by the law’s treatment of the unincorporated association.<sup>200</sup>

Randall and Baker concluded that in relation to the implementation of protectionist policies, mimetic pressures were more pronounced than the other forms of isomorphism.<sup>201</sup> Randall and Baker refer to the manner in which mimicking provides a means of arriving at a solution without a great deal of inferential energy expense as an explanation for its prominence within their study, thus providing a potential further link between resource constraint and management of external pressures.<sup>202</sup>

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<sup>197</sup> Money talks – A qualitative analysis of the organisational change connected with the corporation formation of a voluntary sport club (n 122), p.156

<sup>198</sup> The Threat of Legal Liability and Managerial Decision Making: Regulation of Reproductive Health in the Workplace (n 113)

<sup>199</sup> Ibid, p.178

<sup>200</sup> Section 2.5

<sup>201</sup> The Threat of Legal Liability and Managerial Decision Making: Regulation of Reproductive Health in the Workplace (n 113)

<sup>202</sup> Ibid

As stated at section 3.4, the issue for institutional theory and associated arguments of resource dependency were taken to be its overly deterministic understandings of organisational behaviour. A sub-branch of institutional theory, institutional logics, argued to be capable of mitigating those deterministic tendencies, emerged as a theoretical perspective more inclusive of agential explanations of organisational behaviour in the early 1990s. The perspective since its emergence has been utilised as a tool capable of facilitating explanations of change within sport whilst experiencing growth in empirical legal literatures. As such, institutional logics was considered for its potential explanatory value.

### 3.4.5 Institutional logics

Black contended that it makes no sense to focus upon the dichotomy that behaviour is either strictly agential or determined by external forces. Black argued “utility maximisation, satisficing, income maximisation, profit maximisation, risk, power, even interest, are all institutionally contingent.”<sup>203</sup> In appreciating the interplay between behavioural models of decision-making and institutionalism in legal contexts, Black stated that not only are actors not omniscient, as proposed by rational choice theory, but that the “knowledge they have and the way in which they see alternatives is subjective and imperfect.”<sup>204</sup> Black, in advocating such a viewpoint, referred to Friedland and Alford who pioneered a new form of institutionalism considered by this section, institutional logics.

Institutional logics emerged as a branch of institutional theory offering a less deterministic and consequently more agential viewpoint. Institutional logics appreciates there exist external forces promoting “mindless cognition” through taken-for-granted type understandings, whilst concurrently appreciating the opportunity for “mindful cognition”.<sup>205</sup> In this way institutional logics are recognised to provide a link between individual agency and cognition and socially constructed institutional

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<sup>203</sup> New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making (n 1), p.68

<sup>204</sup> Ibid, p.63

<sup>205</sup> Patricia Thornton and William Ocasio, “Institutional Logics” in Royston Greenwood and others *The Sage Handbook of Organisational Institutionalism* (Sage Publications Ltd, 2008), p.113

practices.<sup>206</sup> An institutional logics perspective is further taken to be cognisant of behavioural models of decision-making and the effect a lack of resources may have upon organisational conduct.<sup>207</sup> An interpretation of organisational decision-maker knowledge as both subject to bounded rationality and subject to institutional framing, provides a synergy between two dominant theoretical perspectives which have been applied to understanding VSC behaviour.

Despite its emergence some 30 years ago institutional logics remains something of a diffuse concept. Nevertheless, a regularly referred to definition of institutional logics is provided for by Thornton and Ocasio;

*“the socially constructed, historical patterns of material practices, assumptions, values, beliefs and rules by which individuals produce and reproduce their material subsistence, organise time and space, and provide meaning to their social reality.”*<sup>208</sup>

Institutional logics existing at the societal level are understood to flow from 7 institutional orders, the market, state, family, religion, corporation, professions and community.<sup>209</sup> Many empirical studies conflate institutional logics with these institutional orders, passing comment on the manifestation of the orders in specific contexts.<sup>210</sup> From an empirical research perspective, the categories are considered important in the disciplining of researchers to identify abstract categories that simplify and

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<sup>206</sup> Ibid, p.102

<sup>207</sup> New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making (n 1), p.54

<sup>208</sup> Patricia Thornton and William Ocasio, “Institutional Logics and the Historical Contingency of Power in Organisations: Executive Succession in the Higher Education Publishing Industry, 1958-1990” (1999) 105 *American Journal of Sociology* 801, p.804.

<sup>209</sup> Patricia Thornton, William Ocasio, & Michael Lounsbury, *The Institutional Logics Perspective: A New Approach to Culture, Structure and Process* (OUP 2012), p.73.

<sup>210</sup> Christina Johansen and Susanne Waldorff, “What are Institutional Logics – and Where is the Perspective Taking Us? [2015] *Academy of Management Proceedings*. <[https://www.researchgate.net/profile/Christina-Berg-Johansen/publication/291371998\\_What\\_are\\_Institutional\\_Logics\\_-\\_and\\_Where\\_is\\_the\\_Perspective\\_Taking\\_Us/links/57bb0ffe08ae8a9fc4c273f5/What-are-Institutional-Logics-and-Where-is-the-Perspective-Taking-Us.pdf](https://www.researchgate.net/profile/Christina-Berg-Johansen/publication/291371998_What_are_Institutional_Logics_-_and_Where_is_the_Perspective_Taking_Us/links/57bb0ffe08ae8a9fc4c273f5/What-are-Institutional-Logics-and-Where-is-the-Perspective-Taking-Us.pdf)> Accessed 16<sup>th</sup> June 2020.

distil the properties of new practices and the outcomes to be expected.<sup>211</sup> For research participants, the institutional logics underpinning institutional orders may represent organising principles which are taken to guide the orders and serve as frames of reference helping actors make sense of their world.<sup>212</sup> Expanding on the theory's inclusive nature, a logics perspective has been considered capable of providing an insight into what has been described as local rationality;

*“What looks to the analyst like nonrational behaviour may be quite sensible when situational constraints, especially those of embeddedness, are fully appreciated. When the social situation of those in non-professional labour markets is fully analysed, their behaviour looks less like the automatic application of “cultural” rules and more like a reasonable response to their present situation.”*<sup>213</sup>

Institutional logics are considered particularly adept at facilitating analysis of change.<sup>214</sup> As a consequence, a logics perspective has been applied in explanation of staggered evolutions and abrupt revolutions across the macro, meso and micro. In contrast to institutional theory's focus upon the organisational field, an institutional logics perspective both claims to return society and the individual to understandings of behaviour in a substantive fashion.<sup>215</sup> Friedland and Alford's commentary upon institutional theory's preoccupation with the organisational field was initially considered something of a rogue critique which has subsequently developed extensively.<sup>216</sup> Institutional logics perspectives have now been applied in numerous empirical settings in explanation of individual and organisational

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<sup>211</sup> Critically, institutional orders are not understood as representative of reality but rather serve as tools to interpret meaning. In doing so such orders provide a way of avoiding getting bogged down in merely reproducing the empirical situation. *The Institutional Logics Perspective A New Approach to Culture, Structure and Process* (n 209), p.52

<sup>212</sup> *Ibid*, p.64

<sup>213</sup> Mark Granovetter, “Economic Action and Social Structure: The Problem of Embeddedness” (1985) 91 *American Journal of Sociology*. 481, p.506

<sup>214</sup> *The Institutional Logics Perspective A New Approach to Culture, Structure and Process* (n 209)

<sup>215</sup> Roger Friedland and Robert Alford, “Bringing Society Back In: Symbols, Practices and Institutional Contradictions” in Walter Powell and Paul Dimaggio (eds) *The New Institutionalism Organisational Analysis*. (University of Chicago Press 1991), p.232

<sup>216</sup> Michael Lounsbury and Eva Boxenbaum, “Institutional Logics in Action” (Emerald Insight, 2013), p.6

decision-making and strategy.<sup>217</sup> The relationships between logics existing at the macro, meso and micro levels have provided for an opportunity to discuss the effects of dominant organisational logics,<sup>218</sup> issues of friction between competing logics<sup>219</sup> and the development of hybrid organisations on account of co-existing logics.<sup>220</sup> Although somewhat less explored,<sup>221</sup> a logics perspective further provides scope to link macro, meso and micro levels by way of individual and organisational cognition.<sup>222</sup>

Despite the present diverse use of the logics perspective, early studies utilising the concept focused on the aforementioned 7 macro level influences and in particular the market logic.<sup>223</sup><sup>224</sup> Thornton and Ocasio's research into higher education publishing has been often cited as a means of portraying the effect of the market logic in a traditionally non-commercial sector.<sup>225</sup> The movement of the higher education organisational field from a predominantly editorial to a more market-based logic, on account of growing competition and a greater influence from market forces more generally, was taken to effectively account for observable organisational change.<sup>226</sup>

In a sporting context specifically, the communitarian logic has most often been discussed. However, this has not been to the omission of other logics and in particular the market logic.<sup>227</sup> Within Fahlen et al's investigation of Bjorkloven, incorporation constituted one element of a wider organisational change argued to have been precipitated by the organisational deinstitutionalising of amateur values

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<sup>217</sup> Patricia Thornton, *Markets from Culture: Institutional Logics and Organisational Decisions in Higher Education Publishing* (Stanford University Press 2004)

<sup>218</sup> For "Love" and Money: A Sports Club's Innovative Response to Multiple Logics (n 172)

<sup>219</sup> Martin Carlsson-Wall, Kalle Kraus and Martin Messner, "Performance measurement systems and the enactment of different institutional logics: Insights from a football organisation" (2016) 32 *Management accounting research* 45.

<sup>220</sup> Loic Pedras, Tracy Taylor and Stephen Frawley, "Response to multi-level institutional complexity in a national sport federation" (2020) 23 *Sport Management Review* 482

<sup>221</sup> What are Institutional Logics – and Where is the Perspective Taking Us? (n 210)

<sup>222</sup> Institutional Logics (n 205)

<sup>223</sup> Heather Haveman and Hayagreeva Rao, "Structuring a Theory of Moral Sentiments: Institutional and Organisational Coevolution in the Early Thrift Industry." (1997) 102 *American Journal of Sociology* 1606

<sup>224</sup> What are Institutional Logics – and Where is the Perspective Taking Us? (n 210)

<sup>225</sup> Institutional Logics and the Historical Contingency of Power in Organisations: Executive Succession in the Higher Education Publishing Industry, 1958-1990 (n 208)

<sup>226</sup> Ibid

<sup>227</sup> Grant Jarvie, "Communitarianism, sport and social capital neighbourly insights into Scottish Sport" (2003) 38 *International Review for the Sociology of Sport* 139

and the subsequent institutionalisation of more commercial and ultimately professionalising alternatives.<sup>228</sup> Fahlen et al focus their discussion on the replacement of an exclusively sporting logic characterising club behaviour, to a circumstance where stronger commercialisation logics became prominent.

In a rugby specific context, O'Brien and Slack utilised an institutional logics perspective in explanation of elite English rugby clubs' reactions to the advent of professionalism<sup>229</sup> towards the end of the 20<sup>th</sup> century.<sup>230</sup> O'Brien and Slack considered a 5 year period which emphasised the sweeping changes the abandonment of amateurism provided for the elite game at large.<sup>231</sup> The timeframe utilised by O'Brien and Slack perhaps however provided for a more deterministic account of organisational change. The rapid professionalising of the elite game and the demise of several established clubs in quick succession framed organisational change as seemingly necessary, providing perhaps for an adapt or perish view of organisational options.<sup>232</sup>

Applications of an institutional logics perspective in a VSC circumstance has however focussed more upon transitional periods and change of an evolutionary rather than revolutionary kind. Engaging with these transitional periods affords greater attention to the agency of organisations who are understood as possessing options away from extremes of adapt or perish. Adaptation is perhaps still required but the manner in which an organisation may adapt is presented as less strictly defined. Fahlen et al., in appreciation of the agential nature of organisations, drew upon the concept of decoupling in

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<sup>228</sup> Money talks – A qualitative analysis of the organisational change connected with the corporation formation of a voluntary sport club (n 122)

<sup>229</sup> The advent of professionalism in this context relates to the prohibition of the payment of players prior to the Paris Declaration of 1995. Following such declaration rugby union was declared an open sport where the payment of players was permitted. See Danny O'Brien and Trevor Slack, "The emergence of a Professional logic in the English Rugby Union: The Role of Isomorphic and Diffusion Processes" (2004) 18 *Journal of Sport Management* 13.

<sup>230</sup> Andrew white for example stated that "The history of rugby union football in England is closely associated with the institutionalization and, in more recent times de-institutionalization of amateurism." Andrew White, 'Rugby union football in England' in Eric Dunning and others (eds) *Sport Histories: Figurational Studies in the Development of Modern Sports* (Routledge 2004), p.53

<sup>231</sup> Danny O'Brien and Trevor Slack "An analysis of change in an organisational field: The professionalization of English Rugby Union" (2003) 17 *Journal of Sport Management* 417. As was the case for Fahlen and Stenlings engagement with Bjorkloven, organisational change for O'Brien and Slack specifically included changes of legal form. In O'Brien and Slack's case this represented a change from unincorporated associations to public liability companies.

<sup>232</sup> Ibid, p.440

explanation of how sports clubs may outwardly portray conformance with emerging professionalising logics whilst internally sustaining operations wedded to traditionally embedded amateur logics.<sup>233</sup> Proponents of decoupling argue that a tendency exists within organisations for a reversion to type, for organisations to avoid or adjust external expectations by not in fact doing what the messages they convey suggest.<sup>234</sup> Such accounts are grounded in conflict with proposed change failing to align with existing organisational norms and values conceptualised as organisational logics. From a logics perspective, decoupling is therefore conceived of as a means of externally embracing those practices, structures, and messages of an emergent logic at the organisational field level whilst maintaining a status quo formed around extant dominant organisational logics.<sup>235</sup>

Perhaps appreciating the perspective as a useful means of unmasking conflict on occasions of change, a growth in the use of institutional logics has been apparent within empirical legal research. The recent use of a market logic as a means of explaining the changing practices of criminal justice rehabilitation speaks to the perspective's diversity of use.<sup>236</sup> Moorhead, employing a more individualistic perspective, conceived of institutional logics as a means of understanding those categories, principles, and conceptual tools which lawyers use to define and frame issues.<sup>237</sup> Moorhead has discussed how the use of an institutional logics perspective may serve to better explain how professional normative values may affect lawyers' decision-making.<sup>238</sup> However, it is Edelman's

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<sup>233</sup> Josef Fahlen, Inger Eliasson and Kim Wickman, "Resisting self-regulation: an analysis of sport policy programme making and implementation in Sweden (2015) 7 *International journal of sport policy and politics* 391.

<sup>234</sup> Professionalization of voluntary sport organisations – a study of the Quality Club Programme of the Norwegian Football Association (n 155), p.671

<sup>235</sup> Tammy MacLean and Michael Behnam, 'The Dangers of Decoupling: The Relationship Between Compliance Programs, Legitimacy Perceptions and Institutionalised Misconduct' (201) 53 *Academy of Management Journal* 1499. Richard Scott, *Institutions and organisations: Ideas, Interests and Identities* (Sage 2013)

<sup>236</sup> Matt Tidmarsh, *Professionalism in Probation Making Sense of Marketisation* (Routledge 2021)

<sup>237</sup> Richard Moorhead, 'Corporate Lawyers: Values, Institutional Logics and Ethics' (2015) CEPLER Working Paper Series 07/2015 <[http://epapers.bham.ac.uk/1984/1/cepler\\_working\\_paper\\_7\\_2015.pdf](http://epapers.bham.ac.uk/1984/1/cepler_working_paper_7_2015.pdf)> accessed 12 February 2020, p.3

<sup>238</sup> Richard Moorhead, Steven Vaughan and Cristina Godinho, *In-House Lawyers' Ethics Institutional Logics, Legal Risk and the Tournament of Influence* (Hart, 2019)

use of institutional logics to explain organisational responses to legal developments which is perhaps of more benefit to the present research.<sup>239</sup>

Edelman's use of institutional logics emerges from a law and society perspective.<sup>240</sup> Edelman suggests behaviour cannot be understood apart from the social environment and that preferences are governed by taken-for-granted notions of what is natural, right, and rational.

Edelman explains;

*“Institutionalised ideas about what is rational develop at the societal level in concert with institutionalised ideas about what is fair, what is legal, what is legitimate.”*<sup>241</sup>

Edelman relies upon an institutional logics perspective to explain how logics dominant in specific organisations may ultimately serve to frame decision-making of legal consequence in a manner which perpetuates existing norms associated with specific dominant forces.<sup>242</sup> Black, in agreement, noted that there is an importance in understanding an organisation's frame, the structure of knowledge, experience and values of decision-makers, in understanding a decision, even one of legal consequence.<sup>243</sup> The use of an institutional logics perspective thus encourages analysis to consider how institutionalised visions of law drawn from extant logics may affect organisational decision-making.<sup>244</sup>

The use of institutional logics in explanations of organisational responses to legal developments provides weight to the perspective's potential utility. The mid-range nature of the perspective affords the opportunity to consider external influence in a manner which remains cognisant of the agency of what are understood to be traditionally highly autonomous entities.<sup>245</sup> Nevertheless, it is appreciated

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<sup>239</sup> Lauren Edelman, Sally Fuller and Iona Mara-Drita, “Diversity rhetoric and the managerialization of law” (2001) 106 *American journal of sociology* 1589.

<sup>240</sup> Lauren Edelman, “Rivers of Law and Contested Terrain: A Law and Society Approach to Economic Rationality.” (2004) 38 *Law & Society Review* 181

<sup>241</sup> *Ibid*, p.187

<sup>242</sup> Diversity rhetoric and the managerialization of law (n 239)

<sup>243</sup> *New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making* (n 1), p.53

<sup>244</sup> *Ibid*

<sup>245</sup> *Sport policy in Norway* (n 92)

that accounting for the manner in which external forces may interact with, and in turn affect, demonstrations of agency, remains a testing task should the theory be utilised.

### 3.5 Theoretical plurality and plausible mechanisms

The critical realist review has considered theories which may realistically assist in explanation of AWRC behaviour as regards engagement with incorporation. In evaluation of the potential theories certain patterns emerged consistently. Issues of resource constraint featured prominently and thus the utility of more behaviourally aligned theoretical models became apparent. In consideration of that which results in resource constraint, the literature suggested an insular perspective may be unduly restrictive. In widening consideration of influential forces to those existing outside of clubs, benefits of considering AWRC and their decision-makers as not just rationally bound but also institutionally directed provided for an alternative yet similarly attractive basis from which AWRC decision-making may be understood.

Reflecting upon the findings of the review led to an agreement with what Seippel suggested was a settled understanding of professionalisation within the literature; that most researchers seem to agree that attempts at causative commentary regarding matters of voluntary sport professionalisation may require a large and complex set of theories.<sup>246</sup> Evaluation of potential theories supported an arrival at a similar conclusion at this point in the thesis.

Consideration of relevant literature however lent itself not only to the evaluation of theory but also to the identification of potential mechanisms. Causative mechanisms according to the critical realist literature can be social structures, organisations, ideas or motivations.<sup>247</sup> The scope for what may constitute a causative mechanism is therefore broad, with empirical evidence considered necessary to

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<sup>246</sup> Professionalization of voluntary sport organisations – a study of the Quality Club Programme of the Norwegian Football Association (n 155), p.669

<sup>247</sup> John Mingers and Craig Standing “Why things happen – Developing the critical realist view of causal mechanisms” (2017) 27 Information and Organisation 171, p.172

tease out that which may apply.<sup>248</sup> Although empirical evidence may be necessary to tease out that which ultimately develops causal understanding, attempts to facilitate a “head start” by way of engagement with the literature at chapters 2 and 3, led to the identification of several plausible mechanisms as outlined within table 3.1.<sup>249</sup>

*Table 3.1 Plausible mechanisms from law and literature.*

THEORETICAL BASE	POTENTIAL CAUSAL MECHANISMS	SOURCES & SECTIONS
LEGAL CONTEXT	FEARS OF LIABILITY & UNCERTAINTY IN LAW'S TREATMENT OF UNINCORPORATED ASSOCIATIONS 	CUSKELLY, AULD AND HOYE (SECTION 2.6) MCGREGOR-LOWNDES AND HANNAH (SECTION 2.6) GRAY & JAMES (SECTION 2.5)
BOUNDED RATIONALITY	LIMITATIONS OF TIME, MONEY AND EXPERTISE 	SUSAN WOODWARD (SECTION 2.7) ALEX DONALDSON, SUSAN LEGGETT & CAROLINE FINCH (SECTION 3.4.2)
BOUNDED RATIONALITY	RECRUITMENT & RETENTION 	RANDALL & BAKER (SECTION 3.4.2)
POWER AND POLITICS	SELF-INTEREST 	ORNULF SEIPPEL (SECTION 3.4.3) SOARES ET AL. (SECTION 3.4.3)

<sup>248</sup> Stephen Ackroyd, “Critical Realism, Organisation Theory, Methodology, and the Emerging Science of Reconfiguration” In Peter Koslowski (ed) *Elements of a Philosophy of Management and Organisation Studies in Economic Ethics and Philosophy* (Springer 2010), p.60

<sup>249</sup> Plausible mechanisms incentivising incorporation are depicted by right-facing arrows with those potential counter-mechanisms facilitating retention of the unincorporated form depicted by those left-facing alternatives.

POWER AND POLITICS	INTERNAL/EXTERNAL DICHOTOMY OF VIEWPOINTS 	ADAMS (SECTION 3.4.3) BYERS (SECTION 3.4.3)
INSTITUTIONAL THEORY	WRU PRESSURE & INCENTIVES 	PASSEY AND LYONS (SECTION 1.2) RANDALL AND BAKER (SECTION 3.4.4) WRU (SECTION 1.2) FAHLEN ET AL (SECTION 3.4.4)
INSTITUTIONAL THEORY	MARKET FORCES 	GEOFF NICHOLS & MICHAEL SHEPHERD (SECTION 3.3.1) GAVIN REID (SECTION 3.3.1)
INSTITUTIONAL LOGICS	INTERACTIONS WITH CHANGING FIELD LEVEL FORCES. 	FAHLEN ET AL (SECTION 3.4.5) O'BRIEN AND SLACK (SECTION 3.4.4)

The diversity of plausible causal mechanisms as emerging from the literature review resulted in a circumstance whereby it was felt unduly restrictive to advocate a potential causal framework based on one particular theory at this stage of the thesis. Chapter 3 can be considered therefore to have fallen short of McAvoy and Butler's belief that a critical realist review may provide for a *potential* causal framework. Nevertheless, those theories of interest and synthesised plausible mechanisms may in any event be compared against empirical findings in deliberation of causative forces.

### 3.6 Literature to design

What emerged from the literature review were plausible mechanisms which may assist in understanding how AWRC may manage and respond to issues of incorporation. Though the chapter's primary objective had been satisfied it was nevertheless appreciated that the review should, if possible, contribute to the methodological development of the thesis. The critical realist literature has advocated the use of contrasting methods and more specifically qualitative and quantitative methods. To do so however one must be considerate of the meta-theory's ontological limitations. Though not problematic for qualitative endeavours, utilising quantitative approaches in a manner appreciative of those limitations critical realism attaches to quantitative conclusions requires appreciable sensitivity. Testing the influence of a collection of the plausible mechanisms through a survey instrument, in a manner similar to Woodward for example, could assess the plausible mechanisms as detailed at table 3.1 for their statistical impact upon decisions to incorporate. However, such analysis would lack the depth the research seeks and the appreciation of context critical realism requires.

Reviewing the literature presented within chapter 3, Taylor's taxonomy of clubs was identified as a means through which quantitative methods could be usefully deployed in a manner appreciative of critical realism's ontological limitations. As Vincent and O'Mahoney stated quantitative data is well suited to establishing taxonomies in critical realist research.<sup>250</sup>

Taylor, as discussed at section 3.4.3, hypothesised distinctive types of formal and informal clubs exist and that crucially informal clubs are wary and resistant to external assistance and organisational development in a manner which does not afflict their formal comparator clubs.<sup>251</sup> Taylor details other key features of his taxonomy of clubs as outlined in table 3.2.

*Table 3.2. Taylor's taxonomy of formal and informal voluntary sports clubs.*<sup>252</sup>

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<sup>250</sup> Steve Vincent and Joe O'Mahoney, 'Critical realism and qualitative research: an introductory overview' in Cassell and others (eds) *The SAGE Handbook of Qualitative Business and Management Research Methods* (1<sup>st</sup> edn, Sage 2017), p.10

<sup>251</sup> Driving up participation: sport and volunteering (n 138)

<sup>252</sup> Ibid, p.105

FORMAL	INFORMAL
<p>THE SAME PRIMARY SOCIAL MOTIVATIONS AS TRADITIONAL/INFORMAL ORGANISATIONS: FRIENDSHIP, GIVING SOMETHING BACK, THE PARENTAL MOTIVE, BUT THESE ORGANISATIONS ARE MORE LIKELY TO SIMULTANEOUSLY WANT THE CLUB TO DO WELL, NOT JUST IN PLAYING PERFORMANCE, BUT ALSO IN ORGANISATIONAL PERFORMANCE.</p>	<p>MOTIVATIONS COMPATIBLE WITH MUTUAL ENTHUSIASM AND SOCIAL BENEFITS: THE MOST COMMONLY CITED MOTIVATIONS FOR SPORTS VOLUNTEERS ARE BOTH INTRINSIC - FRIENDSHIP AND ENJOYMENT, GIVING SOMETHING BACK - AND EXTRINSIC - PARENTS WANTING TO HELP THEIR CHILDREN.</p>
<p>PROFESSIONALISATION IS SEEN AS A RESPONSE TO PRESSURES. THESE ORGANISATIONS ARE MORE LIKELY TO ADOPT PAID WORK PROCEDURES AND ARE MORE RECEPTIVE TO PAYING FOR WORK E.G. COACHES.</p>	<p>A PROUD CULTURE OF INFORMALTY, WHICH TRANSLATES TO ACTIVE RESISTANCE TO THE RELEVANCE OF TERMS SUCH AS 'MANAGEMENT' OR EVEN 'VOLUNTEERING' THE ORGANISATION IS MORE OF A CO-OPERATIVE THAN A BUSINESS. SUCH ORGANISATIONS ARE OCCASIONALLY EFFECTIVE. ON THE OTHER HAND, IT IS OFTEN NOT EFFECTIVE, WHICH EXACERBATES ORGANISATIONAL PROBLEMS.</p>
<p>MORE FORMAL AND MANAGERIALIST IN APPROACH, BUT OFTEN NOT SEEING IT AS THAT, THEY ARE MORE LIKELY TO USE PROCEDURES SUCH AS AUDITS OF VOLUNTEERING POTENTIAL, MENTORING, JOB DESCRIPTIONS AND TRAINING. SOME EVEN HAVE VOLUNTEER CO-ORDINATORS.</p>	<p>THESE ORGANISATIONS ARE REACTIVE RATHER THAN PROACTIVE. THIS IS NOT SEEN AS CRISIS-MANAGEMENT, ALTHOUGH IT OFTEN HAS THE CHARACTERISTICS OF THIS. RATHER IT IS THE SPIRIT OF 'MUCKING IN', REINFORCING THE CO-OPERATIVE CULTURE, BUT OFTEN THIS SPIRIT IS ONLY MANIFESTED IN A LOYAL CORE OF KEY VOLUNTEERS.</p>
<p>THESE ORGANISATIONS ARE MORE PROACTIVE IN ANTICIPATING DEVELOPMENT AND IN PLANNING TO RESOLVE PROBLEMS AND TAKING ACTIONS TO DELIVER THE PLANS.</p>	<p>PROFESSIONALISATION, IN THE SENSE OF MORE FORMAL MANAGEMENT, IS SEEN AS A FUNDAMENTAL THREAT TO THE CULTURE OF THE ORGANISATION. "IT WOULD BE LIKE PAID WORK WITHOUT THE PAY."</p>
<p>RECEPTIVE TO EXTERNAL ASSISTANCE, WELCOMING IT AND SEEKING IT FOR RESOLVING PROBLEMS AND FOR DEVELOPMENT. WHILST THE BETTER ORGANISED MIGHT INSTIGATE PLANNING PROCEDURES TO EXPLOIT EXTERNAL SOURCES OF ASSISTANCE, OTHERS ARE MORE OPPORTUNISTIC IN SEEKING ASSISTANCE. THE KEY DIFFERENCE FROM TRADITIONAL/INFORMAL ORGANISATIONS IS THAT THESE CONTEMPORARY/FORMAL ORGANISATIONS ARE NOT MISTRUSTFUL OF, OR HOSTILE TO, EXTERNAL AGENCIES.</p>	<p>MISTRUST OF ASSISTANCE ON OFFER FROM EXTERNAL SOURCES. THIS IS SEEN AS EXTRA WORK AND THESE ORGANISATIONS ARE TOO CONSTRAINED IN RESOURCES TO EVEN ACKNOWLEDGE OR INVESTIGATE THE OFFERS FROM OUTSIDE, LET ALONE SEEK THEM.</p>

If one considers Taylor's findings in their totality, the potential for an association between what Taylor describes as a formal club, and an ability and willingness, to move from an informal unincorporated association to a more formal company limited by guarantee, appears worthy of consideration. In effect, extant club professionalism was understood to perhaps facilitate an openness

to the further professionalisation incorporation requires.<sup>253</sup> In the alternative, by giving appropriate regard to those features attaching to informal clubs, one may more easily understand why, as was the case in Passey and Lyon's study, some not-for-profit organisations often perceive the costs of incorporation to outweigh its potential benefits.<sup>254</sup>

Crucially, Taylor recognises that although informal and formal clubs may possess characteristics which speak to their willingness to deal with problems proactively or reactively, welcome or resist external assistance, and action or dismiss matters of organisational development, Taylor does not state why such clubs fall into the respective categories.<sup>255</sup> Taylor does not conclude with a causative explanation underlying such categorisation. Taylor speculates it may be the power of constituent decision-makers but is non-committal and seemingly open to the prospect of alternative explanations.<sup>256</sup> Attempting to establish through quantitative means whether a taxonomy of formal and informal clubs exist within the AWRC community thus afforded the opportunity to progress the research in a manner which facilitates further causative enquiry, without anchoring to one theoretical causative explanation.

Understanding whether a taxonomy of clubs is evident was deemed particularly beneficial to the thesis given fundamentally the research was interested in understanding why some clubs had chosen to engage with incorporation whilst others had not. Nichols et al argued that professionalisation was an inevitability in the VSC context.<sup>257</sup> Crucially, the authors further argued that by classifying clubs, one may understand how to adapt processes and policies to assist with professionalisation dependent upon whether a club can be considered to represent a formal or informal alternative.<sup>258</sup>

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<sup>253</sup> It was appreciated that any relationship was not necessarily indicative of a one-way causal link and that choice of legal form may contribute to levels of professionalisation rather than the converse. Nichols and James in their investigation of club professionalisation and club performance remained cognisant that any association was indicative of a relationship yet not determinative. One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support (n 53), p.110. In the present research, given any association was sought for the purposes of framing later qualitative exploration, findings of an association alone was deemed sufficient for the purposes of the preliminary quantitative enquiry.

<sup>254</sup> Regulating Third Sector Organisations; The views of Incorporated Associations in NSW (n 81), p.98

<sup>255</sup> Driving up participation: sport and volunteering (n 138), p.106

<sup>256</sup> Ibid, p.106

<sup>257</sup> Pressures on the UK Voluntary Sport Sector (n 85), p.47

<sup>258</sup> Ibid

Following Nichols and James development of Taylor's works,<sup>259</sup> the first empirical phase of the thesis therefore sought to consider whether a taxonomy of formal and informal clubs were evident within the AWRC population. In turn the quantitative enquiry further investigated whether such classification could be seen to have any statistical relationship with incorporation status. Any positive association in this regard would of course only legitimate further qualitative exploration given critical realism's understanding of causation as advanced within section 1.3. Nevertheless, exploration of why some clubs are more professional than others, whether certain causal mechanisms are present in formal clubs but not informal clubs, and ultimately the manner in which levels of professionalism may impact on decisions of incorporation, were potential qualitative enquiries thought to be facilitated by a preliminary quantitative exploration. Such progression was considered consistent with critical realist ontological limitations given quantitative methods have been appreciated as beneficial in critical realist studies for their abilities to unmask associations and facilitate deeper qualitative probing.<sup>260</sup>

Identifying whether Taylor's taxonomy of formal and informal clubs was evident within the AWRC community was therefore interpreted as a useful way for the research to employ quantitative means in a manner appreciative of the causal restrictions critical realism places upon quantitative findings. By seeking to understand whether Taylor's taxonomies of formal and informal clubs translate into the AWRC circumstance, the research sought to establish a useful structural development for the empirical phases of the thesis in a manner which facilitated rather than spoke directly to causal explanation.

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<sup>259</sup> One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support (n 53)

<sup>260</sup> Phil McEvoy and David Richards, "A critical realist rationale for using a combination of quantitative and qualitative methods" (2006) 11 *Journal of Research in Nursing* 66, p.71





## Chapter 4: Methods and methodology part one

This chapter's purpose is to detail how the methods relating to the quantitative phase of this research were developed. Reference to methodological development is important to the thesis as it was not the case that visions of how the project would look during the study's formative phase were mirrored by the form the empirical investigation eventually took. In consequence, planning and forethought were as important to the study as flexibility and reflexivity. Although areas of interest changed and grew, the aim, to greater understand AWRC decision-making as it pertained to the incorporation policy, and the methods employed to this end, remained consistent with the critical realist metatheoretical framework as detailed within the introductory chapter.

Although chapters 4 and 5 largely focus upon the quantitative phase of the research, as outlined at section 1.3, an exclusively quantitative approach in pursuit of causative commentary was considered inappropriate.<sup>1</sup> As Modell argues, it is important to recognise that quantitative methods can only take the researcher so far. Empirical critical realist research, as suggested by Modell, needs to go beyond what quantitative analysis may *indicate* to appropriately understand causation.<sup>2</sup> The limitations of quantitative methods centre upon the fundamental position of critical realism that it does not subscribe to the notion of a "final truth."<sup>3</sup> In appreciation of these limitations of quantitative methods, the study does not seek to provide an account of causation based on quantitative analysis.

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<sup>1</sup> The critical realist paradigm promotes the recognition of difference between social cases. In turn this provides for a scepticism of the deductive logic that definitive causative explanation can hinge on the presence of one factor. Stephen Ackroyd and Jan Karlsson, "Critical Realism, Research Techniques, and Research Designs" Paul Edwards, Joe O'Mahoney and Steve Vincent (eds), *Studying Organisations Using Critical Realism: A Practical Guide*. (Oxford University Press 2014), p.32

<sup>2</sup> Sven Modell, 'In defence of triangulation: A critical realist approach to mixed methods research in management accounting' (2009) 20 *Management Accounting Research* 208, p.213

<sup>3</sup> Gill Westhorp, 'Realist Impact evaluation: An introduction' [2014] *Methods Lab* September 2014 <<https://cdn.odi.org/media/documents/9138.pdf>> Accessed 19<sup>th</sup> September 2021

Although the qualitative stage of the research therefore can be considered the project's dominant strand,<sup>4</sup> both as regards matters of data collection and data analysis,<sup>5</sup> the thesis' explanatory objectives, coupled with its more exploratory features, were taken to provide for a circumstance whereby quantitative methods were understood as capable of enhancing the research process.<sup>6</sup>

#### 4.1 Metatheoretical consistency

Being something of a modern approach to studying law, empirical legal research perhaps lacks the methodological traditions of other disciplines. Banakar and Travers made reference to the lack of texts covering how one can do research about law and legal processes which accounts for social scientific standpoints.<sup>7</sup> Since Banakar and Travers statements however, such omission has been somewhat mitigated.<sup>8</sup> Nevertheless, empirical legal research remains largely interdisciplinary and therefore often relies upon the borrowing of concepts and theoretical perspectives from other disciplines to guide empirical pursuits.<sup>9</sup> For this research, considerations of how to tackle the overarching research objective during formative deliberations led to a decision that a critical realistic meta-theoretical

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<sup>4</sup> John Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (3<sup>rd</sup> edn, Sage Publications 2009)

<sup>5</sup> Achieving insight of the choices of societal actors has been considered best facilitated by the use of qualitative methods. Hazel Genn, "Hazel Genn and Paths to Justice" in Patrick Schmidt and Simon Halliday (eds) *Conducting Law and Society Research: Reflections on Methods and Practices* (Cambridge University Press, 2009)

<sup>6</sup> Alex Nunn and others, 'Factors influencing social mobility' (Department for Work and Pensions 2007)

<sup>7</sup> Reza Banakar and Max Travers, 'Introduction' in Reza Banakar and Max Travers (eds) *Theory and Method in Socio-Legal Research* (Hart Publishing 2005) p.ix.

<sup>8</sup> George Wilson and others, *Legal research methods in a modern world: a coursebook* (3<sup>rd</sup> edn, Djoj Publishing 2011). Laura Cahillane, *Legal research methods: principles and practicalities* (Clarus Press 2016). Willem Van Boom *Empirical legal research in action: reflections on methods and their applications* (Edward Elgar Publishing 2018)

<sup>9</sup> Rebecca French, 'Of narrative in law and anthropology' (1996) 30 *Law & Society Review* 417, p.420

perspective, growing in use within organisational<sup>10</sup> and VSC fields,<sup>11</sup> appeared well placed to tease out those perhaps less perceptible causal forces at work.<sup>12</sup>

As is the case for any research-based decision however, benefits are accompanied by detriments and the choice to utilise a critical realist perspective to guide the empirical research was no different.

Though inherently flexible, critical realism, as stated previously, provides for a lack of systematicity.<sup>13</sup> Arguments that critical realist literature has failed to comprehensively engage with questions of how to apply the concept in empirical settings has been recognised recently by Fletcher and Hoddy.<sup>14</sup> The literature however is not entirely silent on this subject. Critical realism can first be taken to hold a similar view to pragmatism in that no empirical methods are automatically privileged over others.<sup>15</sup> What is important is utilising methods which depend on “the nature of the object of study and what one wants to learn about it.”<sup>16</sup> Wiltshire as a consequence stated that critical realism provides for an openness to methodological plurality.<sup>17</sup> Mukumbang goes further in stating that critical realist research should adopt and integrate different methods.<sup>18</sup> Danermark perhaps more

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<sup>10</sup> Steve Vincent and Joe O’Mahoney, ‘Critical realism and qualitative research: an introductory overview’ in Cassell and others (eds) *The SAGE Handbook of Qualitative Business and Management Research Methods* (1<sup>st</sup> edn, Sage 2017) Dennis Frederiksen and Louise Kringelum, ‘Five potentials of critical realism in management and organisation studies’ (2021) 20 *Journal of Critical Realism* 18

<sup>11</sup> Terri Byers, “Using critical realism: A new perspective on control of volunteers in sport clubs.” [2013] *European Sport Management Quarterly* 5. Christine Wegner and others, ‘Voluntary sensemaking: the identity formation process of volunteers in sport organisations’ (2019) 19 *European Sport Management Quarterly* 625. Jim Lusted, ‘A critical realist morphogenetic approach to researching sport policy: reflections on a large scale study of policy implementation in grassroots English Football’ (2018) 10 *International Journal of Sport Policy and Politics*. 705. Spencer Harris and Barrie Houlihan, ‘Implementing the community sport legacy: the limits of partnerships, contracts and performance management’ (2016) 16 *European Sport Management Quarterly* 433.

<sup>12</sup> Stephen Ackroyd, “Critical Realism, Organisation Theory, Methodology, and the Emerging Science of Reconfiguration” In Peter Koslowski (ed) *Elements of a Philosophy of Management and Organisation Studies in Economic Ethics and Philosophy* (Springer 2010), p.60

<sup>13</sup> See section 3.1.

<sup>14</sup> Amber Fletcher, “Applying critical realism in qualitative research: methodology meets method” (2017) 20 *International Journal of Social Research Methodology* 181. Eric Hoddy, “Critical Realism in empirical research: employing techniques from grounded theory methodology.” [2018] *International Journal of Social Research Methodology* 111

<sup>15</sup> In defence of triangulation: A critical realist approach to mixed methods research in management accounting (n 2), p.213

<sup>16</sup> Critical realism and qualitative research: an introductory overview (n 10), p.208

<sup>17</sup> Gareth Wiltshire, ‘A case for critical realism in the pursuit of interdisciplinarity and impact’ (2018) 10 (5) *Sport, exercise and health* 525, p.537

<sup>18</sup> Ferdinand Mukumbang, ‘Retrodutive Theorizing: A Contribution of Critical Realism to Mixed Methods Research’ (2021) 0 *Journal of Mixed Methods Research* 1, p.4

specifically still, argues that most events should be described by qualitative as well as quantitative means.<sup>19</sup> Though a mixed methods perspective has many benefits, bringing together quantitative and qualitative methods in a single study has been the subject of much criticism on the basis of concerns as to ontological and epistemological consistency. Critical realism's pragmatic epistemology may leave the door open for combining methods; however, facilitating mixed methods research in an epistemologically sensitive manner, remains a considerable task. It is to the ways in which the research has attempted to address this task which section 4.2 details.

## 4.2 Type of mixed methods research

Critical realist literature, though advocating a mixed methods approach to social research, states little of how methods can, or indeed should, be mixed. Mixed methods research requires a considerable deal of epistemic flexibility and therefore to justify whether mixed methods should be used, it is necessary to define its purpose, to discuss why mixed methods are appropriate.

There are several designs through which mixed methods research can be conducted with different types of mixed methods design serving different objectives.<sup>20</sup>

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<sup>19</sup> Berth Danermark and others, *Explaining Society Critical Realism in the Social Sciences* (2<sup>nd</sup> edn, Routledge 2019), p.130

<sup>20</sup> Reproduced from Tom Clark and others, *Bryman's Social Research Methods* (OUP 2021), p.568

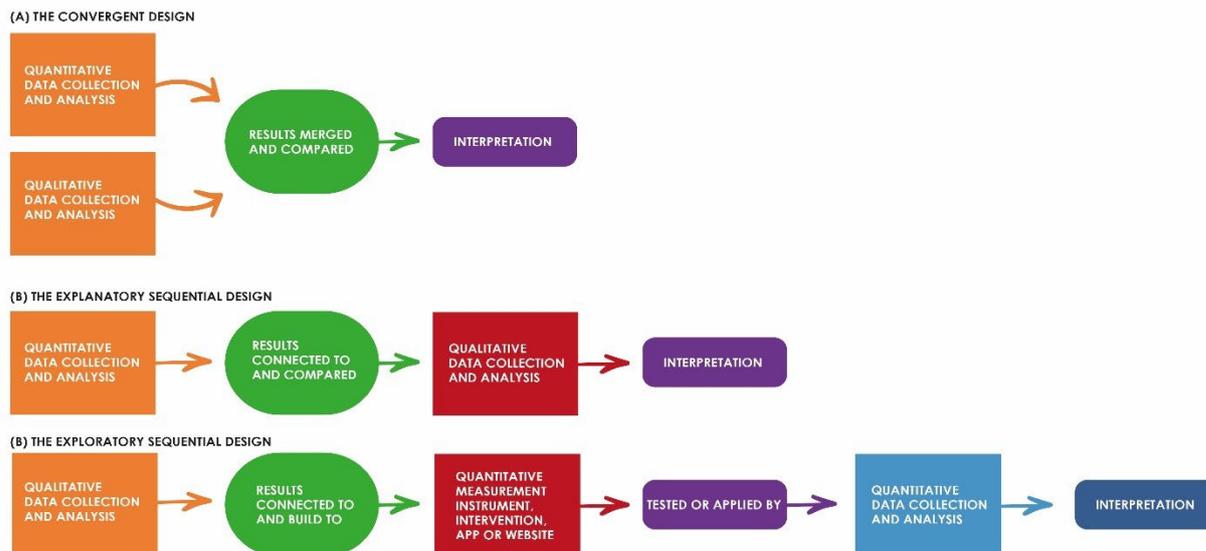


Figure 4.1 Types of mixed-methods research designs.

Creswell noted the importance of matching research designs to research problems.<sup>21</sup> The research is exploratory, owing primarily to the fact that little research has been afforded to the area previously. However the primary objective of the research is explanation. The research ultimately seeks to understand and importantly explain those influences effecting AWRC behaviour. To understand why a certain circumstance is as it appears, the research thus utilises an explanatory sequential design. With the thesis' focus of explaining causation, the research relies upon an explanatory sequential design. The sequential design was implemented as a means of seeking to first utilise quantitative methods to inform research questions, identify generalisable patterns for further qualitative exploration, and to assist in the construction and development of the project's methodology more generally.

Sequential research designs outside of the critical realist paradigm have more readily deployed qualitative methods prior to quantitative methods. The logic behind such approach is to tease out areas

<sup>21</sup> John Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (3<sup>rd</sup> edn, Sage Publications 2009)

of interest through qualitative means and thereafter test the veracity of such findings by subjecting them to quantitative analysis argued to be capable of establishing generalisability. However, Lusted, utilising a critical realist approach, stated that it is quite common for quantitative data collection to take place prior to the deployment of qualitative methods.<sup>22</sup> Given quantitative methods in initial stages of critical realist projects have been considered useful in unmasking patterns and associations,<sup>23</sup> the deployment of quantitative methods in an attempt to identify a potential relationship of interest appeared in keeping with the traditions of the study's meta-theory. In recognition of causative limits, the quantitative analysis, as stated previously, did not seek therefore to show definitive causality but rather sought to provide evidence of potential demi-regularities relevant to the research issues. Should an association be evident, then this would legitimise further in-depth exploration of the phenomena through the secondary, more dominant, qualitative strand of the research and provide an empirically substantiated taxonomy to facilitate such endeavour.<sup>24</sup> In this way the sequential mixed methods research design can be considered to seek complementarity and development<sup>25</sup> as per Greene, Caracelli and Graham's reasons for undertaking mixed methods design.<sup>26</sup>

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<sup>22</sup> Jim Lusted, 'A critical realist morphogenetic approach to researching sport policy: reflections on a large scale study of policy implementation in grassroots English Football' (2018) 10 *International Journal of Sport Policy and Politics* 705

<sup>23</sup> Phil McEvoy and David Richards, "A critical realist rationale for using a combination of quantitative and qualitative methods" (2006) 11 *Journal of Research in Nursing* 66, p.71

<sup>24</sup> Utilising exploratory statistical analytical methods without complementing such endeavours with probing qualitative engagement has been described by Modell as potentially representative of little more than fishing expeditions. In defence of triangulation: A critical realist approach to mixed methods research in management accounting (n 2)

<sup>25</sup> Attempts to develop understanding of VSC engagements with matters of legal form away from extant quantitative and legalistic analysis may further be seen to contribute to "innovation" as defined by Greene et al.

<sup>26</sup> Reproduced from Jennifer Greene, Valerie Caracelli and Wendy Graham, "Toward a Conceptual Framework for Mixed-Method Evaluation Designs" (1989) 11 *Educational Evaluation and Policy Analysis* 255, p.259

Figure 4.2 Greene et al's rationales for mixed-method designs.

PURPOSE	RATIONALE
 <p><b>TRIANGULATION</b> SEEKS CONVERGENCE, CORROBORATION, CORRESPONDENCE OF RESULTS FROM THE DIFFERENT METHODS.</p>	<p>TO INCREASE THE VALIDITY OF CONSTRUCTS AND INQUIRY RESULTS BY COUNTERACTING OR MAXIMIZING THE HETEROGENEITY OF IRRELEVANT SOURCES OF VARIANCE ATTRIBUTABLE ESPECIALLY TO INHERENT METHOD BIAS BUT ALSO TO INQUIRER BIAS, BIAS OF SUBSTANTIVE THEORY, BIASES OF INQUIRY CONTEXT.</p>
 <p><b>COMPLEMENTARITY</b> SEEKS ELABORATION, ENHANCEMENT, ILLUSTRATION, CLARIFICATION OF THE RESULTS FROM ONE METHOD WITH THE RESULTS FROM THE OTHER METHOD.</p>	<p>TO INCREASE THE INTERPRETABILITY, MEANINGFULNESS, AND VALIDITY OF CONSTRUCTS AND INQUIRY RESULTS BY BOTH CAPITALIZING ON INHERENT METHOD STRENGTHS AND COUNTERACTING INHERENT BIASES IN METHODS AND OTHER SOURCES.</p>
 <p><b>DEVELOPMENT</b> SEEKS TO USE THE RESULTS FROM ONE METHOD TO HELP DEVELOP OR INFORM THE OTHER METHOD, WHERE DEVELOPMENT IS BROADLY CONSTRUED TO INCLUDE SAMPLING AND IMPLEMENTATION, AS WELL AS MEASUREMENT DECISIONS.</p>	<p>TO INCREASE THE VALIDITY OF CONSTRUCTS AND INQUIRY RESULTS BY CAPITALIZING ON INHERENT METHOD STRENGTHS.</p>
 <p><b>INITIATION</b> SEEKS THE DISCOVERY OF PARADOX AND CONTRADICTION, NEW PERSPECTIVES OF FRAMEWORKS, THE RECASTING OF QUESTIONS OR RESULTS FROM ONE METHOD WITH QUESTIONS OR RESULTS FROM THE OTHER METHOD.</p>	<p>TO INCREASE THE BREADTH AND DEPTH OF INQUIRY RESULTS AND INTERPRETATIONS BY ANALYZING THEM FROM THE DIFFERENT PERSPECTIVES OF DIFFERENT METHODS AND PARADIGMS.</p>
 <p><b>EXPANSION</b> SEEKS TO EXTEND THE BREADTH AND RANGE OF INQUIRY BY USING DIFFERENT METHODS OF DIFFERENT INQUIRY COMPONENTS.</p>	<p>TO INCREASE THE SCOPE OF INQUIRY BY SELECTING THE METHODS MOST APPROPRIATE FOR MULTIPLE INQUIRY COMPONENTS.</p>

Initial ideas of how the study may progress foresaw utilising quantitative methods to establish taxonomies and identify broad areas of interest to be explored more thoroughly through the use of qualitative techniques. As will be seen, such objectives were not wholly fulfilled. Although the research did not progress as perhaps originally expected, the sequential nature of the design did influence development from a methodological and analytical perspective. Complementarity was perhaps not achieved in its most traditional sense on account of the empirical data. However, by moving from quantitative to qualitative engagement, the latter did provide an opportunity to understand to a greater degree the results of the former.

Given the sequential research design does not involve so much of a mixing of methods but perhaps more so a use of multiple methods, decisions relating to the respective quantitative and qualitative

phases were necessarily distinct. In consideration of the developmental element of the research, and to properly account for the chronology of how the findings from the quantitative data informed the latter qualitative phase, discussion of methods is split. The first element thus focuses on the quantitative phase, with the discussion of qualitative methods following the presentation of the quantitative analysis. Though this may perhaps not align with traditional presentations of methods and methodology, presenting the research in this fashion was felt to give a clearer portrayal as to how the research truly developed. The sequential nature of the research design is therefore felt to be more clearly illustrated through the structuring of the research in a more chronological fashion. The remainder of chapter 4 is therefore largely committed to discussions pertaining to the quantitative phase, with the remaining methodological element of the research re-engaged at chapter 6 following a presentation of the quantitative findings. Before engaging with those issues of method exclusive to the quantitative element, section 4.3 details the rationale underpinning engagement with club decision-makers for purposes of data collection regarding both empirical phases.

### 4.3 Empirical participants

Prior to engaging substantively with those methods dedicated to the quantitative enquiry, the chapter first details those participants deemed most capable of providing insight into AWRC decision-making, executive body members. The burgeoning VSC literature may be growing in diversity however the focus of this research relates specifically to high level organisational decision-making. In order to develop knowledge as regards such decisions it was appreciated that the thesis must commit focus to the entities within such organisations who may provide for the greatest insight into such issues. For this reason, the thesis has focused upon clubs' executive bodies, being committees for unincorporated clubs and boards of directors within companies limited by guarantee. These decision-makers hold a multitude of responsibilities ranging from the upholding of the organisation's constitution, to recruiting volunteers, developing coaches, and registering players.<sup>27</sup> It is therefore the case that iterations of these executive bodies, be it in committee or board form, can be considered the foci for

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<sup>27</sup> Michael Van Bussell and Alison Doherty, "An examination of the conflict process in nonprofit community sport boards" (2015) 15 *European Sport Management Quarterly* 176, p.178

the majority of sports organisations and representative of its formal aspects.<sup>28</sup> For these reasons, individuals comprising such bodies have been most often understood as an appropriate medium through which to gain knowledge of organisational features of the type the quantitative endeavour seeks.<sup>29</sup>

The decision to focus upon these executive bodies for the quantitative limb of the project, but in particular the qualitative element, represented a significant methodological choice as regards the direction of the thesis. Such decision was however felt to be justified in one respect owing to the knowledge developed from engagement with the literature and legal context. Nichols commented on the contrast of opinion often existing between those who volunteer in clubs and those who simply hold memberships.<sup>30</sup> Although it is important to be wary of Nichols arguments that this inconsistency within VSC between volunteers and non-volunteers may cause a difference of viewpoint, or facilitate tensions between the two groups,<sup>31</sup> it has been acknowledged that the executive body members are those most likely to be involved in the implementing of externally devised policy.<sup>32</sup> The decision to engage with AWRC decision-makers, as mentioned, was further justified by the findings of the thesis as drawn from chapter 2. Disadvantages of incorporation, such as the potential for continuing personal liability and increased administrative burdens, appeared to effect most acutely decision-makers of incorporating organisations. Given the thesis seeks to understand why clubs do and do not incorporate, focussing upon those decision-makers for whom incorporation may offer advantages and disadvantages appeared in keeping with the overarching objective of the research.

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<sup>28</sup> Graham Cuskelly, Norman McIntyre and Alistair Boag, "A longitudinal study of the development of organisational commitment amongst volunteer sport administrators" (1998) 12 *Journal of sport management*. 181

<sup>29</sup> Dennis Coates and others, 'A Bivariate Probit Examination of Financial and Volunteer Problems of Non-Profit Sport Clubs' (2014) 9 *International journal of sport finance* 230. Russell Hoye, 'Commitment, Involvement and Performance of Voluntary Sport Organisation Board Members' (2007) 7 *European Sport Management Quarterly* 109

<sup>30</sup> Geoff Nichols and others, "Pressures on the UK Voluntary Sport Sector" (2005) 16 *International Journal of Voluntary and Nonprofit Organisations*. 33, p.44

<sup>31</sup> *Ibid*, p.44

<sup>32</sup> Christopher Clenk, Benjamin Egli and Torsten Schlesinger, "Exploring how voluntary sports clubs implement external advisory inputs" (2017) 22 *Managing Sport and Leisure* 70

There were of course other entities relevant to the incorporation policy such as the Welsh Rugby Union (WRU), solicitors involved in the incorporation process, and accountancy firms assisting with the same who represented groups of potential interest. The decision to focus on executive bodies however did not close the research to the potential influence of external entities as regards understandings of incorporation. Retaining such an openness was deemed important given engagement with extant literature highlighted the manner in which an organisational field and its constituent actors may impact upon an organisation's strategic decision-making. Facilitating an exploration of such influence thus remained a significant consideration in those deliberations of research design. The research in its latter qualitative phase therefore seeks to explore external influence but does so by engaging executive body decision-makers on their thoughts, feelings, and experiences of those external entities deemed relevant to the incorporation experience. In this sense the research appreciates Nichols et al's conclusions that although external influences may be important in defining sports club behaviour, such forces are often mediated by those individuals holding positions of power.<sup>33</sup> The decision ultimately aligns therefore with Lipsky's argument that "policy implementation in the end comes down to the people who actually implement it"<sup>34</sup> and follows Passey and Lyons methodological conclusions that when considering matters of non-profit incorporation, engagement with those responsible for legal compliance seems most fitting.<sup>35</sup>

Having determined the project's primary class of empirical participants, the chapter moves to consider those quantitative specific methods of data collection. Guided by the works of Taylor et al.<sup>36</sup> Nichols and James<sup>37</sup> and Cuskelly et al.,<sup>38</sup> it was considered appropriate in the first instance to establish

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<sup>33</sup> Pressures on the UK Voluntary Sport Sector (n 30), p.44

<sup>34</sup> Michael Lipsky, *Street level bureaucracy: dilemmas of the individual in public services* (Russell Sage Foundation, 1980), p.8

<sup>35</sup> Andrew Passey and Mark Lyons, "Regulating Third Sector Organisations; The views of Incorporated Associations in NSW" (2009) 15 *Third Sector Review* 85, p.87

<sup>36</sup> Peter Taylor, 'Driving up participation: sport and volunteering' in Sport England (ed) *Driving up participation: the challenge for sport* (Sport England 2004)

<sup>37</sup> Geoff Nichols and Matthew James, "One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support" (2008) 13 *Managing Leisure* 104

<sup>38</sup> Graham Cuskelly and others, "Volunteer Management Practices and Volunteer Retention: A Human Resource Management Approach" (2006) 9 *Sport Management Review* 141

whether a taxonomy of clubs, analogous to that which had been observed in VSC generally,<sup>39</sup> was applicable to the subpopulation of AWRC. In turn the research sought to investigate whether an association between club professionalisation and use of legal form could be identified.

#### 4.3.1 Quantitative methods, the questionnaire

The questionnaire was chosen as the most appropriate method for the quantitative phase of the empirical research. Questionnaires are often associated with quantitative research designs as the method facilitates collection of data susceptible to coding and quantification.<sup>40</sup> Questionnaires further provide a means of collecting large amounts of data over a relatively short time.<sup>41</sup> A cross-sectional design was considered to be the optimal means of carrying out this stage of the research which further complemented the use of the questionnaire method. Mann noted that a cross-sectional design provides the ability to consider a particular phenomenon at a particular time, in identification of existing differences and relationships or associations between groups.<sup>42</sup> Consideration was given to other designs and associated methods which would facilitate quantitative analysis, however, given the objective of this element of the project was to provide an insight as to the situation in clubs as they existed at that time, an exclusive documentary analysis, for example, relying upon potentially non-contemporaneous documentation, seemed inappropriate. The questionnaire was therefore considered the optimal method given its ability to provide a contemporary snapshot of participant clubs' features and practices.<sup>43</sup>

The type of questionnaire which would be appropriate in furtherance of the objectives of the research was also considered at some length. It was acknowledged that the objective of organisational

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<sup>39</sup> See section 3.6

<sup>40</sup> Chris Gratton and Ian Jones, *Research Methods for sports studies* (3<sup>rd</sup> edn, Routledge, 2015), p.192

<sup>41</sup> Ronet Bachman and Russell Schutt, *The Practice of research in criminology and criminal justice* (Sage 2014), p.191

<sup>42</sup> Clifford Mann, "Observational research methods. Research Design II: Cohort, cross sectional, and case control studies" (2003) 20 *Emergency Medicine Journal* 54, p.56

<sup>43</sup> Mildred Patten, *Questionnaire Research: A Practical Guide* (4<sup>th</sup> edn, Routledge 2017)

questionnaires generally is to obtain high-quality data that is reliable and valid.<sup>44</sup> This was kept in mind when considering whether open- or closed-ended questionnaires would be most appropriate. Open-ended questionnaires have the benefit of providing data of a richer quality capable of detailing contextual influences.<sup>45</sup> Furthermore, an open-ended instrument also possesses the attribute of leaving the respondent unencumbered by a prepared set of replies.<sup>46</sup> Given the stated objective of this particular phase of the project however was to establish any taxonomies of interest and identify any association between professionalism and incorporation, categorising open-ended responses was considered to be unduly resource intensive and lack tangible benefit to the stated objectives.<sup>47</sup> Facilitating in-depth enquiries through the exploration of issues of context and experience were deemed therefore to be more appropriately engaged through alternative qualitative methods within the second empirical phase of the research.

Once the questionnaire had been chosen as the most suitable method, it was thereafter decided to adapt the questionnaire which had been employed by Nichols and James in their 2008 study relating to amateur netball clubs.<sup>48</sup> The decision to adapt a previous questionnaire was considered appropriate owing to the successful dissemination and analysis of the instrument in an analogous setting. The restructuring of a previously successful instrument, which had been shown to facilitate engagement with the type of clubs whom the researcher was hoping would participate, provided an element of security and rigour to the prospective study, given such instruments would already have been assessed in terms of reliability and validity.<sup>49</sup> Utilising and adapting a previous questionnaire is also considered beneficial given the capacity for comparison with the outcomes of previous studies.<sup>50</sup> Though the

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<sup>44</sup> Timothy Hinkin and Brooks Holton, "Response Rates and Sample Representativeness: Identifying Contextual Response Drivers" in David Buchanan and Alan Bryman (eds) *The Sage handbook of organisational research methods*. (1<sup>st</sup> edn, Sage 2011), p.451

<sup>45</sup> Abraham Oppenheim, *Questionnaire design, interviewing and attitude measurement* (Pinter, 1992)

<sup>46</sup> *Ibid*, p.113

<sup>47</sup> Close ended questionnaires have further been considered advantageous over open-ended alternatives in terms of maximising response rates. Questionnaire design, interviewing and attitude measurement (n 45), p.114. Mirta Galesic and Michael Bosnjak, "Effects of Questionnaire Length on Participation and Indicators of Response Quality in a Web Survey" (2009) 73 *Public Opinion Quarterly* 349

<sup>48</sup> One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support (n 37)

<sup>49</sup> *Research Methods for sports studies* (n 40), p.157

<sup>50</sup> *Ibid*, p.157

questionnaire utilised the vast majority of questions which had appeared in Nichols and James' 2008 research, it was necessary to amend the questionnaire to take into account technological advancements and to ensure the instrument was rugby specific.

The decision to adapt the Nichols and James survey instrument logically imposes a means by which this research project defines and importantly measures an organisations' professionalism.<sup>51</sup> As previously mentioned, professionalisation and formalisation have been used interchangeably within this area of literature.<sup>52</sup> Consistent with Nichols and James position, Taylor's taxonomy of formal and informal clubs were therefore taken to be understandable as a classification tool based on a clubs' level of professionalism. Nichols' and James reference to professionalisation representing "the adoption of a set of management practices which would normally be associated with an organisation managed by paid staff"<sup>53</sup> was further adopted by the research.

A close-ended binary questionnaire was therefore distributed to representatives of amateur Welsh rugby clubs within the first 6 months of 2019. The questionnaire contained 26 questions which were answerable by either a yes or a no response.<sup>54</sup> There was an additional question which asked whether the participant would be willing to be contacted in the future in relation to the study. The questionnaire can be considered an analytical questionnaire given its overall purpose was to inform issues of incorporation and professionalisation. Though the survey was not a typical analytical questionnaire, in that a score emanating from the responses was to be considered against incorporation status, the questionnaire cannot be considered as descriptive owing to the use of the data for the purposes of establishing an association between variables.

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<sup>51</sup> One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support (n 37)

<sup>52</sup> Geoff Nichols and others, "Measuring the formalization of community sports clubs: findings from the UK, Germany and Australia" (2015) 7 *International Journal of Sport Policy and Politics* 283

<sup>53</sup> One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support (n 37), p.106

<sup>54</sup> Consistent with the approach taken by Nichols et al. the questionnaire specified that if an individual was unsure of the answer to a question, then a no should be provided. The rationale behind such decision was that if a club representative was unaware whether their club carried out a practice, the likelihood was they did not, given the involvement of such individuals in the running of their respective organisations. Geoff Nichols and others, 'The relationship between types of sports club and English government policy to grow participation' (2012) 4 *International journal of sport policy and politics* 187, p.192

### 4.3.2 Contact

In terms of dissemination of the questionnaire, emails were initially sent to the nine WRU representatives for each geographical district of Wales, requesting permission to attend their respective district meetings and distribute the survey. A district meeting represents a gathering of representatives from each club's executive body from a particular geographical region of Wales. The meetings, as well as being attended by representatives of each club, are headed by WRU district representatives who disseminate information from the WRU to the club officials. In turn, the WRU district representatives then act as spokesperson for the collective views of their district during national WRU discussions. Eight positive responses were received from WRU district representatives and therefore attendance took place at eight of the meetings.

Contact with the potential participants was initially made by email. An email was sent prior to the distribution of the questionnaire, given previous research had suggested that advanced notice of distribution may increase response rates.<sup>55</sup> An internet search focussing upon publicly accessible Welsh rugby club websites provided, in the overwhelming majority of cases, email addresses of club executive body members. The clubs which did not publicly provide email addresses through their websites possessed general enquiry sections through which messages could be forwarded. The initial email provided notice of an intention to attend a district meeting and distribute a questionnaire relating to a project concerning the issue of incorporation.

The decision to attend district meetings as the primary method of distribution was made on the basis of maximising response rates, which is important to empirical studies as regards the quality of the data.<sup>56</sup> Venue-based methods were considered appropriate in these circumstances given response rates regarding VSC are traditionally low and venue-based methods regularly involve "hard to reach"

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<sup>55</sup> Michael Link and Ali Mokdad, 'Advance letters as a means of improving respondent cooperation in random digit dial studies: a multistate experiment.' (2005) 69 *Public opinion quarterly* 572, p.572

<sup>56</sup> Response Rates and Sample Representativeness: Identifying Contextual Response Drivers (n 44), p.452

populations.<sup>57</sup> Venue-based methods involve visiting respondents in places where they would reasonably be expected to gather and collecting data related to attendance at that specific venue.<sup>58</sup> Other methods such as postal questionnaires and online questionnaires were considered, however, the former was thought to be less advantageous given a lack of personal contact may have had a negative effect on response rates.<sup>59</sup> As regards the latter, the main advantage of the online questionnaire method, participant convenience, could be replicated through the sending of follow up emails to club representatives with word versions of the questionnaires attached. Following the meetings, questionnaires were therefore emailed to the club representatives along with the relevant information sheet, in order to provide the option of completing the questionnaire electronically. Such additional method was appropriate given schedule constraints of the representatives could not be known, and the provision of adequate time and opportunity to complete the instrument is considered a vital consideration in the optimisation of response rates.<sup>60</sup>

At each of the district meetings attended, a short statement was made to the attendees addressing some salient points. Attendees were provided the below-numbered information within the statement, following which the questionnaire and accompanying information sheet were distributed, with the representatives then left to complete the questionnaire. Collection thereafter took place at the end of the meeting.

1. There was no obligation to complete the questionnaire.
2. The questionnaire consisted of 26 tick-box questions requiring a yes or no response.
3. The data collected from the questionnaire would be pseudonymised.
4. The participants could contact the researcher at any time for further information relating to the project.

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<sup>57</sup> Farzana Muhib and others, "A Venue-based method for sampling hard-to-reach populations" (2001) 116 Public Health Reports 216

<sup>58</sup> Ibid, p.217

<sup>59</sup> Martha Sinclair and others, "Comparison of response rates and cost-effectiveness for a community-based survey: postal, internet and telephone modes with generic or personalised recruitment approaches" (2012) 12 BMC Medical Research Methodology 132, p.133

<sup>60</sup> Response Rates and Sample Representativeness: Identifying Contextual Response Drivers (n 44), p.451

5. The participant could withdraw from the study at any time and for any reason and should contact the researcher if they wished for the data provided to be removed from the study.

Distributing the questionnaire in person and allowing the participants to complete the questionnaire without assistance from the researcher was a conscious decision to utilise the self-administration method. The questionnaire was distributed in this manner given it has been posited that the action of the researcher delivering the questionnaire in person can result in a greater response rate.<sup>61</sup> This was of importance to the project given a general principle of empirical research is to collect as much data as resources and time will allow.<sup>62</sup> Generally, self-administered questionnaires are also associated with minimal interviewer bias owing to the withholding of assistance regarding completion of the questionnaire instrument.<sup>63</sup> The claim as to minimal bias is not however universally accepted. It has been noted for example that the demeanour of the researcher may influence subjects' behaviour in whether to respond to the questionnaire.<sup>64</sup> This response bias however should be limited owing to the fact that the researcher did not assist in any way individuals undertaking the questionnaire. It is however accepted that the appearance and personality of the researcher may make the process less neutral in comparison with a postal method for example.

### 4.3.3 Quantitative sampling

The WRU state that there are 291 clubs operating within their league structure. The 16 premierships teams were removed from the study owing to the fact that they constitute something of a half-way house between professionalism and amateur rugby, with the vast majority of players remunerated for their efforts, but not to the level whereby further employment is not necessary. The study was

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<sup>61</sup> Bryan Rookey and others, "Understanding the resilience of mail-back survey methods: An analysis of 20 years of change in response rates to national park surveys." (2012) 41 *Social Science Research* 1404, p.1412

<sup>62</sup> Lee Epstein and Andrew Martin, "Quantitative Approaches to Empirical Legal Research" in Peter Crane and Herbert Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (OUP 2010), p.910

<sup>63</sup> Ann Bowling, "Mode of questionnaire administration can have serious effects on data quality" (2005) 27 *Journal of Public Health* 281, p.287

<sup>64</sup> Herschel Knapp and Stuart Kirk, "Using pencil and paper, internet and touch-tone phones for self-administered surveys: does methodology matter?" (2003) 19 *Computers in Human Behaviour* 117, p.118

therefore seeking to engage with 275 clubs within the 2018/19 season. The WRU website provides a breakdown of all clubs which operate within their league structure.<sup>65</sup> The clubs from the championship to the bottom conference of division 3 across the five league ladders being East, East Central, West Central, West and North were included to form the sample frame. The project sought to engage with 100% of the clubs within the frame. This was however appreciated to be somewhat unrealistic based on existing studies successes in seeking to engage with voluntary sports clubs.<sup>66</sup>

62 completed questionnaires were received with 37 by way of attendance at the district meeting and 24 through email. One further response was posted to Cardiff University Law School in the days following a district meeting attendance. Within the questionnaire, point i. asked whether the club would be happy for the researcher to contact them in the future regarding further discussions relating to the issue of incorporation. Of the 62 completed questionnaires, 53 provided their consent to further contact.

#### **4.3.4 Phase one ethical considerations**

When undertaking any form of empirical research which involves human participants ethical issues should be considered before the commencement of the project, during the project itself and following completion.<sup>67</sup> The application for ethical approval prior to data collection came in three stages. The first stage, relating to the quantitative element of the study, formed the initial application which was granted approval on the 6th of January 2019. The relevant ethical considerations to the qualitative phase are discussed later in the thesis. All applications took into consideration the Cardiff School of Law and Politics ethical guidance and also considered ESRC guidance documents regarding conduct relating to empirical research.

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<sup>65</sup> Welsh Rugby Union 'Documents and Regulations' (Community.wru.wales, undated)

<<https://community.wru.wales/club/club-resources/documents-and-regulations>> Accessed 7<sup>th</sup> July 2020

<sup>66</sup> Thomas May, Spencer Harris & Mike Collins, "Implementing community sport policy: understanding the variety of voluntary club types and their attitudes to policy" (2012) 5 International Journal of Sport Policy and Politics 397, p.405

<sup>67</sup> Anthony Veal, *Research Methods for Leisure and Tourism* (Prentice Hall 2006), p.70

The participant population were not considered as a vulnerable group and so ethical considerations primarily related to adhering to accepted norms when engaging with members of the general public. Nevertheless, certain matters did arise in contemplation of the project which were specific to this group and required mitigating action. A general principle which researchers must abide by is that of doing no harm or as little harm as possible to the research participant. Causing no harm is of course preferable. However, certain projects seek to reflect on somewhat sensitive issues which may cause distress to the participant recalling particular events. In relation to the research project, sensitive issues were not scheduled to be considered. There was nevertheless the possibility that the questions raised within the questionnaire may cause a level of anxiety amongst the participants given the sensitivity of a subject can differ significantly from person to person.<sup>68</sup> The distribution of a questionnaire seeking to assess club professionalisation inevitably contained insights into how more professionalised clubs may operate. It was suspected that a recognition that a club's operations were not particularly professionalised, may cause concerns as regards compliance and administrative record keeping, which on one occasion appeared to occur. The researcher was contacted promptly following the distribution of the questionnaire by an individual seeking a further copy. The individual sought a further copy of the document to relay its contents to their fellow committee members as they were worried their practices had become somewhat out of date. Though this may have been a fleeting concern, it was nevertheless indicative of the type of worry which could emerge in relation to this topic.

The circumstance of engaging with representatives of amateur clubs in relation to research partially sponsored by the WRU was also considered as a potential source of contention and anxiety. The WRU as a national governing body acts as a regulator of the clubs which participate within their league structures. The WRU has the ability to fine, deduct points and to impose other sanctions including the removal of clubs from their competitions owing to issues of conduct by clubs and their

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<sup>68</sup> Astushi Asai, and others, "Ethics in questionnaire-based research" (2003) 13 *Eubios Journal of Asian and International Bioethics* 147 <<https://www.eubios.info/EJ134/ej134k.htm>> Accessed 14<sup>th</sup> October 2018

players.<sup>69</sup> With it recognised that sponsorship of the research can have a determinative effect upon response rates,<sup>70</sup> the potential for carrying out research with a regulatory body of the participant population was an acknowledged source of potential contention.

Given the potential for anxieties or ill-feeling to arise on account of the above, it was made explicit within the information sheet and questionnaire that any data collected would be pseudonymised and that the individuals in the study would be referred to in the most detail as director/committee member of x rugby club within the presentation of any findings. Indicating those measures undertaken by researchers to ensure confidentiality and anonymity is considered to be an ethically appropriate practice.<sup>71</sup> Though the issue of research sponsorship by the WRU was not raised within the questionnaire distribution phase by the participants nor in the immediate aftermath, detailing the measures in place to pseudonymise the participant data, it is hoped alleviated any implicit concerns held by participants.

#### 4.4 Funding

The issue of funding as referred to above requires further elaboration at this stage in acknowledgement that such issue may be perceived to influence research results. The research was partly funded by the ESRC and partly by the Welsh Rugby Union. Literature exists which seeks to illuminate the effect of funding upon research designs and outcomes whether this be explicit or implicit, recognised or otherwise.<sup>72</sup> It is perhaps those more implicit influences which are of greater concern in the production of empirical research given the reader is unaware of the funder's sway in matters of research progression.<sup>73</sup> The Welsh Rugby Union commissioned the broad focus of the research being an improvement of the understanding as to AWRC engagement with the incorporation policy. Aside from this however, the researcher felt no pressure to design the research in a certain way

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<sup>69</sup> Welsh Rugby Union 'Documents and Regulations' (Community.wru.wales, undated)

<<https://community.wru.wales/club/club-resources/documents-and-regulations>> Accessed 7<sup>th</sup> July 2020

<sup>70</sup> Richard Fox, Melvin Crask and Jonghoon Kim, "Mail survey response rate: a meta-analysis of selected techniques for inducing responses"(1988) 52 *Public opinion quarterly* 467, p.467

<sup>71</sup> *Research Methods for sports studies* (n 40), p.141

<sup>72</sup> Sheldon Krinsky, 'Do financial conflicts of interest bias research? An inquiry into the "funding effect" hypothesis' (2012) 38 *Science, Technology and Human Values* 566

<sup>73</sup> Alan Bryman, *Social Research Methods* (OUP 2012), p.203

nor experienced any influence which suggested findings of a particular kind were sought. The research design was led by the broad objective yet aside from this general goal, the design was the product of engagement with relevant literature and the empirical findings of the research itself.

The researcher at the time the research was conducted was furthermore a member of a WRU member club. The decision was taken to exclude such club specifically from the empirical element of the research in order to minimise issues of bias. Although the participation of the researcher's club within the project may have been more problematic in the qualitative stage owing to heightened concerns that interviewees may "provide the researcher information which they wish to hear",<sup>74</sup> it was felt appropriate to remove the club from both phases of the empirical endeavour.

#### 4.5 Questionnaire responses

The works of May, Harris and Collins<sup>75</sup> and Sports and Recreation Alliance<sup>76</sup> noted engagement with voluntary sports clubs was a problematic issue, with the former identifying rugby clubs in particular as unresponsive to questionnaire requests.<sup>77</sup>

Reid Howie Associates considered a response rate of 28% to be excellent in their Scottish research related to voluntary sports clubs and therefore the response rate of above 20% reached by the research is indicative of a respectable sample.<sup>78</sup> In relation to the geography of the respondent clubs, engagement was categorised by the league ladder in which the clubs senior team operate, East, East Central, West Central, West and North. 11 of the responses were received by clubs from the East

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<sup>74</sup> Claire Anderson, 'Presenting and Evaluating Qualitative Research' (2010) 84 (8) *American Journal of Pharmaceutical Education* 141, p.146

<sup>75</sup> Implementing community sport policy: understanding the variety of voluntary club types and their attitudes to policy (n 66), p.405

<sup>76</sup> Sport and Recreation Alliance, "Red Card to Red Tape: How sport and recreation clubs want to break free from bureaucracy" (Sport and Recreation Alliance 2011) <<http://sramedia.s3.amazonaws.com/media/documents/16850507-ad39-4ff8-aea-50378dd1aad6.pdf>> Accessed 8<sup>th</sup> March 2020, p.203

<sup>77</sup> Implementing community sport policy: understanding the variety of voluntary club types and their attitudes to policy (n 66), p.405

<sup>78</sup> Reid Howie Associates, "The sustainability of Local Sports Clubs in Scotland" (Scottish Executive 2007) <<https://www.gov.scot/Resource/Doc/145971/0038194.pdf>> Accessed 2<sup>nd</sup> January 2018

Central ladder, 25 from the Eastern ladder, 18 from the West Central Ladder, 2 from the North ladder and 6 from the Western ladder. In relation to an analysis of the league level in which the club's most senior team operate, the findings were more evenly distributed. 2 of the respondent teams operated within the Championship, 13 of the teams within Division One, 12 of the teams within Division Two, 15 within Division 3A, 12 within Division 3B and 8 within the bottom division.<sup>79</sup>

The willingness to continue to participate in the study was a welcomed finding following consideration of the responses. Of those minded to complete the questionnaire, 85% consented to further contact being made in relation to the second stage of the research project. Following the collection of the completed questionnaires, a database populated with the responses was created using Microsoft Excel and thereafter the statistical analysis software package SPSS. For the purposes of anonymity, each club was assigned a number with their respective responses to each question thereafter provided.

Following the construction of the database, statistical analysis was undertaken. The primary objective of the analysis was to understand whether a taxonomy of clubs, based on professionalism, as observed within the VSC literature more widely was evident within the AWRC sub-population, as well as the identification of any associations which existed between a club's level of professionalisation and their incorporation status. Chapter 5 offers the results of this quantitative endeavour.

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<sup>79</sup> The championship response rate of two is not the outlier it may appear on first consideration owing to the fact that the Championship is one division comprising 12 teams. The other divisions represent the findings from the respective leagues across the previously mentioned five geographical ladders.



## **Chapter 5: Quantitative analysis.**

In order to understand whether a taxonomy of clubs based on organisational professionalism was evident and thereafter whether any association between a club's level of professionalism and its use of legal form was apparent, a number of analytical techniques were utilised. The collected data and associated analysis is presented within chapter 5 through both tables and graphs. Through the use of SPSS, descriptive analysis of the data was undertaken with cluster analysis performed thereafter for the purposes of classification. Finally, cross tabulation and bivariate logistical regression was utilised to highlight the existence of any pertinent relationship between a club's professionalism and choice of legal form.

62 cases were analysed following the removal of three cases owing to a failure of the participants to complete the questionnaire document and relevant declarations in their entirety. In absolute terms the number of responses can be considered a small sample. Owing however to the overall population size and the issues experienced in response rates regarding similar populations as detailed previously, the sample size was considered satisfactory for empirical research in this field.

### **5.1 Measuring professionalism**

Table 5.1: Responses to professionalism questionnaire.

Q	ASPECTS OF PROFESSIONAL MANAGEMENT	%
1	DOES YOUR CLUB HAVE A BANK ACCOUNT IN THE CLUB NAME?	100
2	ARE MINUTES OF YOUR COMMITTEE MEETINGS MADE AVAILABLE TO YOUR CLUB MEMBERS?	77.4
3	DOES YOUR CLUB PRODUCE AN ANNUAL REPORT AND ACCOUNTS?	98.4
4	DOES YOUR CLUB HAVE ANY LEVEL 2 QUALIFIED COACHES?	96.8
5	DOES YOUR CLUB HAVE ANY LEVEL 3 QUALIFIED COACHES?	69.4
6	DOES YOUR CLUB HAVE AN ELECTRONIC DATABASE OF ITS CLUB MEMBERS?	67.7
7	HAS YOUR CLUB REVIEWED ITS CONSTITUTION IN THE LAST FIVE YEARS?	85.5
8	DOES YOUR CLUB PROVIDE NEW MEMBERS WITH AN INFORMATION PACK OR CLUB HANDBOOK?	37.1
9	HAS YOUR CLUB APPLIED FOR ANY GRANTS TO DEVELOP ITSELF IN THE LAST FIVE YEARS?	88.7
10	DOES YOUR CLUB HAVE A WRITTEN CODE OF CONDUCT FOR ITS COACHES?	58.1
11	IS YOUR CLUB PART OF THE WRU'S DEVELOPMENT PROGRAMME, WHICH UTILISES HUB OFFICERS	58.1
12	DOES YOUR CLUB FOLLOW A DOCUMENTED CHILD PROTECTION POLICY?	90.3
13	DOES YOUR CLUB'S CONSTITUTION STATE HOW LONG COMMITTEE MEMBERS ARE EXPECTED TO SERVE FOR?	43.5
14	DOES YOUR CLUB HAVE A WRITTEN HEALTH AND SAFETY POLICY?	71.0
15	DOES YOUR CLUB HAVE A WRITTEN VOLUNTEER POLICY?	21.0
16	DOES YOUR CLUB HAVE A SOCIAL MEDIA PRESENCE? (FACEBOOK, TWITTER, INSTAGRAM ETC.)	100
17	DOES YOUR CLUB EMPLOY ANY PAID COACHES?	43.5
18	DOES YOUR CLUB HAVE FINANCIAL FORECASTS FOR THE NEXT TWO YEARS?	25.8
19	DOES YOUR CLUB HAVE FREEHOLD OR A LONG-TERM LEASE (10 PLUS YEARS) OVER EITHER A PITCH OR A CLUBHOUSE?	83.9
20	IS YOUR CLUB INCORPORATED?	48.4
21	IS YOUR CLUB CASC (COMMUNITY AMATEUR SPORTS CLUBS) REGISTERED?	35.5
22	HAS YOUR CLUB CARRIED OUT A PREMISES RISK ASSESSMENT IN THE LAST TWO YEARS?	71.0
23	DOES YOUR CLUB KEEP AN ACCIDENT BOOK?	85.5
24	ARE YOUR CLUB PREMISES HIRED OUT TO ANY OUTSIDE BUSINESS/COMMUNITY GROUPS?	72.6
25	IS YOUR CLUB REGISTERED FOR VAT?	77.4
26	DOES YOUR CLUB OFFER PAYMENT OF SUBSCRIPTIONS BY DIRECT DEBIT, PAYPAL OR STANDING ORDER?	38.7

A professionalism score was drawn from the data collected from the distribution of the questionnaires. As previously alluded to, the questionnaire was binary in nature. Each club was therefore awarded one point for every yes answer they provided with 0 points awarded for a no response. A 100% positive

response rate was received in relation to question 1. “Does your club have a bank account in the club name” and question 16. “Does your club have a social media presence?” On only eight occasions, being questions 8, 13, 15, 17, 18, 20, 21 and 26, did less than 50% of the clubs participating answer in a positive manner.

For purposes of comparison with Nichols’ and James 2008 research, the professionalism scores were placed into three distinct categories, with the outcome of this categorisation represented by table 5.2.

*Table 5.2: Distribution of AWRC professionalism scores.*

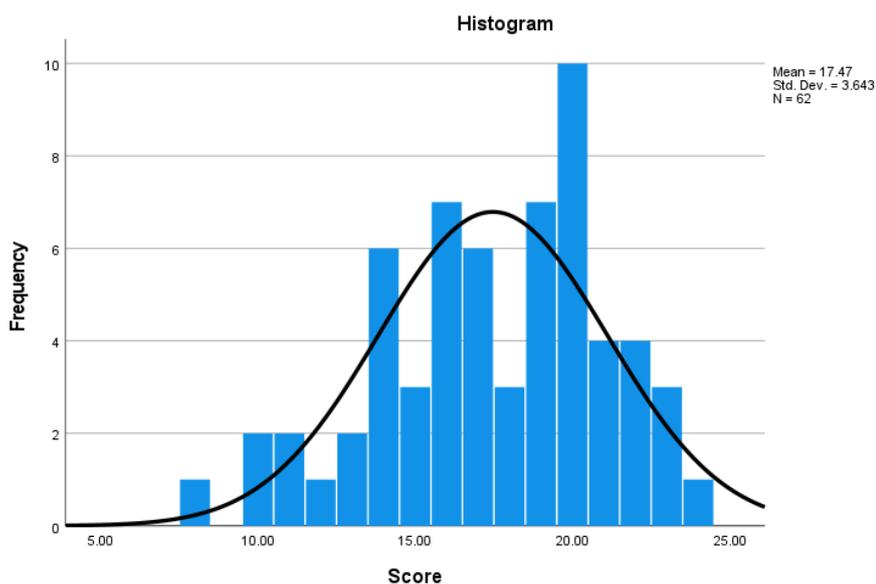
PROFESSIONALISM SCORE	% OF CLUBS
0-8	1.6
9-17	46.8
18-26	51.6

With a maximum score of 26, 1.6 per cent of clubs scored within the bottom third percentile. A frequency analysis was undertaken to provide a descriptive insight into several of the salient characteristics of the data. As can be seen within table 5.3, the mean and median of 17.5 and 18 respectively highlight that the average rugby club willing to engage in this research has a high professionalism score. The range of professionalism scores measured 16.00 with a standard deviation of 3.6. Though the range is considerable given the figures involved, the standard deviation reading is a better indicator as to the distribution of scores with 74.3% of clubs’ scores falling within one standard deviation (3.6) of the mean. The standard deviation reading of 3.6 therefore suggests that the mean is a relatively accurate representation of the overall data. The data can be considered to be normally distributed with a slight positive skew evident. This can be seen in Graph 5.1.

Table 5.3: Descriptive statistics of AWRC professionalism scores.

STATISTICS		
SCORE		
N	VALID	62
	MISSING	3
MEAN		17.4677
MEDIAN		18.0000
STD. DEVIATION		3.64272
SKEWNESS		-.476
STD. ERROR OF SKEWNESS		.304
RANGE		16.00

Figure 5.1: Graphical representation of AWRC professionalism scores.



Conclusions that the respondent rugby clubs should be considered to be generally professionalised is perhaps best supported through comparison with the data collected by Nichols and James in their study addressing professionalism of UK netball clubs. Within Nichols and James' 2008 study, it was found that 55% of clubs had a professionalism score of five or less. Further, the mean was noted as 6.4, with only three questions receiving a positive response from 50% or more of the participant netball clubs. It would be remiss not to draw attention to the fact that Nichols and James' equivalent

questionnaire was comprised of 21 rather than 26 questions. A mere superficial analysis however allows for clear distinctions to be drawn between the two datasets.

*Table 5.4 Nichols and James distribution of professionalism scores.*

PROFESSIONALISM SCORE	% OF CLUBS
0-5	55
6-14	30
15-21	6

## 5.2 Cluster analysis

Cluster analysis was considered an appropriate means by which to analyse the data. Cluster analysis was previously utilised by May, Harris and Collins<sup>1</sup> as well as Nichols et al.<sup>2</sup> and Nichols and James<sup>3</sup> as a means of grouping VSC according to levels of professionalism. Cluster analysis has been described as a “statistical technique that helps reveal hidden structures by grouping entities or objects with similar characteristics into homogenous groups while maximising heterogeneity across groups.”<sup>4</sup> Cluster analysis has been described as well suited to developing taxonomies and facilitating exploration of statical associations.<sup>5</sup> Adhering specifically to Nichols and James consideration of

<sup>1</sup> Thomas May, Spencer Harris and Mike Collins, “Implementing community sport policy: understanding the variety of voluntary club types and their attitudes to policy” (2012) 5 *International Journal of Sport Policy and Politics* 397

<sup>2</sup> Geoff Nichols and others, “Measuring the formalization of community sports clubs: findings from the UK, Germany and Australia” (2015) 7 *International Journal of Sport Policy and Politics* 283

<sup>3</sup> Geoff Nichols and Matthew James, “One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support” (2008) 13 *Managing Leisure* 104

<sup>4</sup> Minlei Liao and others, “Cluster analysis and its application to healthcare claims data: a study of end-stage renal disease patients who initiated hemodialysis” (2016) 17 *BMC Nephrology*, p.2

<sup>5</sup> Joseph Hair and others, *Multivariate data analysis* (8<sup>th</sup> edn, Cengage 2019), p.427

netball clubs, a K-means cluster analysis was performed with a view to establishing whether a taxonomy of clubs existed within the amateur Welsh rugby club population. K-means non-hierarchical clustering was preferred over hierarchical alternatives given the research was seeking to understand specifically whether two clusters, being professional and unprofessional alternatives, were apparent. Had the research sought a large number of potential clusters or indeed an as yet undetermined number of clusters, then the hierarchical alternative would have proved more suitable.<sup>6</sup> In this circumstance however, cluster analysis was utilised in order to determine whether amateur Welsh rugby clubs could be classified into professional and unprofessional club clusters, similar to the findings of Nichols and James as well as Taylor.<sup>7</sup>

*Table 5.5: K-Means analysis initial cluster centres.*

<b>INITIAL CLUSTER CENTRES</b>		
<b>CLUSTER</b>		
	<b>1</b>	<b>2</b>
<b>SCORE</b>	<b>8.00</b>	<b>24.00</b>

*Table 5.6: K-Means analysis final cluster centres.*

<b>FINAL CLUSTER CENTRES</b>		
<b>CLUSTER</b>		
	<b>1</b>	<b>2</b>
<b>SCORE</b>	<b>13.71</b>	<b>19.84</b>

<sup>6</sup> Ibid, p.219

<sup>7</sup> 'Driving up participation: sport and volunteering' in Sport England (ed) *Driving up participation: the challenge for sport* (Sport England 2004)

Applying a k-means cluster analysis supported arguments that a taxonomy of clubs based on professionalism was evident within the AWRC sub-population. However, in contrast to Nichols and James<sup>8</sup> as well as Taylor's<sup>9</sup> respective taxonomies, the research here rather supports findings of a professionalised category of clubs and a second highly professionalised category.

Non-hierarchical cluster analysis of the type undertaken seeks to highlight the centres of the natural clusters. K-means clustering relies upon the programme's analysis to select the necessary cluster centres which in this case can be seen as 13.71 and 19.84 respectively (Table 5.6). The number of cases in each cluster being 24 and 38 respectively (Table 5.7) suggests a considerable number of cases, relatively, populate each cluster thus indicating the data is well represented by a 2-cluster solution.<sup>10</sup>

*Table 5.7: AWRC cluster populations.*

<b>CLUSTER</b>	<b>1</b>	<b>24.000</b>
	<b>2</b>	<b>38.000</b>
<b>VALID</b>		<b>62.000</b>
<b>MISSING</b>		<b>3.0000</b>

The initial findings as drawn from the descriptive statistics<sup>11</sup> and the cluster analysis suggested AWRC may be more professionalised in comparison with netball clubs and perhaps the wider VSC

<sup>8</sup> One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support (n 3)

<sup>9</sup> 'Driving up participation: sport and volunteering' in Sport England (n 7)

<sup>10</sup> Hair et al. state that caution should be exercised in circumstances where solutions provide for clusters composed of one or a small number of cases. Multivariate data analysis (n 5), p.221

<sup>11</sup> Descriptive statistics seek to describe the midpoints of data with the mean, median, and modes providing examples. Descriptive statistics also look to account for the variance within data. Gill Marshall and Leon Jonker, 'An introduction to descriptive statistics: A review and practical guide' (2010) 16 Radiography e1, p.e3

population.<sup>12</sup> Although cluster analysis had revealed distinct clusters constituting an interesting point of comparison with the wider VSC literature, evidence of professional and unprofessional clubs specifically were not supported by the data.

In order to facilitate a consideration of whether any association between use of legal form and the professionalised and highly professionalised clubs was apparent, further statistical analysis was undertaken. In order to properly account for any potential association between such clusters and incorporation status, it was deemed appropriate to re-run the cluster analysis and exclude the data relevant to the use of legal form.

Cross tabulations were utilised to facilitate considerations of statistical associations given that such analytical tools are considered beneficial for variables that normally have a relatively small number of categories, such as the two types of clusters identified by the statistical analysis and the binary incorporation status question.<sup>13</sup> The utility of cross-tabulation to explorations of this type is often depicted through the use of an example based on sex and smoking status. If 70% of smokers were women, it could for example be suggested that the relevant data shows an association may exist between sex and smoker status, given basic statistical theory suggests that the division would be 50/50 if sex had no bearing.<sup>14</sup>

From the cross-tabulation of the data, the specific chi-square output was considered relevant given the test's ability "to determine whether or not there is a statistically significant association between two variables."<sup>15</sup> Chi square tests allow for consideration of whether the expected counts, which would be evident if no association existed between the variables, are statistically significant to the actual counts observable from the relevant data.<sup>16</sup> Such output has been utilised specifically as a means of developing knowledge as to incorporation based organisational decision-making.<sup>17</sup> In the research

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<sup>12</sup> One size does not fit all: implications of sports club diversity for their effectiveness as a policy tool and for government support (n 3) 'Driving up participation: sport and volunteering' in Sport England (n 7)

<sup>13</sup> Ciaran Acton and others, *SPSS for Social Scientists*. (Macmillan 2009), p.143

<sup>14</sup> *Ibid*, p.144

<sup>15</sup> *Ibid*, p.144

<sup>16</sup> *Ibid*, p.144

<sup>17</sup> Andrew Passey and Mark Lyons, "Regulating Third Sector Organisations; The views of Incorporated Associations in NSW" (2009) 15 *Third Sector Review* 85.

circumstance, the question was whether the category of cluster to which a club belongs has a statistically significant association with incorporation status.<sup>18</sup> If observed counts from a chi-square test were markedly different to the expected counts, then this could be indicative of a situation in which an independent variable (cluster identity) has a significant bearing upon a dependent variable (incorporation status).

To explore the relationship between cluster identity and incorporation, it was necessary to recode the clusters as derived from the cluster analysis into categorical data depicting whether a club belonged to cluster A or cluster B. As consistent with general social science practices, evidence of a statistically significant relationship was measured by reference to a 95% confidence interval. The 95% figure relates to the degree of error a researcher is willing to accept. A *p* value reading of below 0.05 indicates that there is a 95% chance of a statistically significant relationship between the variables.<sup>19</sup> A 5% possibility remains that such a relationship is due to chance or error within the data, however 5% is generally the accepted level of risk within social science research.<sup>20</sup> Should a *p* reading (Asymptotic Significance reading of table 5.9) be less than 0.05 the relationship can be considered as statistically significant. Within the present research the chi-square test ( $\chi^2$  (df = 1, N = 62) = .389; *p* = .533) (table 5.9) suggested a statistically significant relationship was not evident between incorporation status and cluster identity. As can be seen by reference to table 5.8, little difference existed between the expected counts and the observed counts. The findings as drawn from the statistical analysis therefore suggested a lack of association between professionalism score and incorporation status.

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<sup>18</sup> Andy Field, *Discovering Statistics Using IBM SPSS Statistics* (Sage 2013), p.838

<sup>19</sup> SPSS for Social Scientists (n 13), p.145

<sup>20</sup> Susith Fernando and others, "CSR practices in Sri Lanka: An exploratory analysis" (2015) 11 Social Responsibility Journal, p.872

Table 5.8: Crosstabulation, cluster Identity and incorporation Status.

		Q20		
		NO	YES	TOTAL
CLUSTER NUMBER OF CASE 1	COUNT	12	9	21
	EXPECTED COUNT	10.8	10.2	21.0
2	COUNT	20	21	41
	EXPECTED COUNT	21.2	19.8	41.0
TOTAL	COUNT	32	30	62
	EXPECTED COUNT	32.0	30.0	62.0

Table 5.9: Chi square, statistical associations between cluster identity and incorporation status.

	VALUE	DF	ASYMPTOTIC SIGNIFICANCE (2 SIDED)	EXACT SIG. (2 SIDED)	EXACT SIG. (1 SIDED)
PEARSON CHI-SQUARE	.389 <sup>A</sup>	1	.533		
CONTINUITY CORRECTION <sup>B</sup>	.126	1	.723		
LIKELIHOOD RATIO	.390	1	.532		
FISHER'S EXACT TEST				.598	.362
LINEAR-BY-LINEAR ASSOCIATION	.383	1	.536		
N OF VALID CASES	62				

A. 0 CELLS (.0%) HAVE EXPECTED COUNT LESS THAN 5. THE MINIMUM EXPECTED COUNT IS 10.16.  
B. COMPUTED ONLY FOR A 2X2 TABLE

Although cluster analysis is a useful analytical tool critics have advocated caution in its use.<sup>21</sup> Given the identification of a statistical relationship between professionalism scores and incorporation status was that most pertinent to the overall research objectives, a complimentary bivariate logistical

<sup>21</sup> Multivariate data analysis (n 5), p.471

regression was undertaken utilising the data as drawn from the professionalism scores (continuous variable) and incorporation status (binary variable). The outcome of such analysis provided for a reinforcement of the findings of the cross tabulations drawn from the cluster analysis being that no statistically significant relationship was evident between professionalism score and incorporation status ( $P=.526 > 0.05$ ).<sup>22</sup> The complimentary bivariate regression therefore provides for a degree of robustness to the findings as synthesised from the cluster analysis.

*Table 5.10 Bivariate regression, professionalism score and incorporation status.*

		VARIABLES IN THE EQUATION							
		B	S.E.	WALD	DF	SIG.	EXP(B)	95% C.I. FOR LOWER	EXP(B) UPPER
STEP 1 <sup>a</sup>	SCORE (W-O INC.)	.046	.072	.403	1	.526	1.047	.909	1.20
	CONSTANT	-.838	1.246	.452	1	.501	.432		
A. VARIABLE(S) ENTERED ON STEP 1: SCORE (W-O INC.)									

### 5.3 Review of findings

Chapter 5 sought to explore in the first instance whether a taxonomy of clubs based on professionalism may exist within the AWRC community. Secondly, the chapter sought to identify whether a statistically significant link was evident between incorporation status and clubs' levels of professionalism.

The analysis of club professionalism scores has indicated in the first instance that AWRC may be more professionalised in comparison with those clubs engaged by the general VSC literature. Consequentially, those features of unprofessionalised clubs thought capable of discouraging

<sup>22</sup> Within table 5.10 the relevant reading can be found at the score (w-o inc) and Sig. intersect.

engagement with incorporation<sup>23</sup> and providing a point of difference to be drilled down into, was unsubstantiated by the quantitative findings.

Recent literature has suggested professionalisation has been growing in momentum and therefore the results as drawn from the quantitative analysis may serve to support such claims.<sup>24</sup> Away from this however the quantitative phase of the research ultimately provided for more questions than answers as regards addressing the primary objectives of the research. The analysis indicated that a division between clubs as advanced by Taylor may not serve as the frames through which qualitative probing should be undertaken and as a consequence a dichotomy of causation based around the professionalism of clubs lacked empirical substantiation. Without empirically substantiated taxonomies to rely upon it was deemed necessary to recalibrate the research in pursuit of what may account for variety in AWRC engagement with the incorporation policy. The presentation of how the research was revised in light of the quantitative findings is provided for within the following chapter 6.

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<sup>23</sup> Section 3.6

<sup>24</sup> Christopher Mills and others, 'From the boardroom to tee: understanding golf club volunteers during an era of change' [2021] *Sport in Society* <<https://www.tandfonline.com/doi/pdf/10.1080/17430437.2021.1904901>> Accessed 28<sup>th</sup> September 2021. Torsten Schlesinger and Alison Doherty, 'The utility of certification for managing the state-voluntary sport club relationship: an agency theory perspective' (2021) 26 *Managing Sport and Leisure*, p.117



## Chapter 6: Methods and methodology part 2

Chapter 6 provides for a discussion of the qualitative methods utilised by the research. Chapter 4 introduced the sequential explanatory design adopted by the thesis, with this chapter committed to detailing the features of the more dominant qualitative strand. The chapter provides for a description of the methodological development of the research, those reasons underlying choices of method, and how a qualitative pilot phase provided for an opportunity to revise the research in a manner capable of enhancing the project's overall contributions.

### 6.1 An evolving process

The inconclusive findings drawn from chapter 5 were thought to require something of a reorientation of the research. As alluded to within chapter 4, the quantitative findings should not therefore be considered inconsequential for the research as regards the thesis' progression, but rather as a trigger for an occasion of contemplation and reflexivity. With a lack of association between incorporation and club professionalism scores it was felt appropriate to proceed with more caution as to the potential for extant literature to frame qualitative engagements in pursuit of causative commentary. On account of the dampening of expectations as to what may be drawn from extant literature, the research moved to what could be described as the more inductive end of the critical realist spectrum.

### 6.2 An explanatory framework

Consideration was first given to the use of a critical realist grounded theory perspective as a means of framing the qualitative endeavour. Grounded theory's processes were originally considered more positivist in approach given the objective of its application was to develop a theory specific to a certain context, with as much researcher bias and influence from extant theory removed as possible. Gibson and Hartman, discussing the works of Glaser and Strauss, concluded that as there is no guarantee that categories available from existing theory could explain phenomena in contrasting

circumstances, an openness to novel theoretical development was essential.<sup>1</sup> Gibson and Hartman's statements that a sensitivity to the prospect that influences drawn from the literature might not be relevant to the field of research resonated with the position of the study on the conclusion of the quantitative analysis.<sup>2</sup> Being sensitive to the possibility that AWRC were in some way inherently different to other VSC dealing with professionalisation, or perhaps that whether to incorporate provided for a type of decision removed from club professionalisation altogether, was therefore a possibility which in light of the quantitative findings was felt to require appropriate attention.

Despite seeking to properly account for the quantitative findings, to abandon the potential benefits of all manner of literature on the basis of a quantitative investigation acknowledged as incapable of providing definitive accounts of causation in any event, was however concluded to be premature. A balance was therefore sought to address these competing interests. Consideration of how critical realist grounded theory had been deployed provided examples of the manner in which greater sensitivity could be afforded to the possibility of existing theoretical redundancy in a manner which appreciated to an appropriate degree its potential for framing causative commentary. Hoddy, himself utilising a critical realist grounded theory perspective, noted specifically how the exploratory character of grounded theory may be an asset to critical realist researchers undertaking more exploratory research.<sup>3</sup>

Critical realism has however traditionally advocated not anchoring to pre-existing literature too closely whilst pursuing plausible explanations of behaviour.<sup>4</sup> For this reason it seemed questionable as to whether a specific grounded theory perspective may be required given critical realism retains an openness to novel development in any event. In consideration of whether a grounded theory perspective should be integrated into the thesis design, regard was given to Danermark et al's assessment as to the benefit of the approach whilst adhering to a critical realist meta theoretical

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<sup>1</sup> Barry Gibson and Jan Hartman, *Rediscovering Grounded Theory* (Sage, 2014), p.200

<sup>2</sup> Ibid, p.201

<sup>3</sup> Eric Hoddy, "Critical Realism in empirical research: employing techniques from grounded theory methodology." [2018] *International Journal of Social Research Methodology* 111, p.121

<sup>4</sup> Ibid, p.116

perspective. Danermark et al are not dismissive as to the potential of grounded theory to critical realist research and consider the concept to have much to offer applied critical realism.<sup>5</sup> Danermark et al. do however consider grounded theory's rejection of theoretical concepts in matters of data analysis to run the risk of being left with conclusions which are short-sighted, shallow, and naïve.<sup>6</sup> They argue that if there is accumulated knowledge in existing theory, this ought to be utilised to provide a more efficient use of resources in the pursuit of knowledge development.<sup>7</sup> It could be argued that modern iterations of grounded theory may be capable of mitigating Danermark et al's concerns.<sup>8</sup> Nevertheless, the disparity in the ultimate objectives of grounded theory and critical realism respectively led to conclusions that it may be inappropriate to fully embrace a grounded theory perspective. Fletcher, in consideration of grounded theory as an appropriate means of conducting critical realist research, highlighted how grounded theory is directed towards developing entirely environmentally specific higher-level theories without drawing from extant concepts.<sup>9</sup> By contrast, Fletcher writes that critical realism requires active thought experimentation before research begins and aims at finding the best explanation of reality through engagement with existing yet potentially fallible theories.<sup>10</sup>

In attempting to continue adherence to the ultimate objectives of critical realism whilst appropriately accounting for the findings as derived from the quantitative empirical phase, the research ultimately returned to Danermark et al's works and adopted their explanatory analytical framework.

*Table 6.1: Danermark et al's critical realist explanatory framework.*

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<sup>5</sup> Berth Danermark and others, *Explaining Society Critical Realism in the Social Sciences* (2<sup>nd</sup> edn, Routledge 2019), p.151

<sup>6</sup> Ibid, p.152

<sup>7</sup> Ibid, p.152

<sup>8</sup> Kailah Sebastian, 'Distinguishing between the types of grounded theory: classical, interpretive and constructivist' (2019) 31 *Journal for social thought*

<<https://ojs.lib.uwo.ca/index.php/jst/article/download/4116/6633/>> Accessed 27<sup>th</sup> December 2019.

<sup>9</sup> Amber Fletcher, "Applying critical realism in qualitative research: methodology meets method" (2017) 20 *International Journal of Social Research Methodology* 181

<sup>10</sup> Ibid, p.186

STAGE	THE STAGES IN AN EXPLANATORY RESEARCH DESIGN BASED ON CRITICAL REALISM
1. DESCRIPTION	AN EXPLANATORY SOCIAL SCIENCE ANALYSIS BEGINS IN THE CONCRETE. AN IMPORTANT PART OF THIS DESCRIPTION IS THE INTERPRETATIONS OF THE PERSONS INVOLVED AND THEIR WAY OF DESCRIBING THE CURRENT SITUATION. MOST EVENTS SHOULD BE DESCRIBED BY QUALITATIVE AS WELL AS QUANTITATIVE METHODS.
2. ANALYTICAL RESOLUTION	IN THIS PHASE A DISSOLUTION OF THE COMPOSITE AND THE COMPLEX IS UNDERTAKEN IDENTIFYING VARIOUS COMPONENTS, ASPECTS AND DIMENSIONS. IT IS APPRECIATED THAT IT IS NOT POSSIBLE TO STUDY ANYTHING IN ALL ITS DIFFERENT COMPONENTS. IN PRACTICE, ONE MUST CONFINE THEMSELVES TO STUDYING CERTAIN COMPONENTS BUT NOT OTHERS.
3. ABDUCTION/ THEORETICAL REDESCRIPTION	STAGE THREE REQUIRES AN INTERPRETATION AND REDESCRIPTION OF THE DIFFERENT COMPONENTS/ASPECTS FROM HYPOTHETICAL CONCEPTUAL FRAMEWORKS AND THEORIES. THIS STAGE THUS CORRESPONDS TO WHAT HAS BEEN DESCRIBED AS ABDUCTION AND REDESCRIPTION. THE ORIGINAL IDEAS OF THE OBJECTS OF STUDY ARE DEVELOPED WHEN PLACED IN NEW CONTEXTS OF IDEAS. SEVERAL DIFFERENT THEORETICAL INTERPRETATIONS AND EXPLANATIONS CAN, AND SHOULD BE PRESENTED, COMPARED AND POSSIBLY INTEGRATED WITH ONE ANOTHER.
4. RETRODUCTION	HERE, ONE SHOULD TRY TO FIND THE ANSWERS TO QUESTIONS LIKE: WHAT IS FUNDAMENTALLY CONSTITUTIVE FOR THE STRUCTURES AND RELATIONS (X), HIGHLIGHTED IN STAGE 3? HOW IS X POSSIBLE? WHAT PROPERTIES MUST EXIST FOR X TO BE WHAT X IS? WHAT CAUSAL MECHANISMS ARE RELATED TO X? IN THE CONCRETE RESEARCH PROCESS, ONE MAY HAVE OF COURSE IN MANY CASES ACCESS TO ALREADY ESTABLISHED CONCEPTS SUPPLYING SATISFACTORY ANSWERS TO QUESTIONS OF THIS TYPE. IN RESEARCH PRACTICE, STAGE 3 AND 4 ARE CLOSELY RELATED.
5. COMPARISON BETWEEN DIFFERENT THEORIES AND ABSTRACTIONS	IN THIS STAGE ONE ELABORATES AND ESTIMATES THE RELATIVE EXPLANATORY POWER OF THE MECHANISMS AND STRUCTURES WHICH HAVE BEEN DESCRIBED BY MEANS OF ABDUCTION AND RETRODUCTION WITHIN THE FRAME OF STAGES 3 AND 4. (THIS STAGE CAN ALSO BE DESCRIBED AS PART OF STAGE 4.) IN SOME CASES, ONE MIGHT CONCLUDE THAT ONE THEORY-UNLIKE COMPETITIVE THEORIES- DESCRIBES THE NECESSARY CONDITIONS FOR WHAT IS TO BE EXPLAINED AND THEREFORE HAS GREATER EXPLANATORY POWER THAN RIVAL PERSPECTIVES. IN OTHER CASES, THE THEORIES ARE RATHER COMPLEMENTARY AS THEY FOCUS ON PARTLY DIFFERENT BUT NEVERTHELESS NECESSARY CONDITIONS.
6. RETRODICTION AND CONTEXTUALISATION	RETRODICTION INVOLVES EXAMINING HOW DIFFERENT STRUCTURES AND MECHANISMS MANIFEST THEMSELVES IN CONCRETE SITUATIONS. HERE ONE STRESSES THE IMPORTANCE OF STUDYING THE MANNER IN WHICH MECHANISMS INTERACT WITH OTHER MECHANISMS AT DIFFERENT LEVELS UNDER SPECIFIC CONDITIONS. THE AIM OF THE STUDIES IS TWOFOLD: FIRST, TO INTERPRET THE MEANINGS OF THESE MECHANISMS AS THEY COME INTO VIEW IN A CERTAIN CONTEXT; SECOND TO CONTRIBUTE TO EXPLANATION TO CONCRETE EVENTS AND PROCESSES.

A key feature of Danermark et al's analytical framework is the flexibility the model provides for.

Danermark et al note that the model should be seen only as a guideline. Separate stages can therefore be intertwined and they need not follow one another prescriptively.<sup>11</sup> Danermark et al's framework has been considered to advocate engagement with theory following data collection; however, their use

<sup>11</sup> Explaining Society Critical Realism in the Social Sciences (n 5), p.131

of theory is perhaps better understood as an approach which is flexible.<sup>12</sup> Danermark et al state that the research process “is probably most productive when we manage to combine a fairly open attitude towards data with the use of established (theoretical) concepts as a resource.”<sup>13</sup> Danermark et al comment that theories can be useful both as frameworks for interpretations and in processes of retrodution. Ultimately therefore, maintaining an open mindedness to the utility of engagement with theory both prior to empirical exploration and in the interpretation of data is considered as essential.<sup>14</sup> Crucially Danermark et al advocate an openness to the utility of new and different theories in matters of data interpretation.<sup>15</sup> Their analytical framework therefore provided for an opportunity to have regard to the theoretical perspectives and plausible mechanisms as developed within chapters 2 and 3, whilst maintaining an openness to the emergence of different explanatory accounts should the data call for a redeliberation as regards theories of interest. Danermark’s explanatory analytical framework therefore provided a means by which the qualitative phase of the research could be undertaken in a manner consistent with the objectives as sought by empirical critical realist projects, whilst accounting appropriately for the findings as presented in chapter 5.

### 6.3 Fitting methods

Archer noted that critical realist ontology plays the role of both gatekeeper and bouncer as regards questions of appropriate methods.<sup>16</sup> Although epistemologically speaking critical realism advocates applying methods which suit the particular problem to be tackled, appreciation of the stratified ontology of critical realism is considered less negotiable. Critical realists have not been associated with specific methods, in the way for example positivists have been affiliated with closed-questioned surveys and social constructionists with ethnography. The research recognised that the causal mechanisms sought were unlikely to be directly observable. Consistent with the critical realist

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<sup>12</sup> John McAvoy and Tom Butler, ‘A critical realist method for applied business research’ (2018) 17 *Journal of Critical Realism* 160, p.163

<sup>13</sup> *Explaining Society Critical Realism in the Social Sciences* (n 5) p.152

<sup>14</sup> *Ibid*, p.161

<sup>15</sup> *Ibid*, p.161

<sup>16</sup> Margaret Archer, *Realist Social Theory: The Morphogenetic Approach* (Cambridge University Press 1988), p.22

ontology it was understood that an interpretation of the available empirical evidence to justify any claims as to their existence would likely be required.<sup>17</sup> With this in mind, those qualitative methods most common to empirical legal studies were considered for their potential utility to the project. The qualitative methods often utilised in empirical legal research are interviews, ethnography, and document analysis.<sup>18</sup>

Ethnography is a method which has been utilised within socio-legal research<sup>19</sup> and has been deployed by legal scholars to provide a more organic account of empirical data in a manner which limits researcher influence.<sup>20</sup> Ethnography of a socio-legal nature has been considered contextual, dynamic, reflexive and open, thus representing a method aligned with the preferences of critical realism.<sup>21</sup> Ethnography also appeared to be a viable method given arguments that its application avoids “theoretical straitjackets”.<sup>22</sup> Though conceptually attractive, the practical difficulties of undertaking an ethnographic enquiry were considered substantial. It was firstly the case that securing consent to undertake an ethnographic study constituted a considerable obstacle to overcome. Given the issues as regards response rates associated with the relevant population,<sup>23</sup> the feasibility of securing what can sometimes be considered intrusive access was questionable.<sup>24</sup> Furthermore, ethnographic studies in the majority of circumstances require sustained involvement with participants for a considerable period of time.<sup>25</sup> The voluntary nature of the research population meant that any ethnographic study would need to fit with the practicalities of the voluntary organisations. The committee or directors’

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<sup>17</sup> Steve Kempster and Ken Parry, ‘Critical realism and grounded theory’ in Paul Edwards, Joe O’Mahoney and Steve Vincent (eds), *Studying Organisations Using Critical Realism: A Practical Guide*. (Oxford University Press 2014), p.100

<sup>18</sup> Lisa Webley, “Qualitative Approaches to Empirical Legal Research” in Peter Crane and Herbert Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (OUP 2010), p.2

<sup>19</sup> Jonas Bens and Larissa Veters, “Ethnographic legal studies: reconnecting anthropological and sociological traditions” (2019) 50 *The Journal of Legal Pluralism and Unofficial Law* 239

<sup>20</sup> Marian Crowley-Henry, “Ethnography: Visions & Versions” in John Hogan, Paddy Dolan & Paul Donnelly (eds) *Approaches to Qualitative Research: Theory & Its Practical Application*, p.41

<sup>21</sup> John Flood, “Socio-Legal Ethnography” in Reza Banakar & Max Travers (eds) *Theory and Method in Socio-Legal Research* (Bloomsbury 2005), p.33

<sup>22</sup> *Ibid*, p.35

<sup>23</sup> See chapter 4.

<sup>24</sup> Ron Iphofen, ‘Research Ethics in Ethnography/Anthropology’ (European Commission Research and Innovation Publication) (2013)

<sup>25</sup> Bob Jeffrey and Geoff Troman, “Time for Ethnography” (2013) 30 *British Educational Research Journal*. 535

meetings most likely to provide insight as to the research objectives, overwhelmingly take place on a monthly basis, and would not necessarily include discussions of areas pertinent to the research. The diverse nature of AWRC operations meant that discussions of legal consequence were likely to be sporadic. Attending meetings therefore and awaiting discussions of interest was not conducive to the timescale associated with the completion of the thesis. Further in this regard, it was considered likely that a proportion of the potential participant clubs would have undertaken incorporation or dismissed the option several months or years prior to the empirical project, resulting in a limited possibility that discussions of legal form would emerge naturally.

Documentary analysis has been argued to represent an opportunity for legal researchers to engage with a range of documents capable of providing a rich source of data.<sup>26</sup> Within socio-legal scholarship, documentary analysis has been utilised for a diverse range of purposes such as the consideration of the effectiveness of alternative dispute resolution<sup>27</sup> and the interactions between lawyers and clients.<sup>28</sup> Despite some application, it is, as a method, considered under-utilised.<sup>29</sup> Despite claims as to the potential of the method, documentary analysis suffers from criticisms that rather than representing the reality of a situation, documents represent the practical requirements for which they were created.<sup>30</sup> There are those however who disagree with this view and prefer an interpretation of documents as a window through which the understanding of an event or perception can be gained.<sup>31</sup> Ultimately, concerns of insufficient detail and low retrievability associated with documentary analysis generally,<sup>32</sup> and amongst voluntary organisations more acutely, led to the rejection of the method as appropriate.<sup>33</sup>

The purpose of the qualitative enquiry was to gauge from the AWRC executive body members their

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<sup>26</sup> Qualitative Approaches to Empirical Legal Research (n 18), p.10

<sup>27</sup> Robert Dingwall and others, *Monitoring Publicly Family Mediation: Final Report to the Legal Services Commission*, (Legal Services Commission 2000)

<sup>28</sup> Austin Sarat and William Felstiner, *Divorce Lawyers and Their Clients* (OUP 1995)

<sup>29</sup> Qualitative Approaches to Empirical Legal Research (n 18), p.10

<sup>30</sup> *Ibid*, p.11

<sup>31</sup> Tim May, *Social Research: Issues, Methods and Practices* (2<sup>nd</sup> edn, Open University Press 2001), p.191

<sup>32</sup> Glenn Bowen, "Document Analysis as a Qualitative Research Method" (2009) 9 Qualitative research Journal. 27, p.31

<sup>33</sup> Lisa Kihl and others, "Tip of the iceberg? An international investigation of fraud in community sport" (2021) 24 Sport Management Review 24, p.37

experiences and perceptions of incorporation and the influential factors affecting associated decisions. Miles and Huberman note the ability of interviews to engage with the contextual factors relevant to participants and the thick description this provides for.<sup>34</sup> Qualitative interviews were considered appropriate for this enquiry given the method's apparent sensitivity to context and causal mechanisms.<sup>35</sup> Additionally, interviews are considered to enable insight as to participants' experiences of events to which a researcher was not privy to.<sup>36</sup>

*“People are always knowledgeable about the reasons for their conduct but in a way which can never carry total awareness of the entire set of structural conditions which prompt an action, nor the full set of consequences of that action ... in attempting to construct explanations for the patterning of social activity, the researcher is thus trying to develop an understanding which includes hypotheses about their subjects' reasons within a wider model of their causes and consequences.”<sup>37</sup>*

In acceptance of the critical realist position that informants are often unable to appreciate influences over conduct, accounts need to be subjected to critical scrutiny not only in their own terms but amongst alternative sources such as other interviews.<sup>38</sup> By undertaking interviews and subsequent analysis in a manner which promotes comparison and scrutiny, the critical realist interview provides a means by which one can build from the empirical layer (interviewee accounts), to tease out those more causative forces existing within the layers of the actual and the real.

### 6.3.1 Semi-structured interviews

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<sup>34</sup> Matthew Miles and Michael Huberman, *Qualitative data analysis* (Sage 1984), p.31

<sup>35</sup> Chris Smith and Tony Elger, ‘Critical Realism and Interviewing Subject’ in Paul Edwards, Joe O’Mahoney and Steve Vincent (eds), *Studying Organisations Using Critical Realism: A Practical Guide*. (Oxford University Press 2014), p.129

<sup>36</sup> Herbert Rubin and Irene Rubin, *Qualitative Interviewing, the art of hearing data*. (Sage 2014), p.3.

<sup>37</sup> Ray Pawson, “Theorizing the Interview” (1996) 47 *The British Journal of Sociology* 295, p.302

<sup>38</sup> Critical Realism and Interviewing Subject (n 35), p.130

Qualitative interviews are commonly classified into structured, unstructured and semi-structured forms.<sup>39</sup>

Unstructured Interview:

*“In qualitative research (unstructured interviews) involve asking relatively open-ended-questions of research participants in order to discover their precepts on the topic of interest.”*<sup>40</sup>

Semi-Structured Interview:

*“The semi-structured interview is a qualitative data collection strategy in which the researcher asks informants a series of predetermined but open-ended questions. The researcher has more control over the topics of the interview than in unstructured interviews, but in contrast to structured interviews or questionnaires that used closed questions, there is no fixed range of responses to each question.”*<sup>41</sup>

Structured Interviews

*“Structured interviews involve administering relatively standardised interview questions to all participants in a research study. This structure ensures that all persons are given equal opportunities to provide data across the same research constructs.”*<sup>42</sup>

A commonly referenced disadvantage of the unstructured interview is the freedom it provides the interviewee to stray from the research topic and the lack of pertinent data capable of analysis as a consequence.<sup>43</sup> Unstructured interviews, it was felt, would detriment the consistency of the research whilst providing a barrier to cross case exploration within the analytical coding phase. In contrast,

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<sup>39</sup> Svend Brinkman, Unstructured and Semi-Structured Interviewing in Patricia Leavy (ed) *The Oxford Handbook of Qualitative Research* (1<sup>st</sup> edn, OUP 2014), p.286

<sup>40</sup> Lisa Given, *Sage Methods – The Sage Encyclopaedia of Qualitative Research Methods*. (Sage 2008), p.907

<sup>41</sup> Ibid, p.810

<sup>42</sup> Ibid, p.837

<sup>43</sup> Steve Chapman and Patrick McNeill, *Research Methods* (3<sup>rd</sup> edn, Routledge 2005), p.59

structured interviews were considered unsuitable given the necessity of maintaining an openness to the development of novel themes is a key tenet of critical realist studies and the same would be constrained owing to the rigidity associated with an entirely structured approach. As well as the pre-determined nature of the available responses potentially devaluing the interviewee's experience of the relevant phenomena, it has also been acknowledged that structured interviews can lead to a feeling of interrogation by the respondent.<sup>44</sup>

Semi-structured interviews, acknowledged to sit between the above two extremes of the interview spectrum, were eventually preferred to alternative forms owing to their "flexible and fluid nature".<sup>45</sup> Semi-structured interviews with club decision-makers, comprising mainly open-ended questions were therefore utilised in an attempt to gain insight into a broad range of issues.<sup>46</sup> The malleable nature of the semi-structured interview provided an ability to understand the specific experience of the particular participants as regards incorporation. Such an interview technique further provided an opportunity to engage with the importance of context and how differing factors influence perceptions and experience as regards the subject matter. The semi-structured interview, finally, provided a degree of agency to the research participants to express those issues they felt were important, thereby mitigating issues of determinism argued to be prevalent within studies seeking to explore VSC interpretations of externally devised policies.<sup>47</sup>

As referred to in chapter 4, it was deemed appropriate to engage with committee members and directors of unincorporated and incorporated respondent clubs.<sup>48</sup> Given all clubs had been afforded the opportunity to participate in the research during the quantitative phase, the qualitative element sought to engage with only those clubs who had indicated on their questionnaire that they would be content for further contact to be made.

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<sup>44</sup> Ibid, p.57

<sup>45</sup> Michal Lewis-Beck, Alan Bryman and Tim Futing Liao, *The Sage encyclopaedia of Social Science Research Methods* (Sage 2011), p.1021

<sup>46</sup> Research Methods (n 43), p.57

<sup>47</sup> Spencer Harris, "Sport Organisations and Their Responses to Policy" in Trevor Slack, Terri Byers & Alex Thurston (eds), *Understanding Sport Organisations: Applications for Sport Managers* (Human Kinetics 2020), p.133

<sup>48</sup> See Section 4.5.

Initial pilot interviews were conducted face to face with a further set of 12 interviews forming the second phase of the qualitative enquiry carried out by telephone. The initial intention was for all interviews to be undertaken face to face. The preference for this form of interview was primarily owing to the method's considered superiority in facilitating the establishment of a rapport between the parties.<sup>49</sup> Rapport was considered important in these circumstances, as cultivating an environment of trust for the participant has been associated with interviewees "opening up" and providing a higher quality of data.<sup>50</sup>

The social distancing measures introduced nationally owing to the COVID-19 pandemic in March 2020 however dictated a change of approach away from face-to-face interviews.<sup>51</sup> It is recognised that research design in a qualitative study requires a flexible and adaptive approach to meet occasionally unforeseen difficulties.<sup>52</sup> In contrast with an experimental setting, an appreciation as to the importance of fluidity in the face of emerging knowledge and unforeseen developments permits qualitative research to, where necessary, alter the parameters of the research in order to meet changing dynamics.<sup>53</sup> Consideration was initially given to the possibility of conducting the interviews via skype or a similar video-based software programme. Virtual interviews, of the type skype allows for, are recognised as providing mitigation of the inability to consider non-verbal communications, traditionally referenced as a disadvantage of distance-based interview methods.<sup>54</sup> Despite the perceived benefits of virtual interviews, it was considered more appropriate for practical reasons to seek to conduct the interviews via telephone. The general disadvantages associated with virtual interviews were considered likely to be more pronounced within the participant population thus potentially exacerbating issues of low response rates. The technological requirements necessary to undertake virtual interviews have been considered inclusive and have been recognised as presenting a

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<sup>49</sup> Nigel King, Christine Horrocks and Joanna Brooks *Interviews in Qualitative Research* (Sage 2019), p.127

<sup>50</sup> *Ibid*, p.77

<sup>51</sup> The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020, No. 399 (W.88)

<sup>52</sup> *Qualitative Approaches to Empirical Legal Research* (n 18)

<sup>53</sup> *Ibid*, p.5

<sup>54</sup> Valeria Lo Iacono, Paul Symonds and David Brown, "Skype as a Tool for Qualitative Research Interviews" (2016) 21 *Sociological Research Online* 103, p.109

problem for representativeness of certain groups participating in empirical research.<sup>55</sup> It is further the case that such inclusivity has been disproportionately reported as effecting those of a more senior age profile.<sup>56</sup> Given the appointment to a decision-making position within a sports club is often preceded by a long-term career within a club,<sup>57</sup> and a significant proportion of executive body members of voluntary sport organisations have been recognised as more senior,<sup>58</sup> the virtual method was considered unsuitable. It was instead decided to conduct interviews by telephone given the participant convenience associated with this method.<sup>59</sup>

Despite the perceived benefit of face-to-face interviewing, the alternative telephone method did in fact provide for various advantages. Telephone interviews provide the benefit of allowing the participant to undertake the interview in an environment within which they are comfortable.<sup>60</sup> It has been recognised that the lack of face-to-face contact can allow for a reduced inhibition on the part of the interviewee.<sup>61</sup> The basis for such conclusion by Ward, Gott and Hoare, were that participants felt as though they could not perceive any judgement by the researcher and therefore felt less inhibited regarding the provision of their responses.<sup>62</sup> Indeed, within the telephone interviews, it appeared that several of the participants were more relaxed from the outset, whereas within the pilot interview phase, there appeared to be a cautionary initial period before the participants became more willing to discuss matters with greater openness. Holt noted that alongside the potential for greater comfort and the positives associated with the same, the inability to assess non-verbal cues, traditionally referred to

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<sup>55</sup> Hannah Deakin and Kelly Wakefield, "Skype interviewing: reflections of two PhD researchers" (2013) 14 *Qualitative Research* 603, p.605

<sup>56</sup> Jessica Sullivan, "Skype: an appropriate method of data collection for qualitative interviews" (2012) 6 *Hilltop Review* 54, p.57

<sup>57</sup> Torsten Schlesinger, Benjamin Egli and Siegfried Nagel, "Continue or terminate?" Determinants of long-term volunteering in sports clubs" (2013) 13 *European Sport Management Quarterly* 32. Fiona Reid, "Increasing sports participation in Scotland: are voluntary sports clubs the answer?" (2012) 4 *International Journal of Sport Policy and Politics* 221

<sup>58</sup> Russell Hoye, "Commitment, Involvement and Performance of Voluntary Sport Organisation Board Members" (2008) 7 *European Sport Management Quarterly* 109, p.113

<sup>59</sup> Kim Ward, Merryn Gott and Karen Hoare, "Participants views of telephone interviews within a grounded theory study" (2015) 71 *Journal of advanced nursing* 2775, p.2780

<sup>60</sup> Skype as a Tool for Qualitative Research Interviews (n 54), para 4.5

<sup>61</sup> Participants views of telephone interviews within a grounded theory study (n 59), p.2780

<sup>62</sup> *Ibid*, p.2780

as a shortcoming of telephone interviewing, were not entirely negative.

*“unlike in face-to-face interactions, everything had to be articulated by both the participant and myself. This need for full articulation meant that a much richer text was produced.”*<sup>63</sup>

Bryman supporting and furthering such argument suggests that telephone interviewing can in fact be advantageous as regards data quality, owing to the inability of the researcher’s mere presence to affect the participants responses.<sup>64</sup> Finally, it has been acknowledged by researchers who have compared telephone and face to face interview methods that telephone interviewing was a valuable method of data collection.<sup>65</sup>

## 6.4 Interview preparation

Interview preparation, as discussed within this section, involves a consideration of the construction of the semi-structured interview guide as well as issues associated with the contacting of prospective participants. Section 6.4 makes reference to both the pilot stage of the research as well as the main qualitative enquiry. Section 6.5 sets out specifically how the pilot study impacted the research development in a more comprehensive manner than provided for in the remainder of this section.

### 6.4.1 Interview guide

With insights drawn from the literature, a working interview guide was constructed for use within the pilot interview phase based on understanding how relevant events associated with incorporation had played out, what causative influences may be relevant, and how clubs may interact with and perceive

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<sup>63</sup> Amanda Holt, “Using the telephone for narrative interviewing: a research note” (2010) 10 Qualitative research 113, p.116

<sup>64</sup> Alan Bryman, *Social Research Methods* (OUP 2016), p.203

<sup>65</sup> Judith Sturges and Kathleen Hanrahan, “Comparing telephone and face-to-face qualitative interviewing: a research note” (2004) 4 Qualitative Research 107

legal issues. The questions were general in nature and participant development was encouraged.<sup>66</sup> The use of a pilot phase preceding the main qualitative inquiry was reactive to the aforementioned hesitancy to rely on insight from the literature following the quantitative analysis. A pilot interview phase was considered to be of significant importance given pilot interviews provide an opportunity to revise and realign research with a view to enhancing the quality of collected data.<sup>67</sup> Further adhering to the more inductive turn within the research, the interview questions were modified over the entirety of the course of the qualitative phase of the project. Though such modification was not necessarily in the form of formally inserting new questions and removing alternatives, the interviews were modified to take into account the insights gained from previous interviewee data.<sup>68</sup> This in turn served the critical realist principles of the research by allowing for a consideration as to contrasting accounts and the contextual features leading to any articulated differences and similarities of viewpoint.

#### 6.4.2 Sampling

Recruitment as to the pilot phase of the research was undertaken on the basis of an open sampling method and formed the first step in a complimentary sampling methodology which later utilised purposive sampling. Selection of pilot clubs was made through the researcher's existing contacts within the AWRC community. It has been suggested that some form of existing relationship between a researcher and participant is highly beneficial in securing participation in qualitative research.<sup>69</sup> The importance of some form of association appeared pronounced within the recruitment for the pilot interviews as approaches through email to prospective participants without any existing relationship provided for a disappointing response rate.

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<sup>66</sup> Questions associated more directly with plausible mechanisms were included at this stage however their development was contingent upon participant responses.

<sup>67</sup> Edwin Van Teijlingen and Vanora Hundley, "The importance of pilot studies" [2001] 35 *Social Research Update*  
<<https://aura.abdn.ac.uk/bitstream/handle/2164/157/SRU35%20pilot%20studies.pdf?sequence=1&isAllowed=y>> accessed 14 January 2020

<sup>68</sup> *Critical Realism and Interviewing Subject* (n 35), p.127

<sup>69</sup> Patricia Adler and Peter Adler, "The reluctant respondent" in Jaber Gubrium & James Holstein (eds) *Handbook of Interview Research* (Sage, 2001), p.526

The criteria for selection for the pilot phase of the qualitative research was driven primarily by convenience. Convenience sampling, though largely inappropriate as a consistent sampling technique in many circumstances, is often deployed within pilot studies.<sup>70</sup> Pilot studies sampling need not be replicated within latter research cycles however as Smith notes pilot studies can play an important role in the development of sampling techniques.<sup>71</sup>

The pilot interview phase, on its conclusion, provided an opportunity to develop the sampling process in a more sophisticated manner in comparison with the aforementioned convenience approach. The sampling method employed as regards the main qualitative phase was intended to create a purposive rather than representative sample of clubs.<sup>72</sup> This was not considered inherently as a weakness of the study as the research did not seek extrapolation to the wider population but rather sought to provide meaningful insights and in-depth understandings.<sup>73</sup>

The findings of the pilot interview phase, as consistent with purposive sampling, were utilised to select cases which appeared “information rich.”<sup>74</sup> Participants were selected on the basis of their legal form, geographical location as defined by relevant district, division of senior team and participant role within club hierarchy. The information required to facilitate the required diversity across the sample was sourced from a combination of the questionnaire data drawn from the quantitative phase of the research and the publicly accessible club websites.

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<sup>70</sup> Sue Greener, *Business Research Methods* (BookBoon 2008), p.48

<sup>71</sup> C. A. Smith, ‘The uses of Pilot Studies in Sociology: a Processual Understanding of Preliminary Research’ (2019) 50 *The American Sociologist* 589, p.590

<sup>72</sup> Geoff Payne and Judy Payne, *Key Concepts in Social Research* (Sage 2004), p.101

<sup>73</sup> Michael Patton, *Qualitative Evaluation and Research Methods* (Sage 2002), p.230

<sup>74</sup> Margaret Schreier, ‘Sampling and Generalization’ in Uwe Flick (ed) *The SAGE Handbook of Qualitative Data Collection*, p.88

Table 6.2: Pilot club details.

INTERVIEWEE CODE	QUALITATIVE PHASE	CLUB INCORPORATION STATUS
Z	PILOT	INCORPORATED
Y	PILOT	UNINCORPORATED
X	PILOT	UNINCORPORATED
W	PILOT	INCORPORATED

Based upon findings as drawn from the pilot interviews, as well as the extant literature, the study employed a heterogeneous sampling approach (being a type of purposive sampling) directed at identifying shared and contrasting patterns across participant organisations with differing features. Aligned with Emmel's approach, the research thus sought to engage with contexts that are likely to matter.<sup>75</sup> The participants purposively selected for the research provided for an opportunity to consider data from a range of perspectives. Inclusion of incorporated as well as unincorporated clubs in the sample was determined as appropriate on account of the statements of a pilot interviewee as regards the continuation of practices associated with the unincorporated form post incorporation. Matters of geography and league position of senior team were further included on account of the views of pilot interviewees that such matters affected club relationships with the WRU both as regards support offered by the union to clubs and the willingness of clubs to work with the Union. As well as seeking a diversity in organisational features of the clubs to which participants belonged, a diversity

<sup>75</sup> Nick Emmel, *Sampling and Choosing Cases in Qualitative Research: A Realist Approach* (Sage 2013)

of those roles undertaken by participants within their respective organisations was further sought. Evidence drawn from one pilot interview suggested that consistent with the literature as outlined in section 3.4.3, leading club decision-makers and in particular chairpersons and treasurers may be highly influential in decision-making pertaining to incorporation. On account of the perceived increases in responsibility for treasurers, in particular, that incorporation may provide for, the research attempted to facilitate consideration of how differences of responsibilities within clubs may affect views of incorporation by way of sample construction. Through a mixture of organisational features, as well as a variety regarding executive body roles, the research sought a range of diverse opinions and views.

The thesis does not offer a specific detailing of each participant club's features as a means of mitigating concerns as to jigsaw identification.<sup>76</sup> Table 6.3 in relation to geographical location based on district membership and division of senior team therefore provides only for roman numerals to denote each of the 9 relevant geographical districts and 8 divisions of the WRU league structure.

*Tables 6.3 and 6.4: Main qualitative study demographic breakdown.*

SAMPLE FEATURES									
LEGAL FORM	INCORPORATED					UNINCORPORATED			
	7					9			
GEOGRAPHICAL LOCATION	I	II	III	IV	V	VI	VII	VIII	IX
		2	4	1	2	2	1	2	2
DIVISION OF SENIOR TEAMS	I	II	III	IV	V	VI	VII		
	1	3	3	3	4	2	0		

<sup>76</sup> See section 6.7

POSITION HELD	NUMBER OF PARTICIPANTS
DIRECTOR/SECRETARY	2
DIRECTOR/CHAIRPERSON	2
DIRECTOR/TREASURER	3
COMMITTEE MEMBER/SECRETARY	4
COMMITTEE MEMBER/CHAIRPERSON	3
COMMITTEE MEMBER/TREASURER	2

16 interviews in total were carried out within the qualitative phase of the research with 4 being in the pilot phase and 12 telephone interviews comprising the main study. Consideration of the data led to conclusions that any decision to treat the pilot interviews in a manner different to those latter 12 interviews ultimately seemed arbitrary. Although it was possible to perhaps focus more closely on areas of interest in the latter phase, the richness of the data from the initial pilot legitimised their inclusion within the analytical process and presentation of results.

### 6.4.3 Contact

First contact with potential interview participants within the main qualitative phase was made by telephone rather than by email. Telephone numbers were sourced from publicly accessible club websites. Given initial attempts to contact participants for the pilot interview stage by email had been unsuccessful, the telephone method was utilised as an alternative first point of contact. Initiating

contact by telephone is considered to positively impact upon response rates given the participant may interpret the effort of the researcher to contact the individual to be greater than “merely” sending an email request.<sup>77</sup> Telephone calls as a means of initiating first contact have been found effective given the method provides an opportunity for the researcher to request participation personally.<sup>78</sup>

Telephone calls furthermore have been recognised as providing an opportunity to establish a rapport with potential research participants and to convey one’s message in a comprehensive manner.<sup>79</sup> The research design in this regard was therefore a response to the practical issue of securing willing participants, which as mentioned, is a phenomenon understood as prevalent within VSC empirical studies and indeed something experienced within the research.<sup>80</sup>

## 6.5 Pilot study

As a response to the inconclusive findings of the quantitative enquiry it was felt appropriate to undertake several pilot interviews. Pilot studies provide for an opportunity to revise and realign research but also provide scope to address more practical issues such as the timings of interviews and transcription processes, as well as the best means of developing interviewee rapport. 4 pilot interviews were undertaken and those matters of sampling and contact relevant to such interviews have been outlined within the preceding section.

From the more practical perspective, the pilot study ensured the audio recording equipment utilised was fit for purpose and revealed that the transcription process was far more time consuming than first expected.<sup>81</sup> As regards the latter point, a revised timetable was constructed which was able to suitably account for transcriptions within the main qualitative phase of the research. As indicated, the pilot

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<sup>77</sup> Jessica Daikeler and others, ‘Web versus other survey modes: An updated and extended meta-analysis comparing response rates’ (2020) 8 *Journal of Survey Statistics and Methodology* 513, p.516

<sup>78</sup> *Ibid*, p.516

<sup>79</sup> Chia-Chien Hsu and Brian Sandford, “Minimizing Non-Response in the Delphi Process: How to Respond to Non-Response” (2007) 12 *Practical Assessment, Research & Evaluation* 1, p.2

<sup>80</sup> Thomas May, Spencer Harris & Mike Collins “Implementing community sport policy: understanding the variety of voluntary club types and their attitudes to policy” (2012) 5 *International Journal of Sport Policy and Politics* 397

<sup>81</sup> Although the recording equipment was considered appropriate following its use within the pilot studies further attachments were necessary for the purposes of using such devices during telephone interviews.

also provided an opportunity to perceive how best to engage with interviewees and develop rapport. Such benefit was somewhat limited owing to the necessity to switch from face-to-face interviews at the participant's clubs to telephone interviews on account of COVID-19 guidance, however, the opportunities provided some utility in any event.

Substantively, the pilot highlighted perhaps most significantly that in understanding why clubs may incorporate, it was necessary to understand how the company limited by guarantee form had been embedded. The clubs within the pilot study indicated that incorporation had provided for little change for those clubs who had gone through the process and was perceived as an issue which would afford for little change by those clubs unincorporated but considering the transformation. A notion of "carrying on as we had done previously", regardless of the changing legal responsibilities and organisational changes required by incorporation, provided for what was perceived as an interesting development in consideration of that which may explain club behaviour as regards incorporation. The pilot interviews showed that by remaining open to the refinement of the research, one may be capable of providing for a more comprehensive account of causation, which in this sense, involved deliberating questions of how clubs had incorporated in order to facilitate understandings of why. The pilot interviews thus facilitated the emergence of a sub-research question to be explored through the qualitative phase, "*how have AWRC engaged with the incorporation policy.*" The sub-research question is inherently linked to the question of why clubs incorporate yet was considered to provide an analytical point of difference capable of contributing to holistic understandings of causation.

As mentioned at section 6.4.2, reflections upon the data drawn from the pilot interviews and the main qualitative phase led to conclusions that any separation in treatment would be arbitrary. Analysis of data drawn from the pilot interviews is therefore included within chapter 7's presentation of the qualitative findings. Importantly for the research, the pilot provided explanations of incorporation directed behaviour which somewhat aligned with those findings as drawn from chapters 2 and 3. As a consequence, the researcher felt more confidence in exploring those potential causative influences identified previously and refined the interview schedule accordingly as regards the main qualitative engagement.

## 6.6 Coding data

Little has been stated about data analysis within the applied critical realist literature.<sup>82</sup> Fletcher commented on the lack of critical realist scholarship detailing suitable coding and how that may leave critical realists without sufficient methodological guidelines.<sup>83</sup> As stated within section 6.2, the research has sought to mitigate the general lack of guidance by utilising Danermark et al's explanatory framework. In appreciation of the features of such framework, the researcher considered potential coding methods. Fletcher advocated a primarily deductive yet flexible directed coding process which drew upon existing theory and literature.<sup>84</sup> Drawing entirely upon codes as drawn from the literature was perceived however to be unnecessarily restrictive and insufficiently cognisant of the inconclusive findings as drawn from chapter 5's quantitative analysis.<sup>85</sup>

Hoddy in an attempt to identify an appropriate coding method for critical realist studies advocated the use of open and axial coding.<sup>86</sup> Hoddy described how open and axial coding may fit within a critical realist meta-theoretical framework in the following way:

*“Open coding breaks open or fractures the data to consider all possible meanings whereas, axial coding reassembles it. Here the axial coding strategy allowed the identification of CR “demi-regularities” or rough trends or broken patterns in the data.”<sup>87</sup>*

The notion of fracturing the data and thereafter reassembling it appeared attractive. In consideration of Danermark et al's explanatory framework the process seemed consistent with the dissolving of the complex as defined by stage 2. What's more, developing from such bases through redescription,

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<sup>82</sup> Critical Realism in empirical research: employing techniques from grounded theory methodology (n 3), p.117

<sup>83</sup> Applying critical realism in qualitative research: methodology meets method (n 9), p.182

<sup>84</sup> Ibid, p.186

<sup>85</sup> Decisions as to appropriate coding methods were taken prior to the pilot study which, in turn, did however support the utility of extant theory in explanations of causative behaviour.

<sup>86</sup> Critical Realism in empirical research: employing techniques from grounded theory methodology (n 3)

<sup>87</sup> Ibid, p.117

abduction, and retroduction further seemed consistent with the nature of open and axial coding.

Although traditionally associated with grounded theory, Saldana emphasised how open and axial coding could be used in non-grounded theory studies.<sup>88</sup> Hoddy further concluded that the borrowing of grounded theory techniques appeared ontologically consistent with critical realism and indeed successful in drawing out causative mechanisms from the perspectives of local actors.<sup>89</sup> In pursuit of relevant causative forces, the research applied such open and axial coding processes to the empirically collected qualitative data.

### 6.6.1 Open coding

The data was coded through the use of Nvivo software common to qualitative analysis.<sup>90</sup> The open and axial coding stages were applied both to the pilot phase and primary qualitative investigation. A secondary axial coding application was however undertaken as regards the pilot interview data later within the process, to allow for a consideration of the pilot responses with the benefit of the entirety of the collected data.

Open coding is a practice directed towards broadening the features of the research to establish a variety of potential areas of interest.<sup>91</sup> The open coding procedure involves a practice of line-by-line coding, whereby selected small sections of the transcription are coded and summarised in a descriptive manner.<sup>92</sup> Despite the predominantly descriptive nature of the initial coding phase, an appreciation is kept as to the importance of noting any statement considered to be of significant interest.<sup>93</sup> Such an approach is recognised as a useful starting point within qualitative research and has been utilised within empirical critical realism.<sup>94</sup>

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<sup>88</sup> Johnny Saldana, *The coding manual for qualitative researchers* (4<sup>th</sup> edn, Sage 2021), p.72

<sup>89</sup> Critical Realism in empirical research: employing techniques from grounded theory methodology (n 3)

<sup>90</sup> Kristi Jackson and Pat Bazeley, *Qualitative Data Analysis with Nvivo* (3<sup>rd</sup> edn, Sage 2019)

<sup>91</sup> This open coding process when applied to the pilot interview transcripts, for example, led to an appreciation of the importance of understanding *how* clubs embed the company limited by guarantee form.

<sup>92</sup> Pat Bazeley, *Qualitative Data Analysis* (Sage 2013), p.186

<sup>93</sup> Qualitative Approaches to Empirical Legal Research (n 18), p.15

<sup>94</sup> Critical Realism in empirical research: employing techniques from grounded theory methodology (n 3)

The codes drawn from this initial coding cycle were thereafter compared for similarities and differences, which includes a process of subsuming codes into broader categories and removing those codes less relevant to the objectives of the research.

*Figure 6.1: Example of category coding.*



Initial coding cycles did not seek to establish codes associated with the theories and ideas drawn from relevant existing literature. The basis for utilising such a process represented a concerted effort to maintain an openness to the emergence of unexpected areas of interest.<sup>95</sup> Such early coding cycles in the pilot study, for example, resulted in a refinement of the research focus as discussed at section 6.5.

It is of course conceivable that the information drawn from the literature could have influenced the initial coding cycles. Nevertheless, the semi-structured nature of the interviews allowed for a meandering within the discussions and facilitated an adherence to the notion that a researcher utilising a critical realist paradigm should be interested in a wide variety of possible causal mechanisms.<sup>96</sup>

## 6.6.2 Axial coding

<sup>95</sup> Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis*. (Sage 2006), p.59

<sup>96</sup> Scott Hurrell, "Critical Realism and Mixed Methods Research: Combining the Extensive and Intensive at Multiple Levels" in Paul Edwards, Joe O'Mahoney and Steve Vincent (eds), *Studying Organisations Using Critical Realism: A Practical Guide*. (Oxford University Press 2014), p.252

From the initial open coding phase, the analytical process thereafter moved to the secondary axial coding process. Axial coding is recognised as necessary to investigate the relationships between concepts and categories that have been developed by open coding.<sup>97</sup> Having “broken up” the data at the open coding stage, the axial coding process requires a joining together of categories identified from the codes to the direction of the research objectives. Axial coding, through this joining process is argued, as referred to earlier in this section, to allow for an identification of demi-regularities or broken patterns, to be considered against pre-existing theoretical positions.<sup>98</sup> Pre-existing theory, when applying an open-coding/axial coding perspective, therefore is used not to dictate explanations as to causation, but rather as potential explanations to consider alongside any emergent explanations. Running parallel to this analysis, the contextual circumstances which led, hampered, or prevented any potential mechanisms’ actualisation were also considered for their effect.<sup>99</sup>

## 6.7 Phase two ethical considerations

The applications for ethical approval in relation to the pilot and main qualitative phase of the research were granted on the 22<sup>nd</sup> of July 2019 and the 13<sup>th</sup> of March 2020 respectively. The nature of the research was not considered to be sensitive as defined by the sage dictionary of social research methods.<sup>100</sup> Given the research focus, the possibility of major ethical issues arising was considered to be limited. Nevertheless, the discussion of organisational operations has been identified as an area with potential to cause anxiety.<sup>101</sup> Though it was the case that the individuals participating within the interviews were not professionals, consistent with its general definition, the legal responsibilities of club decision-makers are wide-ranging. With this considered, an exploration as to legal decision-making and responsibilities could cause an element of discomfort for the interviewee. In promotion of

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<sup>97</sup> Maike Vollstedt and Sebastian Rezat, “An Introduction to Grounded Theory with a Special Focus on Axial Coding and the Coding Paradigm” in Gabriele Kaiser & Norma Presmeg (eds) *Compendium for Early Researchers in Mathematics Education*. (Springer 2019), p.87

<sup>98</sup> Applying critical realism in qualitative research: methodology meets method (n 9), p.185

<sup>99</sup> Joe O’Mahoney, “Critical Realism as an Empirical Project” in Paul Edwards, Joe O’Mahoney and Steve Vincent (eds), *Studying Organisations Using Critical Realism: A Practical Guide*. (Oxford University Press 2014), p.16

<sup>100</sup> Victor Jupp, *The sage dictionary of social research methods* (Sage 2006), p.278

<sup>101</sup> Kevin Corley, Courtney Masterson and Beth Schinoff, “Innovation Through Collaboration” in Kimberly Elsbach & Roderick Kramer (eds) *Handbook of Qualitative Organisational Research* (Routledge 2015), p.337

the principle of informed consent, prior to each interview taking place, the participant was sent an email containing the information sheet and consent form to review. At the commencement of each interview, it was reiterated to the participant that they were free to stop the interview at any point and for any reason, that the interview was being recorded, and that they could decline to answer any question they did not wish to answer. Such an approach was undertaken in order to minimise any harm or discomfort which may arise as a result of the interview and to redress, at least in part, the asymmetry of power between the participant and researcher acknowledged to exist within interview settings.<sup>102</sup>

Given the breadth of duties expected of participants either as directors<sup>103</sup> or as committee members, and the range of actionable claims which may be brought against individuals holding such positions, it was considered appropriate to seek to anonymise, as far as possible, the interview data. Providing anonymity has been recognised as a means of eliciting richer data from participants<sup>104</sup> whilst increasing the likelihood of participation.<sup>105</sup> Though the provision of anonymity has been argued to facilitate the collection of richer data, the same could alternatively be considered to limit the explanatory ability of the research. Editing for purposes of anonymity may limit for example the discussion of context. The benefits of implementing measures seeking to reduce the prospect of identification were however considered on reflection to offset the detriment caused by the measures promoting anonymity. Full anonymity was not however guaranteed to the participant, which was an issue made clear within the information sheet and consent form provided to the participant prior to the undertaking of the interview. It is acknowledged that qualitative interviewing is susceptible to “jigsaw identification” whereby those engaging with the research may be able to identify the participant, or the participant’s organisation, through the piecing together of different elements of information offered by the interviewee. Though a concerted effort was undertaken to protect the identity of the

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<sup>102</sup> Frederick Anyan, “The influence of power shifts in data collection and analysis stages: a focus on qualitative research interview” (2013) 18 *The qualitative report*. 1

<sup>103</sup> Companies Act 2006 s 171-177.

<sup>104</sup> Anthony Ong and David Weiss, “The Impact of Anonymity on Responses to Sensitive Questions” (2000) 30 *Journal of Applied Social Psychology* 1591, p.1701

<sup>105</sup> The reluctant respondent, (n 69)

participants, it was deemed necessary to explicitly identify this issue within the information sheet and consent form in adherence to the principle of informed consent.<sup>106</sup>

## 6.8 Conclusion.

Chapter 6 has detailed the methodological choices relevant to the dominant qualitative strand of the research. The chapter facilitates an understanding of the qualitative analysis presented in chapter 7. Through the application of Danermark et al's explanatory framework, chapter 7 presents the outcomes of the dissolution of the interviewee accounts into various components and the consequential restructuring of the data. In doing so chapter 7 seeks to facilitate causative explanations of AWRC behaviour through the creation and synthesis of themes of interest.

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<sup>106</sup> Carol Warren, "Qualitative Interviewing" in Jaber Gubrium & James Holstein (eds) *Handbook of Interview Research* (Sage, 2001), p.89



## Chapter 7: Qualitative analysis

This chapter focuses on the narrative accounts drawn from the interviews. The chapter presents the empirical findings and explores associated theoretical perspectives in a manner consistent with critical realism's search for demi-regularities.

The research utilises Danermark et al's flexible critical realist analytical framework acknowledged to facilitate explanation of certain real-world phenomena. The chapter seeks to engage with stages 2 and 3 of the framework, with the latter stages considered at chapters 8 and 9.<sup>1</sup> Chapter 7 focuses on the outcome of a fragmenting of data and the first reconciliatory analytical step. From a critical realist perspective chapter 7 does not therefore attempt to explain why the empirical behaviour perceived as a whole took the form which it did, but rather attempts to describe the constituent elements of AWRC engagement with the incorporation policy. Chapter 7 as a consequence offers a broad, if often disparate, description of the experiential data. Situating the process within the critical realist stratified ontology, chapter 7 reconceptualises data with the assistance of theory as a means of suggesting demi regularities that may impact upon the events as observed.

Aligning with norms as to the presentation of interview-based enquiry, verbatim quotations developing understanding of club behaviour as drawn from the open and axial coding process were synthesised into themes for the purposes of explanation. The reconceptualisation of the individual themes, subsequent to their respective presentation, represents an abductive/theoretical re-description process consistent with Danermark et al's third analytical step. The reconceptualisation involved the introduction of existing theoretical perspectives in a manner promoting comparison and integration. Such reconceptualisation relied primarily on theoretical perspectives as drawn from chapter 3 though

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<sup>1</sup> See Table 6.1.

certain emergent themes required the introduction of separate, if nevertheless associated, theoretical perspectives.

Analysis of interview transcripts led to the development of 5 themes considered particularly relevant to the research objectives:

1. A legal consideration.
2. Organisational constraints.
3. Trust and Legitimacy.
4. Marketisation and Identity.
5. Partial incorporation.

The themes above sought to address both temporal points of importance to the incorporation experience from decision to implementation. The analysis concurrently accounted for those less direct but nevertheless influential contextual factors considered to effect AWRC behaviour.

It should be noted prior to the presentation of the analysis that the interviewees unanimously stated that their clubs had either incorporated or had decided to incorporate yet for varying reasons had not yet been able to do so. As a consequence, issues of resistance to incorporation were discussed in general terms as well as with specific reference to why clubs may have failed to incorporate previously. The limitations for the research flowing from the homogeneity of the participants perspectives in this regard are discussed in detail within the concluding chapter.

### 7.1 A legal consideration

The first theme titled “a legal consideration” explores how participants perceived and engaged with the law and their legal environment as it related to the issue of incorporation. Two perspectives were utilised for the purposes of explanation, with the first relating to the prominence of legal consequence as a determining factor as regards decisions as to whether to incorporate.

### 7.1.1 The pursuit of legal protection

The first substantive question put to the interviewees sought to gain an insight into their respective organisations' rationales for engaging with the incorporation policy. When answering this question, all respondents referenced the importance of protecting the individuals associated with their clubs, be it trustees, committee members, or the general membership, from the personal liability associated with operating as an unincorporated association.

*"Purely safeguarding of the committee and the members." A7*

*"I think there was a bit of history about another club we read about where secretaries and others were liable for debts .....And that's the biggest reason we decided to go, to become incorporated.....it really sort of focused our approach on this to make sure we protect people who should be protected within the club." A10*

*"I'm just quite relieved that the responsibility would go from our trustees to a limited company." A9*

*"We didn't want anything to happen that could impinge on the committee or trustees. We did have a situation a few years ago where a player got injured and I think the chairman and secretary ended up in court as they were sued ... they were in danger of losing whatever they had. We couldn't let that happen again." A12*

Although the interviewees largely attributed the threat of personal liability to committee members as well as trustees, there was an appreciation that by design, or otherwise, the general membership base could also face personal liability whilst the unincorporated legal form was utilised. As outlined within

chapter 2, occasions of liability being attributed to general voluntary sport club memberships, although not common, were nevertheless possible, with respondents A8, A10, and A13 passing comment on the issue.

*“The internal decision taken at XX was that if anyone was put under pressure for anything, it was decided by the membership that it would be right that everybody would share whatever it was.” A8*

*“So, we said yeah you know...the club with the original trustees were very responsible and then there was talk about making all members responsible so we decided the right thing to do was become incorporated.” A10*

*“(An AWRC Treasurer) still being pursued for money as a result (of a claim) and that certainly did play a part in us wanting to become a limited company definitely... that protection, and that is purely the way we were looking at it, is protecting the committee members first and foremost but all the membership from being sued.” A13*

The data showed that, at the very least, protection from personal liability, perceived to be afforded by the transformation of legal form, represented the most influential factor amongst a small number of motives for undertaking the conversion of clubs into companies limited by guarantee. Although ancillary factors were recognised as either contributory in some circumstances (A16 and A5) or hypothetically attractive in others (A13), the overriding influence as articulated by the directors and committee members respectively was the perceived protection from personal liability.

*“and the second was, if you want to uh and this is pre covid 19 now and I think covid 19 might have changed things somewhat, but prior to covid 19 the WRU offered grants to rugby*

*clubs to improve their facilities and things and the amount of grant that you could be considered for was considerably more if you were incorporated than if you were unincorporated, so those two reasons.” A16*

*“I would say as an unincorporated rugby club if you like, some grants are still available to us but not to the same level as if we were incorporated so I would say it was a secondary consideration.” A5*

*“I’d forgotten about that to be honest with you because that wasn’t within my time, but no that didn’t come in to our thinking, but it would have, yeah if we thought we wouldn’t get grant money. Grant money is huge to us, we can’t operate without it, so yeah that would, it’s a bit hard to say now because it’s not the case but yeah.” A13*

Whereas protection from personal liability was consistently identified as the primary reason for incorporating, many of the respondents provided details of insurance policies believed to indemnify committee members and trustees from personal loss as a consequence of legal action. A “belt and braces” approach to the issue of personal liability appeared evident as explained by several respondents, including A14, who considered insurance as an “extra layer” of protection alongside limited liability. A12 and A4 further stated:

*“Yes, that’s the main reason to try and limit that, obviously we’ve got insurances out personal liability and all this but.... I wanted to make sure that if this was an easier way out, we’d take the easier way out...things could go wrong with insurances.” A4*

*“We have insurance to cover claims, but there’s always a chance isn’t there litigation these days is getting a bit silly, it might not cover what you have so you’re better off doing what we want to do.” A12*

Responses to these initial points of discussion allowed for a recognition as to the primacy of legal considerations amongst those influences effecting decisions as to whether to incorporate. Although the acceptance by VSC of policies promoted by national governing bodies have previously been reported to hinge upon a diverse range of issues,<sup>2</sup> the interviewee accounts suggested an adherence to a law first perspective, in which pre-eminence was afforded to legal factors over other salient considerations.<sup>3</sup> Although a useful insight, such finding provided for an insufficiently shallow understanding as to the mechanisms at work. The justification however provided by A12 as to why incorporation alongside insurance seemed appropriate, represented an insight into the role of the legal context and its effects upon the relevant decision-making.

### 7.1.2 Legal vulnerability

Although the limited liability consequence of operating as a company limited by guarantee was explicitly detailed as the primary attraction of incorporating, the second sub-theme addresses why limited liability was so coveted. In exploration of this matter reference is made to interviewee accounts regarding perceptions of the relevant legal environment. Consistent with the views of Cuskelly, Auld and Hoye as to growing VSC concerns regarding susceptibility to legal action,<sup>4</sup> the analysis identified a widespread acceptance of a “claims culture.”<sup>5</sup>

The perception of such a culture having emerged over the last several decades appeared to facilitate arguments as to the necessity of moving away from a structural model aligned with personal liability.

For example, respondent A7 and A13 stated:

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<sup>2</sup> Richard Garrett, ‘The response of voluntary sports clubs to Sport England’s Lottery funding: cases of compliance, change and resistance’ (2004) 9 *Managing Leisure* 13, p.26

<sup>3</sup> See Chapter 3.

<sup>4</sup> Graham Cuskelly, Russell Hoye & Chris Auld. *Working with Volunteers in Sport: Theory and Practice*. (Routledge 2006)

<sup>5</sup> See Section 2.6.

*“I don’t think the committee going back to those days, you know maybe 20 years ago, wouldn’t have been aware of you know the strength ... and it’s more the culture now really isn’t it, it’s a blame culture and it’s a claim culture currently. I think 20 years ago that wasn’t the case.” A7*

*“Some people, they’ll say well we’re 130 years old this year, they’ll say well why’s this (incorporation) suddenly appeared now, and it’s just well things do change ..... the world has changed like with litigation and it’s a completely different thing from what it was 30 years ago, the risks are worse.” A13*

As outlined within chapter 2, the veracity as to the existence of a claims culture has been regularly challenged.<sup>6</sup> Despite this, the authenticity attached to the claims culture appeared somewhat taken for granted by the research participants. Respondent A3, justifying his club’s decision to incorporate and developing A13’s sentiments, referred to the vulnerability they perceived owing to the propensity of some to claim and the inability to mitigate the pertinent risks:

*“Yeah because you, you know with the game we’re playing if somebody however well you run a club, if you put a youngster out there perhaps it could be a mini and junior who say broke his or her neck and maybe because in this day of compensation the parent would point the finger perhaps unfairly at the coaches. Are they totally qualified to do it? then um you could find however well we run the club as the main committee we could have found ourselves in that set of circumstances where a claim is made against the club.” A3*

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<sup>6</sup> Ibid

The acuteness of the issue as reported by the interviewees was perhaps unsurprising given Nichols et al's reference to findings that society is becoming more averse to risks such as those emerging from sports.<sup>7</sup> There remained however a reluctance on the part of the interviewees to associate the sporting context with a heightened sense of concern. A14 stated:

*“um, yes, I don't think that's a problem with regards to rugby I think it's a problem with regards to society, we have become such a litigation society that a lot of volunteers now refuse to volunteer because of the risk that's placed on them, the financial risk which is placed on them.” A14*

A14's interpretation of the claims culture as a societal, rather than sports specific issue, was shared on all but two occasions within the interviews. The accounts of the respondents largely provided for an interpretation of the relevant legal environment as imported, prone to abuse, and ultimately constraining of beneficial conduct.

*“So you know that's the age we live in at the moment and have done for 10,15,20 years so we've followed the USA a lot, the slightest little thing car accident, faking this and faking that, sometimes to claim compensation so it certainly was an element I think of what went through our minds.” A3*

*“No its society and its come from across the pond ..... well it used to be, well it's even worse over there everyone's bloody frightened to death of moving over there almost and you think about blooming doctors and dentists and all the rest of it how they actually do their job I*

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<sup>7</sup> Geoff Nichols and others, “Pressures on the UK Voluntary Sport Sector” (2005) 16 *International Journal of Voluntary and Nonprofit Organisations* 33

*don't know." A15*

*"Unfortunately that's America for you, what America do first we finish up with and we are such a litigation society that a lot of people say I've got the choice of volunteering on a Saturday afternoon or sit on a rugby or other sporting committee then they've got to weigh up well I've got a £500,000.00 house, if something goes wrong this voluntary sport isn't going to protect my house and they walk away." A14*

The data presented within the above sub themes suggests a potential manifestation of Bies and Tyler's contention that a pervasiveness of a litigation paranoia can result in organisational policies and processes becoming increasingly driven by legal considerations.<sup>8</sup>

### **7.1.3 Reconceptualising a legal consideration**

Discussions focusing upon law and the legal environment proved both common and instructive as regards achieving a deeper understanding of the causal influences affecting engagement with incorporation. In the first instance consideration of such data suggested McGregor-Lowndes and Hannah's remarks that fears of legal liability were capable of overcoming concerns as to greater formality in driving incorporation could be substantiated.<sup>9</sup> It became apparent however that ideas of equity also proved of great importance to interviewees. The personal liability consequences of operating within an unincorporated structure were interpreted by interviewees as contrary to understandings of what fairness in the law should represent. The statement of club representatives A12 and A7 provide a useful illustration of the views in this context.

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<sup>8</sup> Robert Bies and Tom Tyler, "The "litigation mentality" in organizations: a test of alternative psychological explanations" (1993) 4 *Organisation Science* 352, p.361.

<sup>9</sup> Myles McGregor-Lowndes and Frances Hannah, 'Unincorporated associations as entities: A matter of balance between regulation and facilitation?' (2010) 28 *Company and Securities Law Journal* 197, p.218

*“it wouldn't be fair if somebody took my house off me for something which happened on the rugby field or happened in the car park of the rugby club do you know what I mean.” A12*

*“we're volunteers, you know it's totally unfair to put ourselves in that position isn't it ...you know we've got no financial gain apart from the love of the game and the love of the club isn't it so.....and to be faced with a claim of the magnitude, its horrendous isn't it.” A7*

In a notable departure, one of the interviewees did take a more nuanced position structuring their response in a manner which recognised the interests of a hypothetical claimant. However, A1 recounted that the protection of their club's unpaid volunteers from personal liability had ultimately prevailed over any concerns emanating from ideas of natural justice.

*“I disagree with it because obviously we're volunteers and obviously we don't get paid for what we do but I understand why it's there, if that makes sense.....Yes so could be like a criminal sort of thing couldn't it, to put a thing on it like if I didn't have my fire alarm tested over every 6 months like I'm supposed to and then there was a fire and the fire alarm hasn't gone off and someone died, then if I was the family of the person who dies I wouldn't want a club to be responsible. I would want a person to be responsible, I understand that side of it you know.” A1*

The notion that committee members and trustees by virtue of their volunteer status were undeserving of the consequences associated with personal liability represented a common belief existing amongst the interviewees, which, in turn, appeared to legitimise incorporation. The belief that volunteers should be shielded from personal liability owing to their renouncement of individual profit is not a finding exclusive to AWRC. Rather the finding represents a belief of significant reach having proved capable of transcending the third sector and ultimately resulting in several instances of legislative

change outside of England and Wales. Flannigan, writing in 2005, considered such belief to be best described as the “halo effect.”

*“In the public mind, the self-denial of profit often generates a “halo” for an organisation and its volunteers. Those who ostensibly renounce personal “profit” are regarded as more virtuous or public-spirited.”<sup>10</sup>*

Flannigan contended that North American legislative actions influenced by such effect were largely unjustified.<sup>11</sup> Although argued to be unjustified, Flannigan’s findings as to the existence of a halo effect driving ideas as to what is fair in circumstances of personal liability for non-profit volunteers resonated strongly with the study’s participants. As was the case in legislative considerations, the existence of the halo effect within the context of an apparent claims culture appeared powerful in persuading AWRC decision-makers that affirmative action to protect volunteers was required.<sup>12</sup>

Legal considerations represented one of the most referred to issues drawn from the interview transcripts. Each representative bar one alluded to the persuasive effects of a claim culture regarding decisions as to whether to incorporate. Such finding serves to support Black’s contention that even an empirical myth emanating from the legal paradigm can play an important role in organisational behaviour.<sup>13</sup> The findings as to the effect of a claims culture upon AWRC decision-making further support Oswald’s observations that fears of litigation have the capacity to change organisational behaviour in a manner which promotes defensive decision-making.<sup>14</sup> The analysis ultimately drew attention to the power a combination of a belief as to a claims culture alongside a “halo effect” may

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<sup>10</sup> Robert Flannigan, “Tort immunity for nonprofit volunteers” (2005) 84 Canadian Bar Review 1, p.4

<sup>11</sup> Ibid, p.5

<sup>12</sup> Ibid, p.5

<sup>13</sup> Julia Black, “New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making.” (1997) 19 Law & Policy 51, p.83

<sup>14</sup> David Oswald and others, “An exploration into the implications of the “compensation culture” on construction safety” (2018) 109 Safety science 294, p.294.

have in driving actions to the objective of immunising non-profit volunteers from the dangers of personal liability.<sup>15</sup>

## 7.2 Organisational constraints

Resource deficits shaping organisational behaviours are well-documented within research relating to the operations of voluntary sports clubs and have already been afforded considerable attention within this thesis.<sup>16</sup> With such issues common across the organisational field, scarcity and control of resources are regularly identified as a major determinant of adaptive organisational acts.<sup>17</sup>

Previous research has focused on the effect of resource constraint upon VSC abilities to deliver core activities<sup>18</sup> as well as enact wider societal objectives.<sup>19</sup> The following section explores the roles resource constraint seemed to play in transformations of legal form.

### 7.2.1 Internal resource constraint

Although the themes forming this chapter are presented as distinct, they are not intended to represent rigid categories. Such flexibility accounts for a repetition of experiences/phenomena across themes with varying points of focus. The wariness of prospective administrators to assume decision-making

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<sup>15</sup> It is arguable that such a combination can be seen in the rhetoric surrounding political efforts to mitigate the legal risks of those involved in the not-for-profit sector. Compensation Act 2006 s1. Social Action, Responsibility and Heroism Act 2015 s2. Lord David Young, ‘Common Sense Common Safety’ (2010) <<https://www.gov.uk/government/publications/common-sense-common-safety-a-report-by-lord-young-of-graffham>> accessed 19<sup>th</sup> November 2019. Jonathan Hyde, “Ridiculous” heroism bill clears Lords Hurdle” *Law Gazette* (7<sup>th</sup> January 2015) <<https://www.lawgazette.co.uk/law/ridiculous-heroism-bill-clears-lords-hurdle/5045846.article>> Accessed January 6<sup>th</sup> 2020.

<sup>16</sup> Alison Doherty, Katie Misener and Graham Cuskelly, “Toward a Multidimensional Framework of Capacity in Community Sport Clubs” (2013) 43 *Nonprofit and Voluntary Sector Quarterly* 124. See Also, Mary Allison, *Sport clubs in Scotland* (Sport Scotland 2002) <<https://sportscotland.org.uk/documents/resources/clubrrsportsclubsinscotlandrr75.pdf>> Accessed 19<sup>th</sup> May 2019

<sup>17</sup> Christine Koberg, “Resource scarcity, environmental uncertainty, and adaptive organisational behaviour.” (1987) 30 *The academy of management journal* 798

<sup>18</sup> Peter Taylor, ‘Driving up participation: sport and volunteering’ in Sport England (ed) *Driving up participation: the challenge for sport* (Sport England 2004)

<sup>19</sup> Tobias Nowy and Christoph Breuer, “Facilitators and constraints for a wider societal role of voluntary sports clubs – evidence from European grassroots football” (2019) 11 *International journal of sport policy and politics* 727

positions owing to concerns of personal liability, for example, as outlined at 7.1.2, speaks not only to anxieties as regards legal vulnerability, but furthermore provides insight into a wider concern established within VSC literature, the inability to attract and retain enough volunteers to operate effectively.<sup>20</sup> The importance afforded to such an issue amongst the respondents supported Seippel's observations that whereas VSC motivations as regards structural developments appeared somewhat vague, a deeper analysis showed that great importance was attached by those within the organisations to a policy's effects upon attracting and retaining volunteers.<sup>21</sup>

Respondents A4, A11 and A8 provided an example of how incorporation, and crucially the conferment of limited liability, was perceived to be instrumental in attracting and retaining club administrators.

*“Well its hard trying to get people to work now..... Because what happens is, if people find out they're liable, they don't want to become a committee man.” A4*

*“Again, I think it comes back around to the claim culture, where young boys now are finishing their careers, ok there's family commitments but they're not coming onto committees um because of potential thoughts of hang on you know something happens, am I going to be liable.” A11*

*“Well they would all be, all be rightly scared wouldn't they, I suppose it's this type of scenario which is stopping people joining clubs in this day and age, you know the litigation sort of society we're getting in Britain now is a scenario that is stopping people from becoming a volunteer because there's so many..well anything from child safety to health and*

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<sup>20</sup> Steffie Lucidarme and others, “Organisational capacity and organisational ambition in nonprofit and voluntary sports clubs” (2014) 26 *Voluntas: international journal of voluntary and nonprofit organisations* 2023, p.2026

<sup>21</sup> Ornulff Seippel, 'Professionalization of voluntary sport organisations – a study of the Quality Club Programme of the Norwegian Football Association' (2019) 19 *European Sport Management Quarterly* 666, p.677. See also Section 3.4.3.

*safety to litigation for various different things, this is what's stopping people from getting involved in amateur sport." A8*

Issues of attraction and retention were particularly pronounced in the AWRC context given the analysis supported prior accounts that amateur sports clubs are typically reliant upon a small number of individuals for the majority of organisational responsibilities.<sup>22</sup> It is the loss or inability to attract these key volunteers which have been observed to inhibit organisational development and has been argued to even prove fatal to a club's continuation.<sup>23</sup> Supporting the findings of Tacon and Walters, several participants stated that the multitude of responsibilities expected of a dwindling number of executive body members had the effect of limiting opportunities to address strategic issues in a proactive manner.<sup>24</sup> Interviewee A4's comment of placing incorporation on the back burner was exemplary of AWRC behaviour in which it appeared short-term problems were prioritised over more fundamental issues, and in which crises management pre-empted planning.<sup>25</sup> Although Miller and Starr suggested that organisations seek to relieve managers from mundane routine tasks in order to direct resources towards strategic decisions, such practice according to interviewees was largely absent in their experiences.<sup>26</sup>

*"Honest to god it is too much, if it's not work I'm on the phone to the district, if it's not the district I'm on the phone to the WRU, if not the WRU I'm on the phone to a parent of the mini and junior section who wants to make a complaint about why their child didn't play on the weekend you know." A1*

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<sup>22</sup> Michael Van Bussell and Alison Doherty, "An examination of the conflict process in nonprofit community sport boards" (2015) 15 *European Sport Management Quarterly* 176, p.178

<sup>23</sup> Damian Gallagher, Audrey Gilmore and Alina Stolz, 'The strategic marketing of small sports clubs: from fundraising to social entrepreneurship' (2012) 20 *Journal of Strategic Marketing* 231, p.235

<sup>24</sup> Richard Tacon and Geoff Walters, "Modernisation and Governance in UK national Governing Bodies of Sport: How modernisation influences the way board members perceive and enact their roles" (2016) 8 *International journal of sport policy and politics* 363

<sup>25</sup> James March, *A Primer on Decision Making. How Decisions Happen.* (The Free Press 1994)

<sup>26</sup> David Miller and Martin Starr, *Executive Decisions and Operations Research* (Prentice-Hall 1965)

*“Yeah Saturday we got to um man the gate, sell programmes, we have to do cooking, we have a canteen over the fields, that needs to be manned, need someone to run the line and someone to run the first aid bag, someone to mark the field, someone to put the flags out... I think the WRU are putting more on the, the clubs, on the secretaries because at the moment I’m chairman, secretary, groundsman, life member, trustee as well.” A4*

While the long-term interests of the club in relation to attraction and retention was perceived by some to be enhanced in consequence of the security provided by incorporation, such interpretation was not universal. Opposing understandings of incorporation as an additional burden upon administrators, represented a counter-weight as regards how incorporation may affect issues of attraction and retention for decision-makers, and prospective decision-makers, concerned as to growing professionalising responsibilities and limited resources.<sup>27</sup> The accounts of interviewees A10 and A16 were instructive as to the view of incorporation as unappealing to volunteers owing to the time and complexity taken to incorporate and/or serve as a director. A16 and A6 drew on their experiences to justify why other clubs may reject incorporation whilst A13’s similar perspective related to his club’s experience of why they had failed to incorporate for several years.

*“we’ve got lots of committee members running sides or committee people running sides and so lots of young people out there but because we’re you know, being a director, I think lots of people are not interested in it, maybe it’s the tasks you have to do maybe they think it’s too hard and there’s more to it than there is I don’t know.” A10*

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<sup>27</sup> Russell Hoye and Graham Cuskelly, “Board-executive relationships within voluntary sport organisations.” 2003 (6) Sport Management Review 53

*“possibly they feel a little bit intimidated by the fact that they have to appoint directors and file accounts on an annual basis, so possibly that maybe a reason (not to incorporate).” A16*

*“Ok, so it’s a lot of work for a volunteer to undertake, and apart from being a lot of work.. there are certain things that are, we had to manage to get hold of, lots of the deeds and so on.” A6.*

*“what they initially said was there’s lots of reasons not to do it as well, and when you push them on what are those reasons? They just kept, oh actually I don’t know, and no one could actually remember so I think really it would come down to we’re all volunteers, we don’t get paid, and something like that is very difficult to take time to do.” A13*

A13, furthering this resource intensive understanding of incorporation as a strong disincentive, commented that the project only initiated at the time he decided to make the task his personal responsibility away from the general executive body’s responsibilities.

*“If they’d have given it to someone to do as a bit of a project away from the daily committee, I’m sure they would have done it, but I think it just gets put on the backburner all the time and we have been in the same boat, we still do that now. It’s very difficult when you come home from a day’s work and you think right I’m going to sift through this 60 page document now and see what’s going on. And you try and do it the cheapest way possible as well so I think it was probably more to do with they just keep putting things on the backburner rather than dealing with them at the time would probably be the truth, nearest the truth..” A13*

A13’s experience as to an inability existing within an executive body to address resource intensive

issues appears typical of the VSC literature as regards time constraints of VSC volunteers.<sup>28</sup> As well as issues of time constraint, the preference for non-profit organisations to direct their resources towards non-profit activities,<sup>29</sup> proved evident within the research context with A3 succinctly noting “it’s the rugby which dominates the conversations”.

Resource constraint, as something of a defining feature of VSC, refers not only to issues of time but also, as intimated previously, to limitations of skill, knowledge, and/or finance to operate in what is considered to be an appropriate organisational manner. Interviewee A14 discussing their thoughts on why other clubs may not have incorporated and interviewee A2 discussing his own club’s previous resistance, acknowledged how limitations of skill and knowledge may impact on decisions of legal form.

*“you go to clubs in some areas and they’re most probably run by two men and a dog who can’t be bothered, it’s a lot of paperwork there’s a lot of hassle.... We’ve still got to write articles of association, you’ve still got to do this, you’ve still got to do that. You’ve still got to put it to the membership to approve.” A14*

*“(Responding to as to why the previous chairman opposed incorporation) Lack of knowledge, he’s never run a business he has no idea that if one of our employees gets injured I’m in court, he doesn’t get that if our physio gets hurt he can come after me at the moment.” A2*

### **7.2.2 External resource constraint**

Resource constraint, as it applied to the constituent individuals comprising the executive bodies, was referred to often. Discussions of resource constraint existing at an organisational level however

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<sup>28</sup> See section 3.4.2.

<sup>29</sup> Tort immunity for nonprofit volunteers (n 10), p.15

provided for a further salient theme. Similarities were evident between the findings of the 2013 report into VSCs which identified “accessing funds/sponsorship”, “generating income” and “increased facilities costs” as the primary concerns of UK VSC, and the situation as it existed in relation to AWRC in 2020.<sup>30</sup>

In furtherance of Fahlen et al’s finding that “money talks”,<sup>31</sup> as well as Passey and Lyons and Woodward’s conclusions that the will of funders may drive decisions of legal form,<sup>32</sup> the analysis here highlighted that, in some circumstances, the financial incentives offered by the Welsh Rugby Union to the same end did prove to be somewhat effective. Interviewees A5 and A9 for example noted the consequence of the access to potential new funds as a contributory factor towards incorporating.<sup>33</sup> As A9 stated;

*“What was crucial was being incorporated or being part way down the road to being incorporated. So again, that was another issue, and another reason to be incorporated I suppose was to access that bigger grant.” A9*

Financial resource constraints from an interorganisational perspective were in fact reported to be the most prescriptive external factor effecting decisions relating to incorporation by interviewee A1.

*“They said they can’t afford to do it and they’ve said you know they are not allowed to go incorporate because of the level of debts and the fact they can’t repay it back. They can’t*

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<sup>30</sup> Sport and Recreation Alliance, ‘Sports Club Survey 2013’ (Sports and Recreation Alliance 2013) <<https://www.sportandrecreation.org.uk/policy/research-publications/sports-club-survey-2013>> Accessed 15<sup>th</sup> July 2019, p.75

<sup>31</sup> Josef Fahlen, Cecilia Stenling & Ludvig Vestin, “Money talks – A qualitative analysis of the organisational change connected with the corporation formation of a voluntary sport club” (2008) 5 Sport and Society 153

<sup>32</sup> Andrew Passey and Mark Lyons, "Regulating Third Sector Organisations; The views of Incorporated Associations in NSW" (2009) 15 Third Sector Review 85. Susan Woodward “Not-for-Profit Motivation in a For-Profit Company Law Regime: National Baseline Data.” (2003) 1 International Journal of Civil Society Law 37

<sup>33</sup> The remarks of A5 and A9 further those accounts of clubs outlined earlier in the section who had identified financial considerations as a secondary influence driving arguments to incorporate.

*have the asset transfer until they're incorporated so I think it's a worry for a lot of clubs out there." A1*

Although the account of A1 was admittedly second-hand, such explanation of inertia was reinforced by a further club attempting to overcome an external creditors resistance to incorporation. Incapable, and consequentially inhibited from transitioning from an unincorporated association to an alternative legal form, the club's inability to overcome issues of personal guarantee served as a considerable stumbling block as regards the realisation of their intentions.

*"There was a, what's the word I'm going to use, battle?.....Um so what they said we owed them, we challenged it and there was an amount of money that we had to raise to obviously sort of, well, stop them shutting the club down really. So, we raised that money and once that is paid off and the debt is sorted, I believe incorporation will take place... It's a bit like we're waiting for the go ahead really because we have done a certain amount of work with xxx and um, there was not a lot they could do until we had the sort of go ahead really..because it's like swapping debt around really wasn't it, if they're indebted to a limited company, there's a chance that could be written off in a way, that they weren't happy for that." A8*

The impact of the structural grant incentive however appeared perhaps less pronounced than was evident to Fahlen et al, with 5 clubs referencing the incentives persuasiveness. The analysis supported Verbuggen and Milis findings that whereas amateur sport organisations owing to resource deficits are susceptible to external influence, it is necessary to consider the plethora of potential financial influencers outside of the most pronounced relationships and the nature of their specific interests on club decision-making.<sup>34</sup>

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<sup>34</sup> Sandra Verbuggen, Johan Christiaens and Koen Millis, "Can resource dependence and coercive isomorphism explain Nonprofit Organizations' Compliance with Reporting standards?" (2010) 40 Nonprofit and Voluntary Sector Quarterly 5

### 7.2.3 Reconceptualising organisational constraints

Resource constraint in the manner in which it has been outlined above serves to reinforce the importance of recognising the influence of organisational environments and the manner in which such environments can facilitate or inhibit decisions such as whether to incorporate. The account of A8 provided evidence as to a preference for organisational change. The inability however to overcome the external entity's resistance highlighted the importance of actors outside the WRU/club relationship and the effect resource dynamics within these alternative relationships may have upon issues of incorporation. In this sense the decision to move beyond causative accounts based solely upon a disconnect between national governing bodies and clubs as referred to at chapter 3 appeared justified.<sup>35</sup>

Discussions of organisational resource constraint within a VSC context have frequently involved reference to resource dependency theory.<sup>36</sup> Resource dependency theory and the often-associated coercive isomorphism, are frequently used in tandem in an effort to explain the steering of organisational behaviour by entities upon which VSCs depend for resources.<sup>37</sup> Resource dependency theory's central premise, that organisations are likely to adhere to the will of those possessing the resources they require, appeared to provide some degree of explanation as to club behaviour regarding incorporation. Although a financial incentive to undertake incorporation may be logically persuasive given the well documented precarious financial standing of many VSC, the variety of actors within the clubs' organisational fields and their countervailing objectives appeared capable of mitigating the effect of the WRU's coercive isomorphic pressure in the incorporation circumstance.

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<sup>35</sup> Section 3.4.4

<sup>36</sup> Carolyn Cordery, Dalice Sim and Rachel Baskerville, "Financial vulnerability in football clubs: Learning from resource dependency and club theories" (2008) 24 *Third Sector Review* 49

<sup>37</sup> Danny O'Brien and Trevor Slack, "The emergence of a Professional logic in the English Rugby Union: The Role of Isomorphic and Diffusion Processes" (2004) 18 *Journal of Sport Management* 13, p.16. Section 3.4.5

As discussed at section 3.4.4, resource dependency theory allows for a consideration of numerous externally positioned actors in explanation of organisational behaviour.<sup>38</sup> The theory is however, as outlined in detail at section 3.4.4, often argued to be limited in utility owing to its deterministic views of organisations and the consequential disregard of agency.<sup>39</sup> From an internal, more agential perspective, the resource constraint findings can perhaps be reconceptualised in the research context as an interplay between co-existing organisational belief systems of a legal and resource-based nature. Black's argument that a battle of norms is often perceptible in explanation of organisational behaviour, with norms from competing institutional perspectives interacting with one another through conflict or mutual reinforcement, in this sense appears supported.<sup>40</sup> In this instance, institutionalised legal beliefs, based on fairness and vulnerability, can be seen to be opposed by resource-based norms promoting the conservation of time and energy for those matters related to less complex, less arduous and less professionalised tasks associated more directly with the clubs' central purpose. In simplification, it appears clubs are occasionally reluctant to implement a policy which aligns with beliefs as to legal fairness owing to perceptions that the decision-makers, as volunteers, lack the time and skill necessary to understand and actualise the complex incorporation process. The analysis does however concurrently show that legal arguments for incorporation in fact draw upon a resource perspective as a legitimising base through claims as to attraction and retention in the face of an unfavourable legal environment.

Such contrasting perspectives provide credence firstly to Black's contention as to a "battle of norms."<sup>41</sup> However, the findings also allow for an insight as to a more nuanced circumstance in which general institutionalised ideas of apparent competing nature can be legitimised through claims pertaining to the same issue, in this case a lack of organisational resources to operate effectively.

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<sup>38</sup> Lucie Thibault and Jean Harvey, 'Fostering interorganisational linkages in the Canadian Sport Delivery System' (1997) 11 *Journal of sport management* 45.

<sup>39</sup> Can resource dependence and coercive isomorphism explain Nonprofit Organizations' Compliance with Reporting standards? (n 34) and Ronelle Burger and Trudy Owens "Promoting Transparency in the NGO Sector: Examining the Availability and Reliability of Self-Reported Data" (2010) 38 *World Development* 1263

<sup>39</sup> Ibid

<sup>40</sup> New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making (n 13), p.52

<sup>41</sup> Ibid, p.52

Considered in this way, a depth of understanding is provided beyond the perhaps simplistic dichotomy provided by discussions emerging from chapters 2 and 3, with the former legal context seemingly promoting incorporation and more VSC centred restraints contributing to understandings of resistance to any transformation.

Ultimately the findings appear to allow for parallels to be drawn with the conclusions provided for by Taylor and Ho that an irony exists in amateur sports clubs that the challenge of limited human resources serves both as the driving need for change and at the same time a most significant barrier to change.<sup>42</sup>

### 7.3 Trust and legitimacy

Many interviewees provided accounts which supported Fahlen et. al's findings that the legitimacy of an external architect can contribute markedly to a policy's success in a VSC context.<sup>43</sup> Perceptions of legitimacy were not however exclusively informative from an interorganisational viewpoint but rather proved instructive from the perspective of the relationships between individuals within the clubs.

Two sub-themes emerged from the data representing both experiences, with the first relating to the relationship between the clubs and the WRU (as the AWRC national governing body) and the second exploring the reliance upon particular club volunteers, flowing from occupational skill sets.

#### 7.3.1 Trust and the WRU

Recent commentary upon Welsh amateur rugby has suggested the existence of something of a schism between the clubs and their governing organisation. National Council Member Ieuan Evans speaking in 2020 noted a "lack of connection between the top of the Union and the bottom," as well as a

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<sup>42</sup> Tracy Taylor and Cynthia Ho, "Global human resource management influences on local sport organisations" (2005) 1 *International journal of sport management and marketing* 110, p.122

<sup>43</sup> Josef Fahlen, "The Trust-Mistrust dynamic in the public governance of sport: exploring the legitimacy of performance measurement systems through end-users" (2017) 9 *International Journal of Sport Policy and Politics* 707, p.708

breakdown in trust between community clubs and the WRU.<sup>44</sup> Rather than reinforcing notions of disconnection, it was principally the case within the research context that the clubs recognised the WRU as supportive, both as to advice and particularly as regards funding. Reliance upon the national governing body was consequentially outlined as an important element in the successful continuation of the organisations generally, as well as the implementation of incorporation specifically.

*“Very good, very good yeah. Everything we ask for, we get. We’ve found them very supportive through this whole process and in general.” A13*

*“It’s a very very complex subject for people like us to handle and to be fair to the union, they try to be supportive around this issue (incorporation) as much as they can by providing information and access to certain companies. But when it goes forward, it’s a very complex subject isn’t it.” A8*

The trust afforded to the WRU was exemplified by the almost uniform willingness to accept the advice of the WRU as to the company limited by guarantee representing the optimum legal form.<sup>45</sup> The majority of the interviewees felt it unnecessary to consider alternative options nor verify the advice of the WRU, instead interpreting the Union’s directions as authoritative and ultimately sufficient.

*“As far as incorporating, yes, we relied very heavily on WRU.” A6*

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<sup>44</sup> Andy Howell, “Former Wales captain Ieuan Evans wants change amid ‘breakdown in trust between WRU and clubs’ as he points to New Zealand’s strength’ *Wales Online* (16 August 2020) <<https://www.walesonline.co.uk/sport/rugby/rugby-news/former-wales-captain-ieuan-evans-18777706>> accessed September 19<sup>th</sup> 2020

<sup>45</sup> 100% of clubs had either implemented the company limited by guarantee form or had stated their intention to utilise the specific company limited by guarantee structure.

*“I don’t think you need a business brain to become a limited company, questions of why we’re doing it and how to do it, it’s just following that procedure that the Welsh Rugby Union gave us.” A13*

Although the appropriateness of the company limited by guarantee option was generally not questioned, there was conversely evidence provided by interviewee A12 and A2 of mistrust of the governing body as regards the intentions of the Union in their advocacy of incorporation generally.

*“The reason why we didn’t initially go with the Union was that we felt that they may want to exercise some control over the way we run the club and we didn’t want that. But having looked into it more closely we realised those concerns were probably unfounded.” A12*

*“If a club goes bankrupt now the WRU has an element of responsibility to cover them doesn’t it, they were all WRU clubs, if we’re all incorporated we’re all separate entities so when a club goes bankrupt again the WRU can finally say well to hell with it I don’t care that’s a company. WRU absolving all responsibility for their constituent clubs because they are all now their own entities aren’t they.” A2*

As well as the misgivings as to intentions as referred to above, representative A10 outlined a further concern, not within the executive body, but within their club membership base, as to the outcomes of incorporating and the reversion of assets on dissolution to the WRU.

*“I think, certainly the case if the club went bust, like we said we can’t continue, we can’t pay rents and we can’t pay this or we can’t pay that, I think even though the club would be worth a substantial sum of money really because we’ve got our own ground and that, members, I*

*think that was one of the issues that the members weren't very happy about, is that if something happened to the club, why wouldn't they get their slice of the cake." A10*

Despite apparent suspicion detailed by A10 and A2 only A12 described a deliberation process which included an effort at external corroboration as to the WRU's recommendations. In total 11 clubs provided an account in which information as to whether or not to incorporate was drawn from one external source, being the WRU. As discussed at section 3.4.2 however, a problem identified with decision-making involving little regard for corroboration or scrutiny has been that failures to probe may lead to failures to engage with further representative and pertinent information.<sup>46</sup> Deference to the WRU as regards incorporation, though widespread, thus provided for practical difficulties in some organisations owing to knowledge gaps and a propensity to rely on the WRU and their partners exclusively for appropriate guidance. Interviewees A9 and A1 provided an account indicative of such an issue;

*"(Discussing responsibilities associated with operating as a company limited by guarantee) Well I don't know, you know, neither had I. This is where I'd expect more help from the body to whom we're associated." A9*

*"We want to as well because they're (WRU and affiliated Solicitors) the guys with the knowledge I mean we know bits and bobs about it and were fed information but like I said unless we're business people we're not going to know it so we're going to rely on them a lot."*

*A1*

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<sup>46</sup> Donna Randall and Douglas Baker, "The Threat of Legal Liability and Managerial Decision Making: Regulation of Reproductive Health in the Workplace" in Sim Sitkin and Robert Bies, *The Legalistic Organisation* (Sage 1994), p.174

The general reliance upon the WRU as to matters of incorporation, as shown by the analysis, appeared to facilitate something of a vulnerability owing to overreliance as exemplified by the account of interviewee A1.

### **7.3.2 Importance of occupation**

The importance of occupation sub-section explores the trust and legitimacy granted to particular individuals within clubs on the basis of their professional skill sets. An appreciation as to the value of professional knowledge in the discharging of regulatory and legal responsibilities required of the AWRC was consistent across all participants. Respondents A4, A7 and A9 provided examples of the manner in which their specific organisations had benefitted.

*“She’s a social worker as well so we leave all that to her, so she’s alright to do that, she’s chasing everyone involved in the first aid, the coaching have got a DBS.” A4*

*“Yeah from a business point of view, personally anyway, yes. Certainly, I’m virtually responsible for the whole company, the employees and etc so it does give a good knowledge then for, with handling things with the club you know.” A7*

*“yeah that is hugely crucial to us that you know we’ve got people from different professions who we can call upon to give us help and the support when we need it.” A9*

The majority of the interviewees discussed the importance of occupational skills in discharging regulatory responsibilities generally. A14 and A1’s comments however

provided for a beneficial research specific perspective.

*“So we are very lucky (having a Solicitor on the committee). I cannot imagine me as a non-legal person having to go through it all and that goes to my question from 10 minutes ago as to why people don’t do it because it’s a huge amount of work.” A14*

*“I think the major thing, right, what I’ve said in all our committee meetings, the problem with us all in our committee is none of us our businessmen or business women none of us own our own businesses ..... I think that’s what holds us back sometimes especially with these things.” A1*

The affording of legitimacy and trust on the basis of professional backgrounds was evident in almost all circumstances within the executive bodies. As highlighted by the comments of A7, A4 and A9 as well as A14 and A1, specialist skills were seen as paramount to organisational capacity for handling more complex responsibilities. The findings support Stebbins and Graham’s arguments as to professionalisation of voluntary sport providing for a growing specialisation of volunteer roles. The data further reinforces their arguments that sports volunteers often feel they require specific skills in order to help.<sup>47</sup>

Trust and associated deference as consistent features of intraorganisational relationships however was not apparent. In particular, mistrust seemed occasionally evident between executive bodies and general club memberships. Accounts of several clubs provided for an insight into the manner in which a lack of trust and consequential suspicion of the executive bodies could affect issues of incorporation. Interviewee A6 for example detailed how their club had opted to implement through incorporation a two-company structure in an attempt to curb directors’ powers to deal with club

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<sup>47</sup> Robert Stebbins and Margaret Graham, *Volunteering as Leisure/Leisure as Volunteering* (Cabi 2004), p.203

property. Further in this regard interviewee A8 outlined the following circumstance which demonstrated that the trust afforded to administrators by general memberships, at the least, was not always absolute.

*“I mean some of the membership did actually express before we went down the road that there was some concern that it was just a small number of people and would they therefore still have to opportunity to have a say in what was going on ..... so when the membership saw that really they had 75%, it really meant that people had to want to go down that road, before it wasn't even marginal, you wouldn't have sort of just 51% deciding that was the way you were going to go, it had to be the vast majority of the membership who wanted and believed that that was the right way to travel.” A8*

### **7.3.3 Reconceptualisation of trust and legitimacy**

In relation to the issue of whether or not to incorporate, the previously referred to willingness to follow WRU guidance, apparent amongst the majority of clubs, suggested evidence of a heuristic based decision-making process emerging from a place of trust and legitimacy.

As stated at section 3.2.2, a strategic decision has been conceptualised as a problem that cannot be dealt with by reference to precedent.<sup>48</sup> Despite commentary suggesting that such decisions command detailed engagement, it appeared in the research context that there was a failure, or perhaps unwillingness, to consider the appropriateness of the policy for the club's individual circumstance, with decision-makers instead accepting the WRU's recommendations as infallible. This most prevalent behaviour may be interpreted as the utilisation of the previously considered deference to authority heuristic, most often deployed in circumstances whereby high levels of legitimacy are

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<sup>48</sup> Jeffrey Harrison and Caron St. John, *Strategic Management of Organisations and Stakeholder: Theory and Cases*. (West Publishing 1994)

evident as regards the pertinent external actor.<sup>49</sup> Within the research context a number of the respondents provided accounts of accumulated legitimacy referring to their historical recourse to the WRU for assistance and guidance. Interviewees A6 and A3 for example noted:

*“They provide guidance in all sorts of ways, even in this coronavirus situation, they’ve provided a considerable amount of assistance in trying to access the grants, in trying to furlough some of the staff that we have, so, and I have on many many occasions, needed to go to them for advice, help, support. We also go to them for sort of financial support sometimes in terms of grants for specific things. So yes, they are important, there are times when people fall out and think that their decisions, that the decisions made are not appropriate, that they concentrate on the professional side rather than the community side, but I would have found it very difficult to operate without the backing that we’ve had from them.” A6*

*“I can still ring for example not that I bother him every week but a phone call to him and he’s always there and it’s a quick you know you’ve got an answer in two minutes job done I can get on then and relay and get on with the work.” A3*

The analysis demonstrated that the continued provision of assistance facilitates a circumstance in which the Union is considered and trusted to be a legitimate source of knowledge and advice. The effects of these long-standing relationships on the decision process supports O’Brien and Slack’s somewhat logical conclusion that actors are more likely to be susceptible to follow those organisations they know and trust.<sup>50</sup> With several clubs seemingly trusting, and thereafter enacting the preference of their national governing body, the importance of the external environment was brought to the fore. Whereas the institutional perspective may contribute to understandings of the effect of

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<sup>49</sup> See Section 3.4.4

<sup>50</sup> The emergence of a Professional logic in the English Rugby Union: The Role of Isomorphic and Diffusion Processes (n 37), p.18

external influence, this finding also reinforces earlier arguments as to the importance of resource constraint. A lack of time, money, and business acumen, acknowledged to characterise VSC executive bodies, facilitates uncertainty in calculating an option's value in decision-making circumstances.<sup>51</sup> A tendency to defer decision-making to external entities under such conditions of uncertainty, is, as outlined at section 3.4, a recognised characteristic of organisational behaviour associated with bounded rationality and institutional theory. Conclusions that organisations are minded to prefer decision-making processes which provide for little immediate inferential energy expense, particularly in circumstances whereby uncertainty is evident, is thus supported by the apparent reliance by the clubs on the WRU as to matters of incorporation.<sup>52</sup>

Randall and Baker's case study of the Bunker Hill mining company<sup>53</sup> as alluded to within the literature review provides for something of a comparable example of the manner in which judgemental heuristics may be deployed in circumstances of uncertainty.<sup>54</sup> Although Randall and Baker were engaging with a company belonging to the private sector, Langevoort's argument that judgmental heuristic decision-making is likely to be more pronounced in less competitive fields, such as that in which AWRC operate, appear corroborated by these research findings.<sup>55</sup>

Despite the limited resource expenditure, heuristic decision-making is not without cost. The reliance placed on the WRU as exemplified by the comments above of A1 and A9 in relation to access and continuing support highlight the difficulties some clubs appear to have faced, and that others may face, when employing types of heuristic based decision-making.

Although the reconceptualisation has primarily focused upon interorganisational occasions of deference, advocacy of certain options by those individuals of professional esteem appeared to

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<sup>51</sup> Torsten Schlesinger, Christoffer Klenk and Siegfried Nagel, 'How do sport clubs recruit volunteers? Analyzing and developing a typology of decision-making processes on recruiting volunteers in sport clubs' (2015) 18 Sport Management Review 193

<sup>52</sup> The Threat of Legal Liability and Managerial Decision Making: Regulation of Reproductive Health in the Workplace (n 46)

<sup>53</sup> Ibid

<sup>54</sup> See Section 3.4.2

<sup>55</sup> See Section 3.4.2. Donald Langevoort "Behavioral Theories of Judgment and Decision Making in Legal Scholarship: A Literature Review" (1998) 51 Vanderbilt Law Review 1499

compound in most cases support for incorporation.

*“I think it was because of their experience in that line of work, they were able to, particularly the solicitor because he knew all about that kind of stuff, and the accountants as well, so we just relied on their advice really.” A10*

Occasions of interorganisational deference appeared largely to influence decisions as to which legal form was most appropriate. The knowledge gaps however as regards how to operate most effectively once incorporated were often filled by directors and committee members perceived to possess the vocational skills necessary to deal with issues from a position of substantive knowledge.

*“Yes and as xx the treasurer said there are things which we have spoken about in relation to the membership and perhaps what we should do and would like to do but, I don’t think it’s top of our to do list simply because this gentlemen who is an expert on tax made us feel that it would be the wrong step for us.” A3*

*(In response to how the club deals with legal responsibilities once incorporated) “If you look at the board of directors I’m a business owner, xx the president has his own business and then xx the treasurer is an ex bank manager, so the three of us are very much au fait with how to run a business, which at the moment is very important to the club.” A11*

The legitimacy afforded to the WRU and consequential deference can be seen to be a commonality across the interviewee accounts. The finding firstly provides a challenge to the notion of autonomy representing a defining feature of VSC whilst concurrently casting doubt as to the veracity of the reported disconnect between rugby clubs and their governing bodies. The analysis furthers the utility of externally positioned explanations of organisational behaviour whilst again supporting the

importance of resource constraint in decision-making circumstances. Finally, deference from an internal perspective points to interviewee perceptions of incorporation, as well as legal obligations more widely, as responsibilities less suitable for volunteers and more appropriately handled by those with a professional skill set.

Seeking to act in a legitimate manner is that which is said to underpin institutionally driven homogenisation of organisational fields. Legitimacy in this sense however appeared to speak to a further legitimacy, one not just drawn from the field level influences but also one which considered what it means to act in a legitimate manner on understanding of market norms. Deference to those individuals perceived to have professional skills, deference to professional entities, and resistance to volunteers undertaking complex administrative works on the basis that to do so seemed illegitimate, appeared to shape rhetoric surrounding decision-making. In this sense it appeared the volunteers were attempting to balance legitimacy concerns from the field level, as well as attempting to act in a legitimate manner as regards what should be expected of an unremunerated individual.

#### 7.4 Marketisation and identity

Market-led considerations have affected organisations across all sports at the elite level, with rugby union in particular over the last several decades undergoing a transformation largely attributed to market pressures.<sup>56</sup> Whereas market forces are commonly recognised as influential towards the top of the sporting pyramid, those organisations forming the grass roots base were previously thought to largely remain insulated, exhibiting cultures of informality and very little proceduralisation.<sup>57</sup>

Analysis of the interview data however highlighted a tension existing within clubs between an adherence to a traditionalist ethos and a need to modernise. The theme explores accounts pertaining to both issues and provides an analysis of the interplay between these somewhat contrasting elements of AWRC organisational life.

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<sup>56</sup> Andrew White “Rugby Union football in England” in Eric Dunning, Dominic Malcolm & Ivan Waddington (eds) *Sport Histories: Figurational Studies of the Development of Modern Sports* (1<sup>st</sup> edn, Routledge 2004)

<sup>57</sup> Klaus Heinemann, *Sport Clubs in Various European Countries* (Schattauer 1999), p.321

### 7.4.1 Amateur ethos

The amateur ethos was most prominently displayed through interviewee accounts relating to the administrative workloads placed upon club volunteers. Such responsibilities were discussed in a manner which portrayed an inconsistency with what individuals perceived to be the role of a voluntary executive body-member. Interviewee A1 provided an exemplary account;

*“I think there’s a few different areas you know because half the time like I say we are volunteers and yet everyone expects us to be businessmen you know and that’s kind of hard sometimes especially for myself and the treasurer ....More important than anyone else we’ve got to keep accounts, we’ve got to make sure stock levels are correct, we need to make sure the VAT is done, all these things and you just sit back sometimes and think it’s not my business, I’m doing this for the benefit of all the other people in the club, that’s when I get thinking it’s too much pressure for people like and I can understand why no one wants to take it on half the time you know.” A1*

Echoing A1’s remarks respondent A4 and A9 interpreted the regulatory workload for volunteers as excessive.

*“Look you’ve got to keep up with things, there’s food hygiene courses, there’s first aid courses, strapping courses and you’ve got to write back to the WRU, the expectations, it’s never ending.” A4*

*“I mean it is now a good job that I’ve retired because I now have the time to give which I didn’t previously and I mean the workload has increased significantly and I mean you would expect it to get easier but it’s getting more and more difficult, more complex you know.” A9*

The majority of respondents reinforced interviewee A9's feelings of frustration that recognition of voluntary status was largely overlooked by the WRU and that increasing pressures were commonplace. Respondent A3 however provided a somewhat differing account suggesting that a recognition as to the amateur status of the volunteers had taken place and that more recent times had represented a period of easing as regards administrative responsibilities.

*"I would say it's been relatively consistent. There's no doubt that the requirements of the WRU have increased from what they were since I became secretary 10 years ago, they've certainly increased until it plateaued off a couple of years ago and that's because we have fed back that we're all volunteers, we don't get paid, and it's getting too much, so it has reduced but it's still a commitment." A3*

Although interviewee A3 provided a different perspective they nevertheless aligned with the majority of the other interviewees in referencing the appropriateness of a limitation upon administrative expectations given club decision makers' voluntary status.

As suggested by the literature, incorporation was occasionally interpreted as an onerous task both as regards process and outcome. Some interviewees suggested others may have viewed incorporation as a choice serving to compound existing regulatory overkill. In this sense, earlier interpretations of incorporation as a professionalising process appeared well founded.<sup>58</sup> Comments associating incorporation with increases in workloads and technical complexity depicted the policy in a manner which appeared incompatible with the voluntary identity of the administrators.

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<sup>58</sup> See Section 3.3

*“Again going back to what I said before a lot of clubs are run by volunteers and what I think is, a lot of those, just from my experience of representing my rugby club, at our district meeting .... you know there are some, you know the committee members tend to be of the older generation and I just think that there is maybe that generation thing where a bit of an obstacle and uh maybe that uh afraid of taking on that responsibility, you know, there'd be a smaller group arguably of directors to run the business, and you know there may be a fear behind that of, you know, a capability probably.” A5*

*“Perhaps we have; we are very lucky for who we've got and again you go to other committees and they don't have those required expertise and that is why perhaps a lot of clubs haven't done incorporation because they've started it and realised bloody hell this is a whole load of work and we're all volunteers at the end of the day and it's not as if we're getting paid for it.” A14*

The reference to older committee members in particular representing a force of inertia when considering whether to opt for incorporation and the consequential increase in responsibilities it affords was a repeated notion. In particular such account was prominent in discussions of why clubs had been unwilling to incorporate previously and what had changed the club's position. A common perception was evident that the preferences for continuity and tradition amongst those of a more senior age profile were ill-suited with the concept and/or mechanics of incorporation.

*“There's not that much business sense within a lot of old committees, it's very much boys from the old brigade who are sort of, of the opinion that we've been like this for donkeys years, what can happen, but I've seen from obviously my days with xxxx and xxxxx um especially in the current climate of claims, a board of directors are easier to insure than*

*trustees are and I think that's a lot of trouble for a lot of clubs, is that they don't know who owns the land where money's been borrowed against the land, it's just a nightmare." A11*

*"Well they were on to us years ago, that we should become incorporated but um our committee at the time weren't in favour, but that's now changed..... couple of older people on there who didn't understand or didn't want to understand what it was all about and um, if you've got one strong personality, they can sway the other people." A12*

The accounts of respondents A11 and A12 as well as A5 and A14 were exemplary of understandings that generational differences of how clubs should operate may serve to inhibit organisational professionalisation.<sup>59</sup> In this regard the research findings support Byers observations noting how long serving traditionalists often seek to perpetuate existent norms.<sup>60</sup> Such findings appear to contradict understandings that the desire to inhibit organisational development was as a consequence of self-serving individuals holding specific roles being concerned of increasing responsibilities. In contrast, a divergence in perspective based on contrasting views between more traditional and modern contributors seemed more prominent in understandings of inhibiting and facilitating forces regarding professionalising processes.<sup>61</sup>

#### **7.4.2 Business like behaviour**

Adams stated that within voluntary sports clubs there existed an impetus to be “enlightened” and to

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<sup>59</sup> Terri Byers, “Using critical realism: A new perspective on control of volunteers in sport clubs.” [2013] European Sport Management Quarterly 1, p.25

<sup>60</sup> Ibid

<sup>61</sup> Andrew Adams, “Between modernization and mutual aid: the changing perceptions of voluntary sports clubs in England” (2011) International Journal of Sport Policy and Politics 3

“move forward” VSC by providing more business focused entities.<sup>62</sup> The analysis suggested that many clubs were indeed following this developmental trajectory.

The way in which organisations sought to act in a more business-like manner varied across the research. Professionalisation in its most traditional sense for example has not often been associated with VSC however A14 and A6 offered an insight into how these particular clubs’ views and practices diverged from the typical in this regard. Discussions of remunerated administrators being required in one sense, and having proven hugely successful in another, provided recognition as to the utility of compensated individuals in the operation of contemporary clubs.

*“I am 100% volunteer as secretary, the workload over the years, because I’ve been involved in different ways has increased enormously. In to the future, I will be finishing before too long, and a considerable problem would be getting someone to do the role on a voluntary basis, because there’s a lot of discussion in the club of going down the road of actually employing someone as a manager, come treasurer, come secretary, but actually who has a remuneration for all that and gets paid for that. And I think a lot of clubs are possibly going down that road given what the role now involves.” A6*

*“We have just appointed a director of rugby for the first time, we are lucky we had someone who said I can afford to give you some money for one year, what do you want to do, and we said well what we would want is a director of rugby to do the rugby from the under 6s to the seniors to the ladies. And it’s cost us an amount of money that’s affordable and it’s the best thing we ever should have done... If you gave me money to spend on a second row or someone to deal with everything that needs doing, it would be the second, no hesitation.” A14*

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<sup>62</sup> Ibid, p.33

Payment of executive body members was considered by A7 to be a consequence of increasing club turnovers and the associated upturn in responsibilities this accords. The recognition that an increase in turnover required more business-like practices was not isolated but rather was shared amongst a number of respondents including interviewee A8, who acknowledged their club's turnover of some £200,000.00 to be a factor in the club's evolution towards operating in a more business-like fashion.

*“Um, I think it's the natural progression from committees being very very old style in the way things could be, responsibilities could be shared, the turnover of the club is going... the club is now a SME now really, it's a small or medium sized business, if you know what I mean so it needs to be updated and brought in to this day because I'm trying to protect the club and the members for the future.” A8*

Although clubs A14 and A6 discussed professionalisation in its more traditional sense, A8's perspective provided an insight into a professionalisation of a more prevalent and VSC specific nature. The integration of professional and business ideals has been considered by this research as the more appropriate means of understanding professionalisation in a VSC context with indicators of professionalisation of this kind, as identified by Hwang and Powell for example, common amongst the interviewee accounts. It was, for example, noted by several respondents that the instruction of professional accountants had become standard practice.

*“The treasurer of the club has a certain amount of reporting that he has to do, normal accounts which go to the accountant, the VAT.” A8*

*“Um, we've put things in place which are making things more efficient.....what they were previously, we've now appointed proper accountants which we pay, our payroll is done and administered by an accountancy firm, and yeah there's a cost implication in that but it helps*

*tremendously.”A9*

A further indicator of this broader professionalisation as identified by Hwang and Powell evident in the research circumstance was the commitment to one’s work.<sup>63</sup> Though perhaps less tangible than the instruction of external accountants, the comments expressed by the likes of respondent A14 were not isolated.

*“Yes, well we’re having the conversation now perhaps it’s not WRU related but you know I work full time I am most probably doing as much club WRU work as I am my own work.”*

*A14*

The creation of a separate legal personality was discussed as a development in keeping with professionalisation in some clubs however this was certainly not widespread. For most clubs a reluctance was evident to consider incorporation to represent either a part of the modernising process or as a change of any notable consequence or difficulty. These findings appeared to support Woodward who noted that respondents more generally understood use of the company structure to involve only manageable minor changes as regards reporting requirements.<sup>64</sup>

*“I think we would have gone down this modernising route anyway, irrespective of whether we’re incorporated or not.....So I don’t think that has made any significant difference at all.”A9*

### **7.4.3 Reconceptualisation of marketisation and identity**

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<sup>63</sup> Hoky Hwang and Walter Powell, “The Rationalization of Charity: The Influences of Professionalism in the Nonprofit Sector” (2009) 54 Administrative Science Quarterly 268

<sup>64</sup> Not-for-Profit Motivation in a For-Profit Company Law Regime: National Baseline Data (n 32), p.60

The analysis provided for an account of two organisational features with potential for significant friction. Aligning with the views of Cordery and Davies, analysis recognised a tension between club professionalisation and the amateur ethos long considered to underpin the actions and intentions of VSC.<sup>65</sup>

Professionalisation in the sense as described by A14 and A6 was limited, professionalisation more widely construed however was more prevalent, with reference to running clubs as a business or an SME made on 27 occasions throughout the interviews. Similar to the manner in which professionalisation has been conceptualised, the research recognises O'Brien and Slacks' broad understanding of amateur values removed from simply a prohibition on remuneration as a more appropriate interpretation for the present research.<sup>66</sup> To this end, amateurism is not considered to be an issue of payment of players, coaches and administrators but rather as a commitment to informality and a resistance to over-organisation.<sup>67</sup>

It can be seen that amateur values from this perspective appear in contrast to the perceived growth in responsibilities of AWRC decision-makers. The accounts of the interviewees support the notion that efforts at professionalisation pressurise already limited resources.<sup>68</sup> With AWRC decision-makers appearing to conform to the trend of striving to display more modern features, the strains upon amateurism associated with this push to operate the club in a more business-like manner provides for a potential occasion of frustration and feelings of incompatibility.

*“You’ve got to run it (the club) as a business you know there’s money coming in and you’ve got to keep the books and that’s where we struggle, none of us are really business people, now XXXX was a businessman he had his own business he knew what was going on here and*

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<sup>65</sup> Carolyn Cordery and John Davies, “Professionalism versus amateurism in grass-roots sport: Associated funding needs” (2016) 2 Accounting History 98, p.104

<sup>66</sup> The emergence of a Professional logic in the English Rugby Union: The Role of Isomorphic and Diffusion Processes (n 37), p.14

<sup>67</sup> Professionalism versus amateurism in grass-roots sport: Associated funding needs (n 65), p.101

<sup>68</sup> The Rationalization of Charity: The Influences of Professionalism in the Nonprofit Sector (n 63), p.289

*I think that's why he took a lot on and protected it from us so if there was any problems he would go and deal with it you know what I mean, but now none of us are businessmen so we are relying on other people and others to help us to do it." A1*

Finally, the data as presented in this theme provided for an interesting understanding of the manner in which clubs perceived incorporation as part of modernising transformations. Providing for something of a contradiction, interviewees often talked of resistance of other clubs or even their own clubs previously to incorporation on account of anxieties as to the perception of the process and outcome as administratively onerous. However, the interviewees themselves were often dismissive of the obligations incorporation represented. What appeared as a pattern across the interviewee transcripts was a view that incorporation is not as bad as others perceive. The views of interviewee A5 were instructive as to this perception:

*"there's just a perception you know, I suppose there's a perception amongst some people that when you're appointed a director of a company the perception for some is that there's an enhanced um responsibility across a whole range of different topics, finance, health and safety, employment, but it's just that it's just a perception." A5*

The reasoning behind those instances whereby incorporation was perceived as problematic for others yet not for oneself, was in part revealed through a consideration of the perceptions and realities of what post-incorporation responsibilities were expected of decision-makers.

## 7.5 Partial incorporation

Justice Megarry in *Gaiman* suggested “the conversion of a club into a limited company is no mere formality but a change of substance.”<sup>6970</sup> The partial incorporation theme considers the continuation of practices established whilst clubs operated as an unincorporated association, post incorporation. Such finding as a consequence runs contrary to those views of Justice Megarry within *Gaiman*. Evidence of the theme was first identified within the pilot study and proved to be prominent following engagement with clubs in the main qualitative phase.

*“I know people there who are directors of the limited companies and they’ve just operated as a committee man, they just get the accounts done at the end of the year by an accountant, and that’s where they are, they carry on as they always have done” A8.*

The observed continuity perpetuated incumbent “ways of doing things”, ultimately providing for a situation in which organisational practice appeared problematic both on a legal and practical level. Analysis of the transcripts identified that despite an interpretation of incorporation as a professionalising process deterring other clubs, and perhaps interviewees own clubs previously, the policy was interpreted as occasioning little tangible change as expressed by those clubs yet to complete the process.

*“From what we can see, it’s just us giving protection but nothing much is going to change in the way we operate, I don’t see why anything needs to” A13*

*“We’d run it with two companies and no, I wouldn’t think there would be any change at all not to the operating side of the business anyway. And the uh other side would just be sat there*

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<sup>69</sup> It is acknowledged by the researcher that partial incorporation may be highly unlikely from a strictly legal sense. The use of the term however intends not to provide a factual description of the circumstances. The term is rather utilised as a means of conceptualising the observed behaviour.

<sup>70</sup> *Gaiman v National Association for Mental Health* [1971] Ch. 317, p.355 (Megarry J)

*as a shelf company holding the assets. It wouldn't be, any decisions will be made as regards operating the club would be how we're doing it now." A12*

*"Would it change anything. I don't think it would change anything it's just when you become a committee man instead now you become a director." A4*

Recognition was forthcoming as to the requirement to file accounts with companies house. However, this acknowledgement represented the only additional responsibility to which all interviewees recognised as necessary. Unincorporated clubs largely offered a limited understanding as to what incorporation would represent for their clubs as regards organisational practice. A13 identified less flexible AGM procedures, alongside greater transparency, as additional pressures upon club decision-makers, but was keen to impress that little else would change and that operations would remain consistent.

A13's prediction that incorporation was likely to represent little operational change for AWRC was seemingly borne out on consideration of those organisations who had undertaken the transition.

Respondent's A10 and A3 provided exemplary accounts of such a finding in this regard:

*"Even though on the face of it, it has been a significant change, legally the running of the club and all, the way the club operates hasn't changed." A3*

*"It didn't change the type of body we are, there was no changes there." A10*

The sub-themes of membership retention and preservation of power emerged as beneficial as to understanding the manner in which features of the unincorporated association were perpetuated post incorporation. Theme 5 primarily accounts for those matters associated with *how* clubs incorporated and how incorporation may not have provided for the change of substance it was perhaps thought to

occasion by J Megarry in *Gaiman*.<sup>71</sup> With this being the case, the reconceptualisation process here required a reengagement with the literature and a development where necessary of the range of possible theoretical perspectives of benefit.

### 7.5.1 Membership retention

Issues of membership retention were established as a particular area of interest following remarks made within a pilot interview alluding to a failure within the incorporated club to transfer members to the newly formed incorporated entity. Of those clubs considering, but who had not yet implemented incorporation, when engaged on this issue of transference, the responses were a mixture of uncertainty, intentions to resist transference of the club membership to the company form, and on only one occasion, an intention to transfer the membership to the incorporated form as required. Furthering themes of uncertainty, two representatives of incorporated clubs provided non-committal responses from positions of apparent ignorance.

*“(In response to whether members had been transferred) Um, I’m not really sure.... I don’t think they are.” A3<sup>72</sup>*

*“I don’t know, they pay their membership and we then enter it, we’ve got an automated system on our till and you know, all the membership is paid in through there so that automatically gives us a list of club members but I don’t think their company members I mean I would assume, well I don’t know, this is where I need some guidance from the Union to be honest.” A9*

Respondent A9, deliberating the matter further from a practical perspective, described the retention of

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<sup>71</sup> *Gaiman v National Association for Mental Health* (n 70)

<sup>72</sup> Interviewee A3 later confirmed that on account of deference to a fellow director, the membership had not been transferred see section 7.3.

the membership as a product of a lack of understanding rather than a deliberately rationalised decision.

*“What about a youth player, I mean a youth player under 18, in fact some of them are under 19, those under 19 maybe they would, I mean if they’re old enough to vote, presumably they’re old enough to carry a legal responsibility so it would apply to some youth players but not others so again, it’s something which I need guidance on, which is the help and support which I would anticipate getting from the WRU, but I’m not getting it.” A9*

Whereas A9 described an omission based on ignorance, respondent A3, when the matter was revisited, provided for a more calculated account in which the decision not to transfer the membership base was justified on the grounds of deference to a fellow directors’ professional knowledge of detrimental tax implications. In turn interviewee A1 alluded to a preference to limit the changes, if possible, on account of the perceived difficulties the same would entail.

*“Transferring memberships, um again that’s something which I think we wouldn’t want to bother with, given what we have to deal with already, we’ll keep it simple, no problems then.” A1*

Although the majority of accounts described a failure to transfer club members, an ignorance of what the transference process required or an intention not to transfer, A6 alongside A11 provided for the sole responses which described an understanding of the process and its apparent successful passing. A6 appeared to recognise the importance of the issue, detailing the manner in which the transfer was important for purposes of constraining director power.

*“What we felt was that it was extremely important was that the rules or the constitution of the club were quite tight and very relevant... so for instance, here’s a for instance, within our rules now, we have a situation now, because we own all the property, if the board suddenly decided that they wanted to say sell some of assets that they had, we actually own land next door because it secures our boundary, say the board decided they wanted to raise some finance by selling that, anything that belongs to the company, has to go to the membership, and there has to be 75% vote in favour in order for any assets of the company to be sold off or distributed or whatever.” A6*

### **7.5.2 Preservation of power**

Where decision-making powers were held appeared to be a feature of clubs’ experiences which again experienced limited levels of change in most circumstances post incorporation.

Amongst three of the clubs yet to incorporate, it was acknowledged that the directors of the soon to be formed companies would be the primary, authoritative, decision-making body. In contrast however, several participants again referenced a lack of clarity on the issue with such clubs understanding the change to have limited effect as regards the powers conferred upon the established decision-making bodies. As A7 noted;

*“So the committee will still run the club...the directors would purely be name only.” A7*

A7’s consideration of the effect of incorporation upon the decision-making practices of the club were consistent with several clubs which had sought or intended to retain the committee as the primary decision-making instrument.

*“To be honest we’ve got two directors for each company they have to be the same people and the board of directors, well it doesn’t exist as a board of directors. What we have, what we’ve*

*continued with despite all of this is the club committee, and the club committee are all members of the club and uh that's how are decisions are carried out here by the committee doing what its always done. We do need a bit of a revamp to be honest and it's an exercise we'll get round to somehow but to find the time and understand how to sort complicated stuff like that out you know it's tough for us we're volunteers... Obviously there's the companies house formalities and all the rest of it and everything we have to say that we've had a board meeting to agree the accounts and everything but what we actually have is an AGM and everything as we always have" A15.*

*"(In response to if members would be transferred to the company) Probably not ..... now whether that changes over the next two or three years I don't know, it was going to be too much of a hassle, it was too much because of the club constitutions, you would have to get rid of the club constitutions, you would have to call an EGM, you would have to do this you would have to do that, so at the moment we've decided to keep things simple, and to run it exactly the same way as its run now with the committee in charge but just with a limited company and one or two directors instead of trustees." A14*

A3 echoing A14 and A15 made reference to the committee's primary decision-making role whilst further acknowledging the previously existing unincorporated association's constitution as the authoritative document as regards club matters. In this sense A3's comments may be taken to support McGregor-Lowndes and Hannah's findings that not-for-profit incorporated organisations are often happy to avoid features of limited companies such as adherence to articles of association.<sup>73</sup>

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<sup>73</sup> 'Unincorporated associations as entities: A matter of balance between regulation and facilitation?' (n 9), p.213

*“They (the membership) would be governed by our constitution/rules which we as a club still are governed by for want of a better phrase instead of the articles, we’re not governed by the articles of association, no one’s bothered looking at them for years.” A3*

A4 again taken something of a resource maximising perspective upon administrative responsibilities referred to a perceived inability of himself as well as his fellow decision-makers to actualise the necessary change once incorporation had occurred:

*“If we do it (organise a move away from committee rule) fine but as I said there’s only so much we can push through with this thing we can’t be getting home after work and sorting all of these extra things as well as the training, the equipment all that which seems to get overlooked.” A4*

Despite the prevalence of continuity in this regard, the preservation of the committee was not absolute in all circumstances. A10 for example provided an account more consistent with a traditional company structure in which directors delegate certain responsibilities to subordinate committees. The statements of A10 were however not clear, with an apparent circumstance in which the previous committee superseded the board of directors in the decision-making hierarchy.

*“We have a committee which discusses you know the general sort of things but I think some decisions, mainly if we spend money or not, are, that’s left to directors. The things is, we have to always clear it with the committee but that would be the position I think, that um, they would make.” A10*

Consistent with the club’s apparent diligence as regards transferring of members, A6 finally outlined a

circumstance which appeared to recognise the primacy of the board of directors as the most authoritative decision-making body. With reference made to the provision of assistance to the directors, the structure as defined appeared aligned with a framework typical of a company limited by guarantee decision-making hierarchy.

*“Yeah the board is the main decision-making body yes. We have got, within the board, each director of the board has got an area where they have a sub board. So for instance we have a director of rugby, and underneath the director of rugby then they have a sub board which involves representatives of the minis, juniors, youth and seniors, in the same way that the director of finance has a sub body involving the treasurer, involving the membership secretary, involving the sponsorship people.”A6*

In summary, clubs in general appeared, to differing degrees, unwilling or unable to transfer power away from the unincorporated association’s committee and to the relevant boards of directors. Use of committees and indeed reference to club rules contained within constitutions are permitted within a company limited by guarantee structure. The articles and board of directors however must take an authoritative position which appeared a requirement dismissed or ignored by the majority of the participants. The analysis provided insight into the existence of something of a spectrum amongst the incorporated clubs which included those embracing company requirements in some cases and incorporated entities in name alone in others. Of all respondents, just two provided an account which suggested a rejection of the committee style decision-making system typical of unincorporated associations in preference for a decision-making model characteristic of a company limited by guarantee.

### **7.5.3 Partial incorporation reconceptualised**

An externally devised policy resulting in little substantive organisational change is a notion familiar to third sector scholars. The continuity finding served to cement understandings of engagement with incorporation as a response consistent with VSC interactions with professionalising processes. It was first apparent that those professionalising obligations required by incorporation were met with occasions of decoupling. Decoupling, as stated, represents the phenomena of organisational surface level conformity with policy, whilst organisational practice continues in a manner divergent to the requirements of the policy in question. Seippel drew attention to the tendency of clubs to often avoid or adjust external expectations by simply not doing that which is required.<sup>74</sup> The works of Fahlen et. Al. however perhaps best conceptualise decoupling:

*“It is evident that neither government missives, programme guidelines and NSO development plans, nor additional and earmarked resources have been able to stimulate development through self-regulation and, in the end, to secure envisioned effects. On the contrary, it seems the power and informal authority to govern the grass roots activities in sport remain in the hands of the implementers: the sports clubs. Our main conclusion of the beneath-surface analysis is that policy fails to survive the journey from top to bottom because the sports clubs have been unwilling or unable to self-regulate in the desired direction.”<sup>75</sup>*

A tendency is thus argued to exist within VSC for a reversion to type, for organisations to avoid or adjust external expectations by not in fact doing what the messages they convey suggest.<sup>76</sup>

Decoupling is seen as a tactic which attracts legitimacy from external entities without having to

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<sup>74</sup> Professionalization of voluntary sport organisations – a study of the Quality Club Programme of the Norwegian Football Association (n 21), p.671

<sup>75</sup> Josef Fahlen, Inger Eliasson and Kim Wickman “Resisting self-regulation: an analysis of sport policy programme making and implementation in Sweden” (2015) 7 International Journal of Sport Policy and Politics 391

<sup>76</sup> Professionalization of voluntary sport organisations – a study of the Quality Club Programme of the Norwegian Football Association (n 21), p.671

endure the detriment attached to monitoring from those same external entities.<sup>77</sup> As a consequence, “business as usual” can continue.<sup>78</sup> Owing to its appreciation of legitimacy and external pressures, decoupling has been utilised as a means of accounting for organisational agency within an institutionalist understanding of behaviour.

Arvidson and Lyon wrote:

*“While there is evidence that funders and other resource holders exert control through directives related to evaluation, others highlight that organisations may hide information, control the flow of information, or provide information that misrepresents activities and achievements.”<sup>79</sup>*

Although misleading third parties as to a club’s legal status is highly unlikely given the required registration process, decoupling as discussed in the context of theme 5, may be evident as regards the willingness of decision-makers to effectively embed the company limited by guarantee form.

Decoupling, often discussed as a strategic measure accounting for agency, was perhaps most evident in the account of A8 who viewed incorporation as a means to an end. From a legal perspective, those clubs utilising the company limited by guarantee model, yet choosing not to abide by its requirements, could be perceived as demonstrating an economically rational approach to the law in which the entities have utilised the legal framework for their own advantage. The decoupling behaviour as a consequence may be seen as an effort to limit the detriment upon resources by avoiding the form’s

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<sup>77</sup> Ibid, p.671

<sup>78</sup> Eva Boxenbaum and Stefan Arora-Jonsson, ‘Isomorphism, Diffusion and Decoupling’ in Royston Greenwood and others (eds) *The Sage Handbook of Organisational Institutionalism* (Sage 2008)

<sup>79</sup> Malin Arvidson and Fergus Lyon, “Social Impact Measurement and Non-Profit Organisations: Compliance, Resistance and Promotion” (2014) 25 *Voluntas: International Journal of Voluntary and Nonprofit Organisations* 869. Burger and Owens have further suggested that this type of behaviour represents a ‘deflection strategy’, used by organisations to cope with control imposed by stakeholders that hold unrealistic expectations. Ronelle Burger and Trudy Owens ‘Promoting Transparency in the NGO Sector: Examining the Availability and Reliability of Self-Reported Data’ (2010) 38 *World Development* 1263, p.1268

greater formalities.

*“We want to be incorporated by now because we know that will give us the type of people we want to get involved in our club. They won’t come and sit on a committee because of the potential liabilities.” A8*

*“Assets (will be moved) to the limited company as long as it suits the club, you know, I should imagine there will be a little bit of toing and froing of what becomes assets of the limited company.” A8*

*“I don’t think being a limited company or whatever would change anything really, there’s not, how would they know, there’s not enough infrastructure (within the WRU) to make us change.” A8*

The views of A8 above provide for an engagement with incorporation which is perhaps more rational. The objective is defined within the first quote with incorporation considered to assist in matters of volunteer attraction and retention. In the second quotation, and contrary to accepted practice, the organisation seems minded to limit transference of assets based on the club’s needs. Finally, quotation 3 provides for a viewpoint that the union as apparent regulator may lack the resources to ensure organisational change is achieved.

Deliberations of goals, requirements of the company form, and matters of enforcement suggest a more rational decision process. Concurrently, the account of A8 provides for an appreciation of law and its associated requirements as malleable with its obligations understood to be subject to the will of the receiving entity. Such an approach to the law can be characterised as showing “less concern about the legitimacy of legal procedures than about their effectiveness for achieving desires.”<sup>80</sup>

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<sup>80</sup> Patricia Ewick and Susan Silbey, *The common place of law stories from everyday life* (University of Chicago Press 1998), p.48

Whereas A8's account provided for an interesting finding, more prevalent was the circumstance that failure to abide by the requirements of the company limited by guarantee was driven by alternative factors. Fahlen et al. suggested that the inability of policy to survive the journey from top to bottom was a consequence of an unwillingness or an *inability* for clubs to self-regulate in the desired direction, with a lack of understanding seemingly playing its part in the research context.<sup>81</sup> Occasional instances were evident whereby ignorance seemingly drove failure to effectively embed the company limited by guarantee.

*“What I was saying is that some people had become committee men, and are now directors, and they're being sold the scenario that well, you've got more protection here than you have as a committee man, which is correct, but also, a director of a company has certain responsibilities in terms of the way they behave, what they can do and they can't do, on behalf of the club. I'm not quite sure that some of these people who are taking some, some of these people who are taking on the responsibilities, don't really know what their duties are, and they can be just as damaged doing something stupid for a rugby club. And if they don't know that, I believe there is probably a bit of work to be done there from the union on educating the responsibilities of directorship as well.” All*

An unintentional non-compliance perspective runs consistent with Sotiriadou and Wicker's analysis that clubs lack the resources to comply with externally situated requirements and preferences.<sup>82</sup> The findings build upon the arguments that owing to a lack of skill, intelligence, time or funding, non-profit decision makers are often incapable of discharging their legal responsibilities. As Sotiriadou and Wicker noted:

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<sup>81</sup> Money talks – A qualitative analysis of the organisational change connected with the corporation formation of a voluntary sport club (n 31), p.169

<sup>82</sup> Popi Sotiriadou and Pamela Wicker, “Community sports clubs' responses to institutional and resource dependence pressures for government grants” (2013) 16 *Annals of Leisure Research* 297

*“Small organisations will simply not have sufficient resources to enable officers to contract in specialist accounting, legal, and other advice to enable them to properly discharge their statutory and fiduciary obligations to the organisation.”<sup>83</sup>*

As A11 suggests, a significant issue for club decision-makers is the appreciation that incorporation requires a change in responsibilities and obligations for the clubs' leading individuals. Supporting A11's concerns as to an ignorance of the hazards of assuming a directorship A10 stated *“I'm not aware of any responsibilities that I have that may be a problem for me financially, if I file the accounts on time everything's you know ok”* A10 went on to state, as referred to earlier, *“I think lots of people are not interested in it, maybe it's the tasks you have to do maybe they think it's too hard and there's more to it than there is I don't know.”* A12 corroborating such sentiments stated that *“as I understand it I'd be protected as I'd be a director of a company so there could be no come back on me .... I don't see why I would need to do anything different though from what I or we do now so no, I'm not concerned.”* The statements of A10 and A12 in this regard further reinforced interviewee A11's viewpoints as to the ignorance of some directors in appreciating the consequences of failing to adhere to duties and the associated possibility of personal liability remaining an issue for directors post incorporation.

Of interest to the development of the research however was not just the ignorance which was occasionally evident but the justification both of ignorance and of the conduct inconsistent with operating as a company form. There were frequent acknowledgements as to knowledge gaps both as regards incorporation and issues of legal compliance more widely. However, the interviewees' suggestions that the responsibility for remedying these issues of ignorance were achievable only through recourse to others with professional skills provided for a further finding of note.

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<sup>83</sup> Andrew Twaits, 'The Duties of Officers and Employees in Non-Profit Organisations' (1998) 10 Bond Law Review 313

A11's comments regarding ignorance of fellow directors for example were concluded with the view that it was the union's responsibility for assisting education whilst acknowledging his appreciation of the requirements was drawn from his professional background. A9, discussing a lack of understanding as to club membership stated the need for the WRU to get involved and assist clubs in understanding the position as regards transference. A14, again discussing matters of membership transfer, put forward the view that to actualise the process would be too much hassle for volunteers to manage alone.

Consistent with the manner in which volunteer status was utilised to justify ignorance or rejection of club professionalisation processes more generally, when pushed on those responsibilities incorporation provides for, volunteers again appeared to rely on arguments that engaging with such issues were ill-fitting with the interviewees' volunteer status. Justification of the continuation of "business as usual" post incorporation as a consequence appeared connected to these self-identified restraints.

## 7.6 Conclusion

Chapter 7 has considered interview data with the intention of identifying demi-regularities (or patterns) which may assist in the construction of causative commentary relevant to the research objectives. In search of demi-regularities, the research adhered to Danermark et al's flexible critical realist analytical framework.<sup>84</sup> Specifically, chapter 7 sought to engage those processes of analytical resolution and theoretical redescription representing steps 2 and 3.

The findings as drawn from chapter 7 were diverse and perhaps at times seemed to lack regularity. However, by accounting for the place of the qualitative findings within the thesis in its entirety, three substantive conclusions may be drawn.

First, for the interviewees, legal arguments were most prominent in driving decisions to incorporate. The risks of personal loss perceived to attach to the use of the unincorporated form were considered

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<sup>84</sup> Berth Danermark and others *Explaining Society Critical Realism in the Social Sciences* (2<sup>nd</sup> edn, Routledge 2019), p.130

by all participants as unjust. Moving away from the use of the unincorporated association was as a consequence unanimously interpreted as the “right” thing to do. The qualitative findings in this regard align with Flannigan’s contentions that risks of personal liability for not-for-profit contributors often offend general notions of fairness.<sup>85</sup>

In contrast to the claims culture representing a non-existent problem,<sup>86</sup> the research found perceptions of a highly litigious environment to be a prominent contextual feature affecting club decision-making. Consistent with those arguments as advanced by the likes of Peyer and Heywood,<sup>87</sup> as well as Cuskelly, Auld and Hoye, the perception of a claims culture was understood to detriment efforts at recruiting and retaining volunteers.<sup>88</sup> Specifically, the impact of the claims culture upon decisions as to whether to incorporate ultimately showed a manifestation of Cuskelly, Auld and Hoye’s arguments that VSC may seek to utilise more administratively demanding and complex organisational structures as a response to perceptions of higher levels of litigation.<sup>89</sup>

The second conclusion speaks to understandings of why clubs may not incorporate. More specifically, the findings engaged with why interviewees thought other clubs may have resisted incorporation or why the interviewees’ clubs had failed to incorporate previously. Issues of both can’t and won’t were offered in explanation. Regarding the former, certain interviewees made reference to external entities inhibiting efforts at incorporation. Two interviewees referenced how the will of creditors who would not wish to see their debts transferred from an unincorporated association to an incorporated entity conferring limited liability, could not be overcome. Such finding legitimated arguments of looking beyond the relationship between the union and the clubs as a means of understanding AWRC resistance to incorporation from an interorganisational viewpoint.

More widespread, accounts of why other clubs may have failed to incorporate and why the interviewees’ clubs had previously not done so, appeared grounded in extant arguments as to VSC

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<sup>85</sup> Tort immunity for nonprofit volunteers (n 10)

<sup>86</sup> Kevin Williams, “Legislating in the echo chamber?” (2005) 155 *New Law Journal* 1938

<sup>87</sup> Sebastian Peyer and Rob Heywood, ‘Walking on thin ice: the perception of tortious liability rules and the effect on altruistic behaviour’ (2019) 39 *Legal Studies* 266

<sup>88</sup> *Working with Volunteers in Sport: Theory and Practice* (n 4)

<sup>89</sup> *Ibid*

resistance to professionalisation. Specifically, issues of won't incorporate rested on two particular arguments, lacking the resources to do so and a generational resistance rooted in traditionalism. Accounts of lacking the time to engage the matter, lacking the understanding to properly consider incorporation's implications, and lacking the abilities to actualise the club's decision to incorporate, were consistent across the transcripts.<sup>90</sup> From the generational perspective, several interviewees attributed resistance to incorporation to previous iterations of their committee comprised of traditionalists. Referencing a lack of understanding, business sense, and comprehension of a growing claims culture amongst "older people" and "boys from the old brigade", these perspectives focussed on tradition centric inertia but again referenced issues of resource constraint as an associated causative force.<sup>91</sup>

The third of the conclusions lacks the clarity of the first and second but perhaps proves more impactful in the development of causative understandings of AWRC decision-making. Away from explanations of different types of clubs behaving in different ways, the qualitative findings provided for evidence of a more cohesive approach amongst clubs to matters of incorporation. However, the construction of such a conclusion began with an appreciation of inconsistencies within the data.

Analysis of the interviewee accounts drew attention to apparent contradictions between the findings of the quantitative and qualitative empirical phases. The high professionalisation scores as drawn from chapter 5's quantitative analysis indicated AWRC may be understood to have embraced those professionalising pressures as detailed in chapter 3. The qualitative analysis and in particular themes 2-4 engaging with matters of resource constraint, trust and legitimacy, and finally frictions between modernisation and traditionalism provided however for a different and perhaps more nuanced depiction of AWRC professionalisation.<sup>92</sup> Analysis of the data comprising these themes suggested a more balanced understanding of AWRC receptiveness to professionalisation was necessary.

Professionalising processes were seemingly *sometimes* embraced, an appreciation of the need to

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<sup>90</sup> See accounts of interviewee A6, A13, A10, A14 and A2 at section 7.2.1.

<sup>91</sup> See section 7.4.1.

<sup>92</sup> The methodological consequences of these findings are explored more comprehensively in chapter 8.

operate as a more business-like entity was *occasionally* apparent, and an understanding was evident that *at times* more complex organisational structures must be adopted. Countervailing forces grounded in amateurism and traditionalism however served to undermine the rhetoric of interviewees relating to amenability to professionalisation and as regards the requirements of incorporation specifically.

Interviewees spoke of the unfairness and hassle of regulatory requirements and how such matters should be left to those holding professional skills within their clubs or alternatively external professional entities.

Theme 7.5's "partial incorporation" provided for a deeper insight into how these countervailing forces were perhaps managed by the clubs in relation to one specific professionalising circumstance. An acknowledgement by interviewees was regularly evident that incorporation demanded greater professionalising requirements. What were perceived as technical requirements of a transformation of legal form were identified as reasons why other clubs or participant clubs previously had avoided incorporation. When pressed on those specific changes incorporation required and how participants had managed these issues or intended to do so, the responses of participants were unconvincing as to how such requirements had been or may be effectively met.

What emerged from participant accounts was a commonality in viewpoint amongst participants that incorporation, in general, was seemingly "not as bad as other clubs choosing not to incorporate (or even their clubs previously) may think." Such view was seemingly premised upon an understanding of incorporation which permitted a continuity of those organisational practices characterising pre-incorporation existence. When specific demands of incorporation were discussed, it was seemingly thought possible to neglect such requirements owing to justifications based on what it is legitimate to expect of volunteers. A notion of carrying on as we had done previously as a consequence came to the fore.

Such a finding could be construed as clubs simply wishing to secure the benefits of limited liability whilst rejecting professionalising detriments. The thesis however conceives of how the interviewees rationalised actions associated with partial incorporation, and even ignorance of requisite organisational change, to be defined by what decision-makers construed as fair and legitimate

behaviour. Consequentially, notions of fairness and legitimacy of action serve as prominent features of the explanatory model of causation as presented within chapter 8.

Chapter 8 will seek to progress the critical realist investigation by holistically analysing the research findings to determine that which makes X what it is. Chapter 8 therefore now moves to distil from the empirical and non-empirical elements of the research those causal forces and issues of context necessary to the development of a causative explanatory framework.



## Chapter 8: An explanatory model

### *Part One: A logics perspective*

The research has aimed to explain how AWRC have engaged with the incorporation policy as advocated by the WRU. The thesis within the initial chapters considered law thought to be relevant to the issue, as well as identifying those plausible mechanisms and theoretical frameworks perhaps capable of assisting in explanations of club receptiveness to incorporation. Empirically, the thesis has utilised both quantitative and qualitative means of analysis in pursuit of patterns or demi-regularities that may elucidate club behaviour. The final analytical element of the study, as presented within chapter 8, attempts to bring together the findings of the non-empirical and empirical threads to create an explanatory model capable of describing why and how clubs have tended to engage with the incorporation policy in the manner observed.

Chapter 8 is divided into two parts. The first focuses upon presenting institutional logics as a theory which serves to enrich understandings of AWRC engagement with incorporation. The advocacy of an institutional logics perspective meets the requirements of stage 5 of Danermark et al's explanatory framework being the identification of theory deemed to possess greater explanatory power than competing alternatives.

The second part of chapter 8 extends the use of the institutional logics perspective in a manner which brings into focus the role of the legal context. Finally, the chapter addresses what the explanatory model of behaviour underpinned by institutional logics and appreciative of the role of the legal context may mean for evaluation of the incorporation policy. Prior to any evaluative discussions

however, the chapter begins with a description of how the themes as drawn from chapter 7 provided the foundations for the eventual causative commentary.

## 8.1 First order mechanisms

Engaging with the why's, what's, and when's of interviewees' respective incorporation experiences led to conclusions that any theory underpinning the explanatory model must be capable of accounting for external influences, as well as the patterns of beliefs and values as expressed by the AWRC decision-makers.<sup>1</sup> These commonalities of values, manifesting as shared interviewee perspectives of what was fair, right, and legitimate, hinted at behaviour driven by a type of local rationality.

Understanding the genesis of the local rationality thus became an important factor in the construction of any explanatory model.

Chapter 8 amalgamates steps 4 and 5 of Danermark et al's explanatory framework. In order to explain "X", being the behaviour of clubs as expressed by the demi-regularities distilled from empirical data, theory is utilised to put forth an explanation of the hidden powers underlying the research findings.<sup>2</sup> In doing so, the research progresses from the abductive to the retroductive stage of analysis.

The first retroductive step towards the construction of the explanatory model was the synthesising of chapter 7's themes into first order causal mechanisms.

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<sup>1</sup> Julie Batilana and Silvia Dorado, "Building sustainable hybrid organisations: the case of commercial microfinance organisations" (2010) 53 *The academy of management journal* 1419, p.1421

<sup>2</sup> Joe O'Mahoney, "Critical Realism as an Empirical Project" in Paul Edwards, Joe O'Mahoney and Steve Vincent (eds), *Studying Organisations Using Critical Realism: A Practical Guide*. (Oxford University Press 2014), p.17

Table 8.1: First order causal mechanisms.

FIRST ORDER CAUSAL MECHANISM	THEME	EXEMPLARY INTERVIEWEE ACCOUNTS
VOLUNTARISM AS A RESTRAINT	PARTIAL INCORPORATION TRUST & LEGITIMACY RESOURCE CONSTRAINT	"perhaps we have: we are very lucky for who we've got and again you go to other committees and they don't have those expertise and that is why perhaps a lot of clubs haven't done incorporation because they've started it and realised bloody hell this is a whole load of work and we're all volunteers at the end of the day and it's not as if we're getting paid for it" A14
MODERNISING MOTIVATIONS	MARKETISATION & IDENTITY RESOURCE CONSTRAINT	"The club is now a SME now really, it's a small or medium sized business, if you know what I mean so it needs to be updated and brought into this day." A8
JUDGMENT PROOFING THE DESERVING	A LEGAL CONSIDERATION	"we're volunteers, you know it's totally unfair to put ourselves in that position isn't it ... you know we've got no financial gain apart from the love of the game and the love of the club isn't it so.....and to be faced with a claim of the magnitude, its horrendous isn't it." A7
TRADITIONALIST INERTIA	MARKETISATION & IDENTITY	"Well they were on to us years ago, that we should become incorporated but um our committee at the time weren't in favour, but that's now changed..... couple of older people on there who didn't understand or didn't want to understand what it was all about and um, if you've got one strong personality, they can sway the other people." A12.
POSITIVE WRU RELATIONSHIP	RESOURCE CONSTRAINT TRUST & LEGITIMACY	"Very good, very good yeah. Everything we ask for, we get. We've found them very supportive through this whole process and in general." A13
ACQUIRING STRUCTURAL GRANTS	RESOURCE CONSTRAINT	"what was crucial was being incorporated or being part way down the round to being incorporated. So again, that was another issue, and another reason to be incorporated I suppose was to access that bigger grant." A9.
PROFESSIONAL SKILLS OF EXECUTIVE BODY MEMBERS	RESOURCE CONSTRAINT TRUST & LEGITIMACY	(In response to how the club deals with legal responsibilities once incorporated)" If you look at the board of directors I'm a business owner, xx the president has his own business and then xx the treasurer is an ex bank manager, so the three of us are very much au fait with how to run a business, which at the moment is very important to the club." A11
EXTERNAL INHIBITORS	RESOURCE CONSTRAINT	"There was a, what's the word I'm going to use, battle?.....Um so what they said we owed them, we challenged it and there was an amount of money that we had to raise to obviously sort of, well stop them shutting the club down really. So, we raised that money and once that is paid off and the debt is sorted, I believe incorporation will take place... It's a bit like we're waiting for the go ahead really because we have done a certain amount of work with xxx and um, there was not a lot they couldn't do until we had the sort of go ahead really..because it's like swapping debt around really wasn't it, if they're indebted to a limited company, there's a chance that could be written off in a way, that they weren't happy for that." A8
RESOURCE MAXIMISATION	RESOURCE CONSTRAINT A LEGAL CONSIDERATION	"Well its hard trying to get people to work now..... Because what happens is, if people find out they're liable, they don't want to become a committee man." A4  "we've got lots of committee members running sides or committee people running sides and so lots of young people out there but because we're you know, being a director, I think lots of people are not interested in it, maybe it's the tasks you have to do maybe they think it's too hard and there's more to it than there is I don't know." A10
DEFERENCE TO AUTHORITY	RESOURCE CONSTRAINT TRUST & LEGITIMACY	"So we are very lucky (having a Solicitor on the committee) I cannot imagine me as a non-legal person having to go through it all and that goes to my question from 10 minutes ago as to why people don't do it because it's a huge amount of work." A14

The mechanisms as presented in table 8.1 are described as first order causal mechanisms as the research appreciated that to advance a theoretically underpinned model of causation, it was necessary

to reduce these diverse mechanisms into deeper and, where possible, unifying structures. In keeping with a critical realist appreciation as to the role of theory, the research sought, if possible, to advocate a theory, or more than one theory,<sup>3</sup> which may provide a better explanation of organisational behaviour than competing alternatives.<sup>4</sup>

Through the reduction of the first order mechanisms into deeper structures,<sup>5</sup> the research arrived at the following conclusion: the manner in which clubs engage with professionalisation, including why clubs decide to incorporate and how they do it, may be explainable by an explanatory model underpinned by an institutional logics perspective.

## 8.2 A logics perspective

To first recap and expand on section 3.4.5 institutional logics are defined as;

*“The socially constructed, historical patterns of material practices, assumptions, values, beliefs and rules by which individuals produce and reproduce their material subsistence, organise time and space, and provide meaning to their social reality.”<sup>6</sup>*

Institutional logics are taken to flow from 7 societal institutional orders, the market, state, family, religion, corporation, professions and community.<sup>7</sup> An institutional logics perspective was introduced by Friedland and Alford to provide an alternative to individualistic rational choice theories and macro

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<sup>3</sup> Section 1.3.

<sup>4</sup> Berth Danermark and others *Explaining Society Critical Realism in the Social Sciences* (2<sup>nd</sup> edn, Routledge 2019), p.129

<sup>5</sup> See Fletcher 2017 for an example of the reduction of mechanisms into deeper structures. Amber Fletcher, “Applying critical realism in qualitative research: methodology meets method” (2017) 20 *International Journal of Social Research Methodology* 181, p.190.

<sup>6</sup> Patricia Thornton and William Ocasio, “Institutional Logics and the Historical Contingency of Power in Organisations: Executive Succession in the Higher Education Publishing Industry, 1958-1990” (1999) 105 *American Journal of Sociology* 801, p.804.

<sup>7</sup> Patricia Thornton, William Ocasio, and Michael Lounsbury, *The Institutional Logics Perspective A New Approach to Culture, Structure and Process* (OUP 2012), p.73.

structural perspectives.<sup>8</sup> The researcher had rejected such perspectives in explanation of the findings given their apparent unsuitability in accounting for the local rationality observed. Crucially for the research, institutional logics are recognised to provide a link between individual agency and cognition and socially constructed institutional practices and rule structures.<sup>9</sup> Accordingly, the mid-range institutional logics approach therefore seemed capable of engaging with externally facing institutionalism, as well as more agential aspects of behaviour, under one theoretical umbrella.

In addition to the anti-determinist objectives of “returning the actor” from its relegation to descriptions of “cultural dope” within neo-institutional scholarship, an institutional logics perspective further attempts to reverse the retreat from society.<sup>10</sup> For Friedland and Alford it was not possible to understand individual or organisational behaviour without locating it in a societal context.<sup>11</sup> Though often avoided by institutional scholars,<sup>12</sup> a logics perspective as a consequence seemed particularly fitting owing to the opportunity the perspective provided to consider issues across an integrated conceptual architecture, being analysis directed at the individual organisation, the organisational field and the societal levels respectively.<sup>13</sup>

Delbridge and Edwards advocate the nested architecture of a logics perspective on the basis it provides an opportunity to consider the micro-processes of agency with higher-order levels of analysis that relate to institutional complexity.<sup>14</sup> Consistent with Van de Ven and Poole’s interpretation of organisational life, the research appreciates that any single theoretical perspective will only be capable

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<sup>8</sup> Roger Friedland and Robert Alford, “Bringing Society Back In: Symbols, Practices and Institutional Contradictions” in Walter Powell and Paul Dimaggio (eds) *The New Institutionalism Organisational Analysis*. (University of Chicago Press 1991), p.232

<sup>9</sup> Patricia Thornton and William Ocasio “Institutional Logics” in Royston Greenwood and others (eds) *The Sage Handbook of Organisational Institutionalism* (Sage 2013), p.100

<sup>10</sup> Josef Fahlen and Cecilia Stenling, ‘(Re)conceptualizing institutional change in sport management contexts: the unintended consequences of sport organisations’ everyday organisational life’ (2018) 19 *European Sport Management Quarterly* 265

<sup>11</sup> *Bringing Society Back In: Symbols, Practices and Institutional Contradictions* (n 8), p.232

<sup>12</sup> Christina Johansen and Susanne Waldorff “What are Institutional Logics – and Where is the Perspective Taking Us? [2015] *Academy of Management Proceedings*. <[https://www.researchgate.net/profile/Christina-Berg-Johansen/publication/291371998\\_What\\_are\\_Institutional\\_Logics\\_-\\_and\\_Where\\_is\\_the\\_Perspective\\_Taking\\_Us/links/57bb0ffe08ae8a9fc4c273f5/What-are-Institutional-Logics-and-Where-is-the-Perspective-Taking-Us.pdf](https://www.researchgate.net/profile/Christina-Berg-Johansen/publication/291371998_What_are_Institutional_Logics_-_and_Where_is_the_Perspective_Taking_Us/links/57bb0ffe08ae8a9fc4c273f5/What-are-Institutional-Logics-and-Where-is-the-Perspective-Taking-Us.pdf)> Accessed 16<sup>th</sup> June 2020.

<sup>13</sup> Rick Delbridge and Tim Edwards, “Inhabiting Institutions: Critical Realist Refinements to Understanding Institutional Complexity and Change” (2013) 34 *Organisation Studies* 927.

<sup>14</sup> *Ibid*

of providing a partial account of complex phenomena.<sup>15</sup> With this being the case, a nested architecture provides an opportunity to at least moderately mitigate this issue. Similar to the approach taken by Dunn and Jones<sup>16</sup>, Lounsbury<sup>17</sup> and Thornton,<sup>18</sup> emergent themes identified primarily through qualitative analysis were assembled into logics which were then traced through the integrated nested architecture.

A progression through this tripartite nested structure led to conclusions that club engagement with the incorporation policy could be characterised in the first instance as the product of an interaction between a dominant volunteer logic and subservient developmental logic, existing at the individual organisational level. In turn, the research argues such organisational logics can be traced through to an interaction of state, communitarian, and market institutional logics existing at the societal level. Such institutional logics represent those deep lying causal forces sought by critical realist scholars seeking to determine that which causes the phenomena under study, *that which causes X*.<sup>19</sup>

### 8.2.1 Organisational logics

A logics perspective directed at the individual organisational level often seeks to understand the logics arising from different organisational departments or factions, and the outcome of these competing logics for organisations, be it subordination, policy change, or conflict more generally.<sup>20</sup> Despite the research focusing upon one faction of the AWRC organisational structure, being the executive bodies, such emphasis does not preclude use of organisational logics. Bettis and Prahalad suggested that the

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<sup>15</sup> Andrew Van de Ven and Marshall Poole, "Explaining Development and Change in Organisations. The Academy of Management Review" (1995) 20 Academy of Management 510, p.511

<sup>16</sup> Mary Dunn and Candace Jones, "Institutional logics and institutional pluralism : The contestation of care and science logics in medical education, 1967-2005" (2010) 55 Administrative Science Quarterly 114

<sup>17</sup> Michael Lounsbury, "Institutional transformation and status mobility: The professionalisation of the field of finance" (2002) 45 Academy of Management Journal 255.

<sup>18</sup> Patricia Thornton, "The rise of the corporation in a craft industry: conflict and conformity in institutional logics" (2002) 45 Academy of Management Journal 81.

<sup>19</sup> Although a plurality of logics existing at each defined stage of the nested architecture is provided for within the sections that follow, it should be noted that this discussion of logics is not intended to be an exhaustive description of every extant and influential logic, but rather provide for a consideration of those logics deemed most relevant to the research.

<sup>20</sup> Anna Thomasson and Caroline Wigren Kristoferson, "Hybridizing the Triple Helix: A prerequisite for managing wicked issues" (2020) 36 Financial Accountability & Management 207

interviewing of strategic decision-makers is conducive to gaining insights as to extant organisational logics,<sup>21</sup> as it is those key individuals who possess significant organisational influence.<sup>22</sup>

The analysis as a consequence sought to define logics somewhat inductively with reference to constituent norms and values interpreted from the qualitative data to exist within the clubs' executive bodies.<sup>23</sup> To facilitate such identification, a retroductive process applied to the empirical data sought to reconceptualise the findings in a holistic manner, capable of illuminating theoretical consistencies and reconciling apparent contradictions. This reconciliation of the data led to understandings of incorporation engagement as explainable by way of wider "volunteer" and "developmental" organisational logics defining VSC engagement with professionalising processes.

Beginning with the developmental logic, many of the interviewees reported an eagerness to leave behind antiquated ideas as to appropriate organisational practice to "run the organisation properly".

Whereas what constituted appropriate behaviour towards such an objective varied, an apparent preference to move on from what were considered to be inferior, less formalised practices, was a viewpoint reflecting many interviewee positions. Supporting the findings of Nichols et al.<sup>24</sup> Taylor<sup>25</sup>

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<sup>21</sup> Organisational logics have been argued to represent pre-existing knowledge systems through which events and information are approached by an entity's strategic decision-makers. Aligning with a more behavioural view of decision-making, knowledge structures (or schema) forming organisational logics have been interpreted as heuristics, enabling organisations' decision-makers to make decisions quickly and frugally Coimbarote Krishnarao Prahalad and Richard Bettis, "The Dominant Logic: A New Linkage between Diversity and Performance" (1986) 7 *Strategic Management Journal*. 485, p.489

<sup>22</sup> Coimbarote Krishnarao Prahalad and Richard Bettis "The Dominant Logic: A New Linkage between Diversity and Performance" (1986) 7 *Strategic Management Journal* 485, p.499. Within AWRC, the involvement of factions outside of the executive bodies, be it players, general members, paid staff or supporters, in decisions as regards incorporation, seemed overwhelmingly limited. This empirical finding supported Cuskelly et al's previous understanding of VSC executive bodies constituting the primary decision-making unit as regards matters of administration and organisational development. Graham Cuskelly, Norman McIntyre and Alistair Boag "A longitudinal study of the development of organisational commitment amongst volunteer sport administrators" (1998) 12 *Journal of sport management* 181

<sup>23</sup> What are Institutional Logics – and Where is the Perspective Taking Us? (n 12)

<sup>24</sup> Geoff Nichols and others, "Measuring the formalization of community sports clubs: findings from the UK, Germany and Australia" (2015) 7 *International Journal of Sport Policy and Politics* 283

<sup>25</sup> Peter Taylor, 'Driving up participation: sport and volunteering' in Sport England (ed) *Driving up participation: the challenge for sport* (Sport England 2004)

and Seippel,<sup>26</sup> the research appeared at first instance to support arguments of a trend towards a professionalisation of VSC.

*Table 8.2: Examples of the developmental logic.*

DEVELOPMENTAL LOGIC	FIRST ORDER MECHANISMS	INTERVIEWEE	ILLUSTRATIVE QUOTE
	MODERNISING MOTIVATIONS	A2	"Yes, what we want to do is run the rugby club as a business."
	MODERNISING MOTIVATIONS	A8	"The club is now a SME now really, it's a small or medium sized business, if you know what I mean so it needs to be updated and brought into this day."
	MODERNISING MOTIVATIONS	A10	"well, those times where things used to get done on the back of a fag packet, well you can't do that anymore."
	MODERNISING MOTIVATIONS	A8	"The limited company would then obviously have its own guidelines as it would all have to be run as a business."
	MODERNISING MOTIVATIONS	A13	"No, you can't make it out to be an amateur rugby club when it suits you and we have, for a number of years now, run it as a business because I think you have to."
	MODERNISING MOTIVATIONS	A1	"We know that going forward with incorporation the final decision is with the directors, with the vote, so they're all well understanding of that now and to be honest its little things like that which we've never done in the past which you know that's the proper way of doing business."

Findings highlighting modernising motivations showed a consistency with the high organisational professionalism scores as presented within chapter 5. However, the quantitative findings and those insights as presented within the above table were inconsistent with much of the qualitative data.

Moving beyond quantitative findings and claims as to organisational development, consideration of the qualitative data holistically suggested a less explicit but more influential power underpinning AWRC engagement with incorporation and perhaps professionalisation more generally. This second order reconceptualisation of the data resulted in the recognition of a competing and ultimately dominant "volunteer logic." Central to the development of the volunteer logic were those perceptions that personal liability in the first instance and complex administrative expectations thereafter were ill-

<sup>26</sup> Ornulf Seippel, 'Professionalization of voluntary sport organisations – a study of the Quality Club Programme of the Norwegian Football Association' (2019) 19 European Sport Management Quarterly 666

fitting with the decision-makers voluntary status. For such reasons clubs often embraced incorporation but sought to disregard compliance, or delegated duties to individuals or organisations perceived to hold commodified knowledge, on the basis of fairness. Notions of incompatibility of what should be expected of volunteers was understood to effect how AWRC decision-makers engaged with professionalising processes generally and incorporation more specifically.<sup>27</sup>

*Table 8.3: Examples of the volunteer logic.*

VOLUNTEER LOGIC	FIRST ORDER MECHANISMS	INTERVIEWEE	ILLUSTRATIVE QUOTE
	VOLUNTARISM AS A RESTRAINT	A4	"We are supposed to be volunteers, like, I can't come home after 12 hours and sit at my computer."
	PROFESSIONAL SKILLS OF EXECUTIVE BODY MEMBERS	A2	"I don't think it's fair because at the end of the day committee men are volunteers and I am lucky because I've run my own company so I do have an inkling of what's going on."
	VOLUNTARISM AS A RESTRAINT	A6	"I am 100% volunteer as secretary, the workload over the years, because I've been involved in different ways has increased enormously. In to the future, I will be finishing before too long, and a considerable problem would be getting someone to come on a voluntary basis."
	DEFERENCE TO AUTHORITY	A1	"We want to as well because they're the guys with the knowledge I mean we know bits and bobs about it and were fed information but like I said unless we're business-people were not going to know it so were going to rely on them."
	JUDGMENT PROOFING THE DESERVING	A12	"It wouldn't be fair if somebody took my house off me for something which happened on the rugby field or happened in the car park of the rugby club do you know what I mean."
	DEFERENCE TO AUTHORITY	A14	"So, we are very lucky (having a solicitor on the committee) I cannot imagine me as a non-legal person having to go through it all and that goes to my question from 10 minutes ago as to why people don't do it because it's a huge amount of work."

<sup>27</sup> On account of such conclusions the research as a consequence supports recent findings of Hill et al that club decision-makers occasionally resist more professional logics for alternative logics grounded in amateurism Simon Hill and others, 'Around the kitchen-table with Bourdieu: understanding the lack of formalization of professionalization of community sports clubs in New Zealand' (2021) 24 (2) Sport in Society 115

As stated, the retoductive process advocates attempts at the reconciliation of apparent contradictions existing within data. Critical to the suitability of the logics perspective for the research was an ability to explain those apparent contradictions between the quantitative and qualitative empirical phases.

The quantitative enquiry provided for two main findings. First, that AWRC showed high levels of professionalisation. Based on the literature one may expect high levels of club professionalisation to correspond to high levels of incorporation across the AWRC community. One may further expect that higher levels of professionalisation may be associated with an increased likelihood to have incorporated. The nature of the research problem and the findings emerging from the quantitative analysis, respectively, suggested neither expectation was evident. A reconciliation of the two quantitative findings themselves, as well as a reconciliation of the quantitative findings with later more dominant interviewee perspectives as detailed at table 8.2, was eventually achieved by appreciating the limitations of quantitative analysis to reveal the reality of organisational life. Specifically, the quantitative endeavour appeared incapable of revealing those less explicit but more dominant influences affecting organisational behaviour towards professionalising processes such as incorporation. Official incorporation status was recognised as an inappropriate indicator of amenability to legitimate club professionalisation, given incorporation was characterised by instances of ceremonial conformity and occasions of decoupling. Quantitative findings and indeed those interviewee accounts professing organisational development therefore were interpreted as accounting for one side of the coin and perhaps the less insightful side at that.

As discussed within the marketisation and identity theme, many interviewees referenced the importance of developing and professionalising their organisation. However, when such development caused additional resource constraints upon volunteers, the outcome, as shown by the data presented within the partial incorporation theme, was often a surrendering of meaningful development in preference for continuity.<sup>28</sup>

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<sup>28</sup> See Section 7.4 and 7.5.

Interviewees' perceptions of their limits flowing from their volunteer status were understood to represent a shield utilised to justify avoidance and/or ignorance of those professionalising responsibilities which perhaps seemed "too much like paid work."<sup>29</sup> Problems of volunteer duties beginning to represent responsibilities akin to paid work owing to the influences of modernising agendas have been noted previously by Harris, as well as Taylor, as something ill-fitting with conceptions of amateurism.<sup>30</sup>

*"The pressures of professionalisation can make both administration and coaching seem burdensome and too much like the daily grind of paid work – not what members joined for."*<sup>31</sup>

Efforts and understanding necessary to successfully implement the company limited by guarantee form (partial incorporation), delegation of administrative duties to those perceived to possess professional skills (trust and legitimacy), and reasons for why their clubs had previously been, and why others still were, unwilling to undertake incorporation (resource constraint), all provided evidence of what appeared to be a perceived incompatibility between volunteer status and professionalising processes such as incorporation. As such, incorporation served as an example of how a logic underpinning decision-makers' concerns may drive and shape implementation in matters of organisational governance.<sup>32</sup> The product of this remoulding appeared to result in a circumstance whereby the policy as a whole can be seen as treated by the dominant organisational logic. The outcome, as presented by the partial incorporation theme, provides evidence of unintended post policy organisational features and practices.

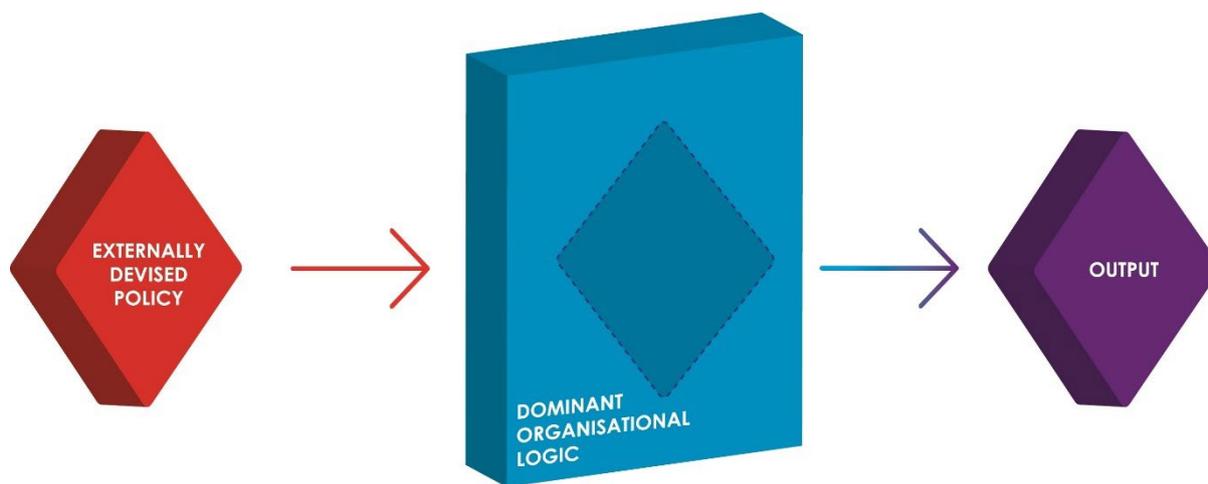
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<sup>29</sup> Driving up participation: sport and volunteering (n 25)

<sup>30</sup> Ibid

<sup>31</sup> Spencer Harris, Kate Mori and Mike Collins, "Great Expectations: Voluntary Sports Clubs and Their Role in Delivering National Policy for English Sport" (2009) 20 *Voluntas* 405, p.411

<sup>32</sup> Bernard Mees and Sherene Smith, "Corporate Governance Reform in Australia: A New Institutional Approach. *British Journal of Management*" (2019) 30 *British Journal of Management* 75.



*Figure 8.1: Policy treatment and dominant organisational logics.*

In order to understand the genesis of the developmental and volunteer logic and to understand more clearly their effects upon AWRC change, analysis was redirected to organisational field and societal levels. The interdependencies between the micro, meso, and macro levels are taken to provide a richer understanding of logics which moves beyond their simple identification.<sup>33</sup> With this in mind, an attempt to trace logics, first through to an organisational field level and thereafter to a societal level, provided an opportunity at further elucidation and a reduction of causal mechanisms into deeper structures still.

### 8.2.2 Tracing logics

As alluded to in chapter 3, institutional theory directed at the organisational field level has been utilised as a means of explaining organisational responses to concerns of legal liability.<sup>34</sup> Rather than standing in direct contrast to neo-institutionalism, Johansen and Waldorff argued dominant organisational field level logics may constitute the “aggregated information carried by isomorphic processes” fundamental to neo-institutional understandings of organisational behaviour.<sup>35</sup> Evidence of isomorphic pressures flowing from organisational fields were indeed apparent in the research findings

<sup>33</sup> What are Institutional Logics – and Where is the Perspective Taking Us? (n 12)

<sup>34</sup> Donna Randall and Douglas Baker, “The Threat of Legal Liability and Managerial Decision Making: Regulation of Reproductive Health in the Workplace” in Sim Sitkin and Robert Bies, *The Legalistic Organisation* (Sage 1994)

<sup>35</sup> What are Institutional Logics – and Where is the Perspective Taking Us? (n 12)

in the form of WRU “pressure.” Consequently, the existence of the developmental logic was considered to provide evidence perhaps of organisational responses to field level professionalising isomorphic pressures.

*“I would say as an unincorporated rugby club if you like, some grants are still available to us but not to the same level as if we were incorporated so I would say it was a secondary consideration but I think increasingly it’s going to become uh more of a more of a priority.”*

*A5*

*“WRU want everyone incorporated that was it ... they did have a guy talking about it, again just saying you need to do it.” A4*

Nevertheless, as indicated by interviewee A5, such field level forces were most often considered as secondary influences by the participants. Reference to field level forces influencing incorporation behaviour were made on 17 occasions by the interviewees. In contrast, reference to notions of fairness or appropriateness driving incorporation engagement were made 26 times. Beliefs as to what was right and appropriate appeared to bear most heavily upon decisions as to whether to incorporate in the first instance and thereafter how implementation should be undertaken. Simply referring to the number of times such issues were mentioned of course is not conclusive as to the respective importance of field level pressures and notions of fairness. However, by considering the actions of the clubs alongside the interviewee rhetoric, it is suggested that what was deemed fair and appropriate behaviour by clubs was worthy of investigation.

From a neo-institutional isomorphic perspective, one may naturally attribute views of fairness to derive from field level forces in the form of normative pressures. Normative isomorphic pressure, though prevalent in discussions of VSC behaviour within the extant literature, most often relates to

latter stage professionalisation where remunerated contributors enter the field.<sup>36</sup> Normative pressure as a consequence often derives from the entrance of individuals with shared professional backgrounds into voluntary sport and their collective beliefs as to what is the “right” way of doing things. What may constitute the correctness of behaviour is taken to derive from shared experience, whether that be shared industry experience or shared educational backgrounds.<sup>37</sup> The interpretation of normative isomorphic pressure as reliant upon shared experience is argued to be that which limits the utility of understanding the organisational field as a conditioning normative force upon the agency of decision-makers. As stated in chapter 3, in the current climate of volunteer attraction and retention, VSC cannot often afford to be picky as to the credentials of prospective volunteers.<sup>38</sup> The apparent heterogeneity of experience in the voluntary workforce as a consequence translates into a circumstance whereby claims as to shared educational background or industry experience are likely limited by the practicalities of the circumstance.

The role of field level logics and associated isomorphic pressures were therefore seemingly unsuitable in explaining why volunteers felt it was inappropriate for them to undertake burdensome administrative responsibilities and be subjected to an organisational framework conferring personal liability.

Vincent and Wapshott stated that as regards normative analysis one should first seek to understand why certain norms emerge above others.<sup>39</sup> Having done so, one should then investigate why certain expectations do not align with reality.<sup>40</sup> The perceived heterogeneity of the voluntary workforce suggested that, from a neo-institutional perspective at least, shared notions of correctness and fairness

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<sup>36</sup> Josephine Clausen and others, ‘Drivers of and Barriers to Professionalization in International Sport Federations’ (2018) 3 *Journal of Global Sport Management* 37

<sup>37</sup> Rahat Munir, Sujatha Perera and Kevin Baird, ‘An Analytical Framework to Examine Changes in Performance Measurement Systems within the Banking Sector’ (2011) 5 *Australasian Accounting Business and Financial Journal* 93, p.105

<sup>38</sup> Not-for-profit organisations have been observed to experience difficulty in attracting on a voluntary basis individuals with financial, legal, and corporate management expertise. Susan Woodward ‘Not-for-Profit Motivation in a For-Profit Company Law Regime: National Baseline Data’ (2003) 1 *International Journal of Civil Society Law* 37

<sup>39</sup> Steve Vincent and Robert Wapshott, “Critical Realism and the Organisational Case Study” in Paul Edwards, Joe O’Mahoney and Steve Vincent (eds), *Studying Organisations Using Critical Realism: A Practical Guide*. (Oxford University Press 2014) p.160

<sup>40</sup> *Ibid*, p.160

would be unlikely. As a consequence, the research looked beyond the organisational field and towards societal institutional orders in an attempt to broaden understandings of AWRC behaviour. In doing so, the research sought to understand why the reality of the situation, namely a local rationality amongst interviewees based around appropriateness of behaviour, appeared evident.

### 8.2.3 Societal logics

Somewhat at odds with the primacy afforded by neo-institutionalists to the effects of the organisational field, an institutional logics perspective emphasises how organisations and their constituent individuals should be understood as embedded in society. As a consequence, societal forces may constrain the cognition and means and ends of action.<sup>41</sup> Existing institutional logics research suggests that sports clubs are constituted by a plurality of logics with VSC behaviour, in particular, argued often to be explainable by communitarian and market forces.<sup>42</sup>

A communitarian logic can be considered in these circumstances to represent the manner in which volunteers seek to facilitate sport in their locality to the enhancement of social capital and civic society.<sup>43</sup> The less quantifiable motivations for amateur sport linked to the communitarian logic, such as the emotional connection to a club, the importance of competition, and reputation serving as a source of identity, are often relied upon in explanation of decision-making undertaken at the voluntary sport club level.<sup>44</sup> Such communitarian motivations were evident in several of the interviewee accounts.<sup>45</sup>

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<sup>41</sup> Hallgeir Gammelsaeter, "Institutional Pluralism and Governance in "commercialised" sport clubs" (2010) 10 *European Sport Management Quarterly* 569, p.571

<sup>42</sup> Ibid

<sup>43</sup> Grant Jarvie, "Communitarianism, sport and social capital neighbourly insights into Scottish Sport" (2003) 38 *International Review for the Sociology of Sport*.139, p.139

<sup>44</sup> Cecilia Stenling and Josef Fahlen, "The order of logics in Swedish sport – feeding the hungry beast of result orientation and commercialisation" (2009) 6 *European Journal for sport and Society* 121 and Rasmus Nissen and Ulrik Wagner, "The inherent risk of being fired: the institutional logics enabling sport directors to replace coaches in professional football." (2020) 25 *Managing Sport and Leisure* 441

<sup>45</sup> Interviewee A7 for example stated "you know we've got no financial gain apart from the love of the game and the love of the club isn't it." Interviewee A8 spoke also of the club's community role "at the end of the day, it goes back to being able to provide sporting facilities to your local community." A11 in turn described the

The penetration of a market logic into amateur sport and consequential concerns as to the eroding of communitarian logics have been investigated by the likes of Ibsen and Seippel in consideration of sports clubs' activities and development.<sup>46</sup> Ibsen and Seippel observed behaviour which supported the notion that financial calculations within amateur clubs had clashed with, and indeed had begun to replace, existing ideals and sporting objectives more traditionally associated with communitarian values.<sup>47</sup>

Interestingly however, it appeared from the analysis of the research data that market logics occasionally worked in tandem with communitarian forces. Such a finding was inconsistent with much of the extant literature which often pit more communitarian and market forces against one another in discussions of those underlying causal powers driving VSC behaviour and organisational change.<sup>48</sup> However, through drawing on the empirical accounts of the unfairness of personal liability and expectations of undertaking administrative tasks, it can perhaps be understood how the logics served to reinforce one another. By appreciating that the motivations for individuals to involve themselves in the administration of the clubs flows from communitarian notions of affection for the game and the provision of sport to the community, one can better understand why pressures to professionalise may offend both communitarian and market principles. If one offers their time and efforts to leisure pursuits without expectation of remuneration, then any pressures to undertake tasks perceived as similar to paid work may prove problematic for two reasons. First, such tasks, in representing responsibilities akin to paid work, remove the nexus between the leisure element and the responsibility.<sup>49</sup> In such circumstances, initial communitarian motivations for involvement focussed

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function of the club was to provide local entertainment and that theirs was a club intent on facilitating young people playing sport rather than making money.

<sup>46</sup> Bjarne Ibsen and Ornulf Seippel, "Voluntary organised sport in Denmark and Norway" (2010) 13 *Sport in society* 593

<sup>47</sup> *Ibid*, p.605

<sup>48</sup> See for example Voluntary organised sport in Denmark and Norway (n 46). Josef Fahlen, Cecilia Stenling and Ludvig Vestin, "Money talks – A qualitative analysis of the organisational change connected with the corporation formation of a voluntary sport club" (2008) 5 *Sport and Society* 153. Danny O'Brien and Trevor Slack, "An analysis of change in an organisational field: The professionalization of English Rugby Union" (2003) 17 *Journal of Sport Management* 417

<sup>49</sup> Taylor et al. noted within their study that not only were more professionalised obligations incompatible with the amateur ethos but also referred to how an element of fun was also important for volunteers. *Driving up participation: sport and volunteering* (n 25)

upon the sport are eroded. Secondly, such tasks can be considered as an affront to societal market norms given the carrying out of unwelcome work like duties are usually attached to financial compensation.

Despite occasional coalescence between market and communitarian influences, issues of conflict were by no means absent. Friction was regularly evident between issues of resource maximisation and bureaucratic responsibilities. For example, although incorporation was understood as providing an opportunity to maximise resources as regards attracting new potential executive body members, its bureaucratising consequences were offered as explanations as to why other clubs may have persisted with the unincorporated association.<sup>50</sup> Despite some contempt for bureaucratisation amongst interviewees generally, Slack's account of decision-makers in voluntary organisations being expected to comply with certification programmes, standardise and formalise organisational operations, and even move to appoint paid staff to run such organisations, were consistent with many of the trends and concerns referred to by the interviewees.<sup>51</sup> Bureaucratisation as a consequence appeared something disliked by clubs but nevertheless a force growing perhaps more impactful for VSC decision-makers.<sup>52</sup>

Giving due regard to the conflicts existing within the data surrounding issues of bureaucratisation led to conclusions that a third institutional logic required recognition for purposes of providing a more comprehensive understanding. Drawing on the empirical data, AWRC were understood as attempting to manage a further state logic emphasising adherence to formal rules and regulation.<sup>53</sup> State logics

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<sup>50</sup> Such views of bureaucratisation were perhaps unsurprising given the conferment of additional bureaucratic responsibilities have been acknowledged in amateur sporting organisations to reduce an "organisation's legitimacy in the eyes of its constituents and prevent accumulation of a sufficient supply of energy. James Frey, "The organisations of American Amateur Sport: Efficiency to Entropy" (1978) 21 *American Behavioral Scientist* 361, p.367

<sup>51</sup> Trevor Slack, "The bureaucratization of a Voluntary Sport Organisation.' *International review for the sociology of sport*" (1985) 20, p.145

<sup>52</sup> Geoff Nichols and others, "Pressures on the UK Voluntary Sport Sector" (2005) 16 *International Journal of Voluntary and Nonprofit Organisations* 33

<sup>53</sup> Wendy Smith and Marya Besharov, 'Multiple institutional logics in organisations: explaining their varied nature and implications' (2014) 39 *The Academy of Management Review* 364, p.373

have been argued to draw their authority from bureaucratic domination<sup>54</sup> with an adherence to such logic considered to reduce scope for organisational flexibility.<sup>55</sup> Whether greater regulation is the product of contractual responsibility, formal law, or recommendations with no legal standing, it is compliance with regulatory bodies' requests, be they national, local, or international, which defines the logic.<sup>56</sup> Waardenburg stated how the service delivery relationship between state and voluntary sport clubs had served to infiltrate and clash with the previously dominant community logic of VSC.<sup>57</sup> The lack of remuneration for voluntary executive body members is understood further as that which brings state professionalising logics acutely into conflict with logics defining the market based economy and associated conceptions of what is appropriate and fair.<sup>58</sup>

Whether the maligned bureaucracy relates to legal requirements under the Companies Act or the requirements of the WRU, the state logic and its associated preferences for regulation and bureaucracy were considered to contrast with communitarian and *occasionally* market logics. The term occasionally is emphasised given it was not always the case that state and market logics would conflict. The interplay between state and market logics was understood to be that which appeared to underpin the developmental logic existing at the organisational level. Clubs may feel pressure to professionalise on the basis of greater regulation but there also existed evidence of an effort by interviewees to facilitate organisational growth and a desire to run their entities in a more business-like manner.<sup>59</sup>

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<sup>54</sup> Alex Gillett and Kevin Tennent, 'Shadow Hybridity and the Institutional Logic of professional sport: Perpetuating a sporting business in times of rapid social and economic change' (2017) 24 *Journal of Management History* 243, p.247

<sup>55</sup> Chris Skelcher and Steven Smith, 'New development: Performance promises and pitfalls in hybrid organisations—five challenges for managers and researchers' (2017) 37 *Public Money & Management* 425

<sup>56</sup> Marika Arena and others, 'What drives the evolution of Corporate Social Responsibility strategies? An institutional logics perspective' (2018) 10 *Journal of Cleaner Production*, p.348

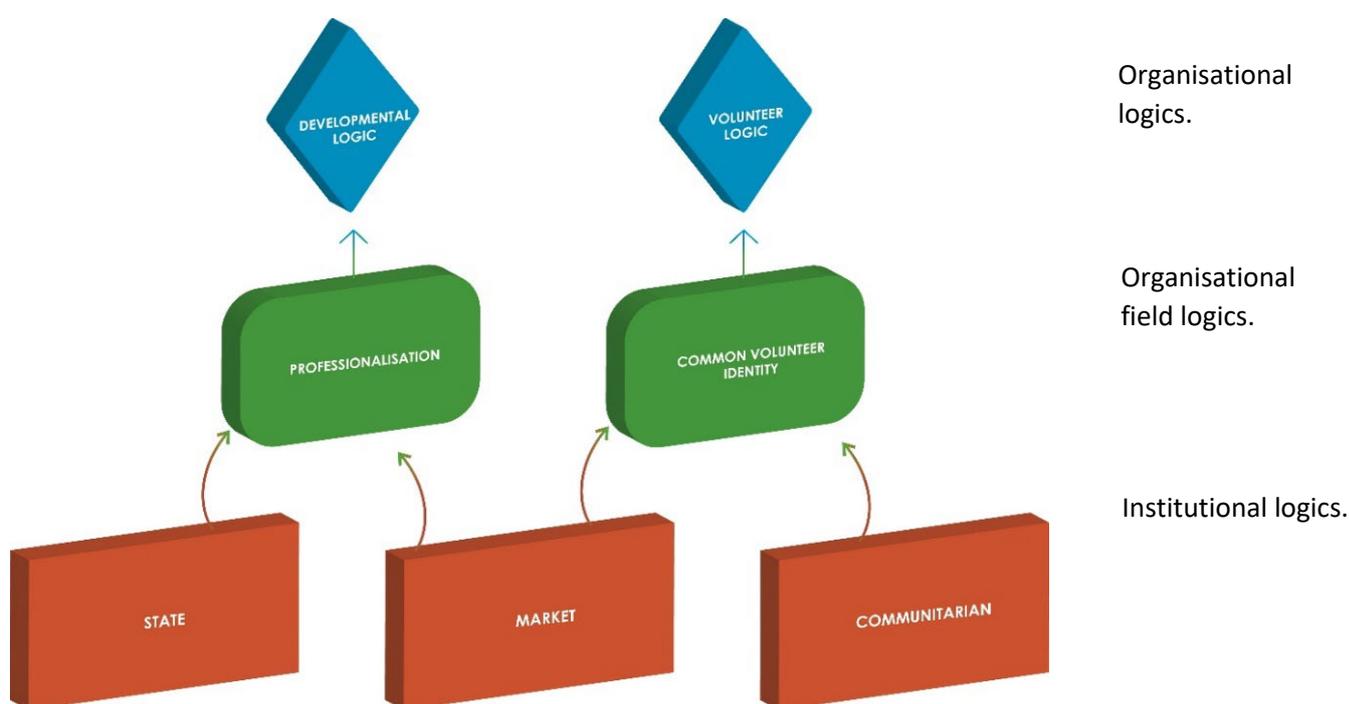
<sup>57</sup> Maikel Waardenburg, 'Understanding the Microfoundations of Government – Civil Society Relations' (2021) 32 *Voluntas* 548, p.550

<sup>58</sup> For a discussion of the interplay between state and other sector specific logics see Eric Zhao and Michael Lounsbury, 'An institutional logics approach to social entrepreneurship: Market logic, religious diversity, and resource acquisition by microfinance organisations' (2016) 31 *Journal of Business Venturing* 643. Mary Dunn and Candace Jones, 'Institutional logics and institutional pluralism: The contestation of care and science logics in medical education 1967 – 2005' (2010) 55 *Administrative Science Quarterly* 114, p.128. Patricia Thornton *Markets from culture: Institutional logics and organisational decisions in higher education publishing* (Stanford University Press 2004)

<sup>59</sup> See Table 8.2

In contrast to the construction of the developmental logic, a combination of the communitarian and market logics are suggested to be the forces which ultimately result in the dominant organisational volunteer logic. From an organisational field level perspective these forces were considered to account for the apparent commonality in viewpoint amongst the respective interviewees. The volunteer logic is taken to be similar to the amateur logic by way of its association with informality and a resistance to over-organisation.<sup>60</sup>

Figure 8.2: A nested architecture of logics acting on AWRC.



<sup>60</sup> Carolyn Cordery and John Davies, "Professionalism versus amateurism in grass-roots sport: Associated funding needs" (2016) 2 Accounting History 98, p.101. Where the volunteer logic perhaps departs from O'Brien and Slack's amateur logic is the focus in this circumstance upon non-sporting specific activities and the consequential merging of communitarian logics and market norms. This was understood as emerging from a resistance to undertake activities exemplifying paid work. Danny O'Brien and Trevor Slack "The emergence of a Professional logic in the English Rugby Union: The Role of Isomorphic and Diffusion Processes" (2004) 18 Journal of Sport Management 13

By understanding VSC volunteers as societally embedded individuals subject to the same market principles as other societal actors one may understand more clearly AWRC behaviour. The benefit of returning society to the theorisation of conduct as advocated by an institutional logics perspective has thus contributed significantly to the study's analytical development.<sup>61</sup> The impact of what was considered appropriate, as well as what was generally deemed unfair, provides for an appreciation as to the gravity of what Skille conceived of as legitimising myths which are impactful not because they are right or true but because most relevant actors subscribe to their belief as right and true.<sup>62</sup>

An institutional logics perspective has been applied in explanation of the participant organisations' behaviour. Focus upon AWRC decision-makers' perspectives have provided for an account of how agency, conditioned by logics, may serve ultimately to define how a professionalising policy manifests as organisational change. The relevant logics and the interplay between them are taken to represent those causal forces underlying the empirically observable engagements with incorporation. Such conclusions of course provide support to proponents of institutional logics as explanatory tools.<sup>63</sup> More generally, the conclusions accord with Black's arguments as to the importance of considering organisational action from a holistic perspective.<sup>64</sup> The research findings have ultimately supported Black's contentions that a focus upon the legal paradigm alone is often insufficient, that middle ground theories are more attuned to explanatory commentary, and that there is significant importance in understanding an organisation's frame, as well as decision-makers' perceptions, in accounting for observable behaviour.<sup>65</sup>

An institutional logics perspective has been advanced within this first part of chapter 8 as the theory deemed to provide greater explanatory power than alternative theoretical positions. In doing so, part

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<sup>61</sup> See Section 3.4.5

<sup>62</sup> Eivind Skille, "Revisiting Myths of Norwegian Sport – Case of the Sports City Program" (2004) 16 *International journal of Applied sports science* 29

<sup>63</sup> Lauren Edelman, Sally Fuller and Iona Mara-Drita "Diversity rhetoric and the managerialization of law" (2001) 106 *American journal of sociology* 1589. Richard Moorhead, Steven Vaughan & Cristina Godinho *In-House Lawyers' Ethics Institutional Logics, Legal Risk and the Tournament of Influence* (Hart, 2019). Danny O'Brien and Trevor Slack "An analysis of change in an organisational field: The professionalization of English Rugby Union" (2003) 17 *Journal of Sport Management* 417.

<sup>64</sup> Julia Black, "New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making." (1997) 19 *Law & Policy* 51, p.70

<sup>65</sup> *Ibid*, p.53

one has engaged with the 5<sup>th</sup> stage of Danermark et al's explanatory framework. However, a critical realist perspective requires a consideration of context alongside claims as to causal forces. Although several causal forces may be at work in certain circumstances, it is the relationship between causal forces and context that is taken to define whether those causal influences are activated. In consideration of the relevant context, the institutional logics perspective is extended to the legal environment in consideration of how the legal context may be understood to have influenced relevant AWRC behaviour.

### ***Part two: Law, Logics, and Context***

The application of an institutional logics perspective has been argued above to provide a theory capable of explaining the observed AWRC behaviour as it relates to the incorporation policy. Chapter 8 turns now to focus upon the legal context relevant to the research findings and in doing so develops the literature which has looked to apply institutional logics in explanation of organisational responses to law and legal issues. Part 2 first seeks to develop an understanding of the manner in which a logics perspective applied to the relevant legal context can contribute further to understandings of the empirical data. Following this initial endeavour, the second part of the chapter at section 8.4 moves away from logic centric discussions to explore how features of the relevant legal context may serve to facilitate the emergence of causal powers as described in part 1 of the chapter and developed in part 2. The chapter concludes with the advocacy of an explanatory model of AWRC tendencies regarding matters of engagement with the incorporation policy. Such model is both underpinned by institutional logics and appreciative of the legal context.

#### **8.3 An introduction to law as an institutional force.**

Given the limited interactions between empirical legal research and critical realism, initial concerns existed as to how the thesis may appropriately account for law's place in causative explanations. The

use of institutional logics to assist in understandings of that which influences and determines lawyers' behaviour by the likes of Moorhead however proved to be a starting point from which the place of the law in the research eventually became more clear.<sup>66</sup> Despite VSC not representing a traditional arena for empirical legal explorations, nor their decision-makers traditional participants for legal research, the study at its most fundamental involved a consideration of a decision of legal consequence, with the actors involved attempting to navigate their legal environment and their legal responsibilities. Interpreted in such a way, the research was eventually construed as a furtherance of an institutional logics perspective outside of engagement with traditional legal actors but nevertheless comprised of a similar formula to that advanced by Moorhead. Accordingly, the research sought to ascertain in what ways do legal principles and norms compete with other non-legal influences and what are the empirical outcomes of these interactions.

Traditionally, most institutional analysis of organisational behaviour viewed law as a neutral set of rules formulated and defined prior to reaching organisations.<sup>67</sup> Law, as a consequence, was considered to represent the rules of the game which defined and limited the agency of organisational behaviour.<sup>68</sup> In contrast to traditional understandings, the manner in which law, and ideas of law, appeared only occasionally to define AWRC decision-making,<sup>69</sup> promoted an understanding which moves away from an interpretation of law as preminent over other possible influences.<sup>70</sup>

Chapter 7's fifth theme of partial incorporation considered the actions and omissions of AWRC which raised the question as to whether the company limited by guarantee can be understood to have been appropriately embedded. The theme focused on a failure to transfer memberships and rely on previous constitutional documents but explored in little detail the effect of such practices at law. The

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<sup>66</sup> Richard Moorhead 'Corporate Lawyers: Values, Institutional Logics and Ethics' (2015) CEPLER Working Paper Series 07/2015 <[http://epapers.bham.ac.uk/1984/1/cepler\\_working\\_paper\\_7\\_2015.pdf](http://epapers.bham.ac.uk/1984/1/cepler_working_paper_7_2015.pdf)> accessed 12 February 2020

<sup>67</sup> Lauren Edelman and Shauhin Talesh, "To comply or not to comply- that isn't the question: how organisations construct the meaning of compliance" in Christine Parker & Vibeke Lehmann Nielsen (eds) *Business Responses to Regulation* (Edward Elgar Publishing 2011)

<sup>68</sup> New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making (n 66), p.82

<sup>69</sup> See section 7.5

<sup>70</sup> New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making (n 66)

registration of the relevant companies at companies house and the transference of club assets and liabilities to said company establishes the organisation as a user of the company limited by guarantee legal form. The issues of implementation as discussed therefore speak not to questions of whether the form has been created. The consequences of insufficiently embedding the company form are rather problematic for those responsible for the running of the incorporated entities. The failure to transfer memberships, ignore requisite formalities, and rely on the documents and practices utilised by the preceding unincorporated associations may be considered practices of which directors hold responsibility for. It is these practices which were interpreted as demonstrative of decoupling and consistent with elements of the extant VSC literature. However, such finding could have particularly detrimental consequences from a legal perspective. This is of particular relevance given the primary objective of the incorporation policy in the first instance was to limit risks of personal legal liability. Section 2.4.1 in discussions of contractual liabilities, for example, argued that directors must ensure adherence to company constitutional documents should they retain protection from the risks of personal liability. Disregard for the constraints as imposed by relevant articles facilitate a circumstance in which a directors' conduct, though perhaps consistent with notions of what they believe is fair and appropriate, may provide for personal liability consequences at law.

Referring back to chapter 2 and further discussions of directors' duties, considering the practices of clubs in light of the codified expectations of directors can be seen to provide for a situation in which significant potential arises for occasions of breach. Despite the potential personal liability consequences arising from a breach of duty, the associated sanctions appeared largely incapable of influencing AWRC governance in a manner which showed consistency with the requirements of the company form.

Table 8.4: Directors Duties and illustrative quotes.

DIRECTORS DUTY	PROBLEMATIC ACTION OR OMISSION	EXEMPLARY INTERVIEWEE ACCOUNTS
SECTION 171 DUTY TO ACT WITHIN POWERS	ADMISSION BY DIRECTORS THAT THE CLUBS HAD FAILED TO CONSIDER ARTICLES OF ASSOCIATION PRESCRIBING THEIR POWERS IN PREFERENCE FOR PRE-INCORPORATION CONSTITUTIONAL DOCUMENTS.	"They (the membership) would be governed by our constitution/rules which we as a club still are governed by for want of a better phrase instead of the articles, we're not governed by the articles of association, no one's bothered looking at them for years." A3
SECTION 173 DUTY TO EXERCISE INDEPENDENT JUDGMENT	DIRECTORS CEDING DECISION-MAKING POWERS TO INDIVIDUALS WHO PREVIOUSLY CONSTITUTED THE UNINCORPORATED CLUBS MANAGING COMMITTEE IN CIRCUMSTANCES WHERE IT IS UNCERTAIN WHETHER SUCH COMMITTEE MEMBERS ARE ASSOCIATED WITH THE COMPANY.	In response to whether members would be transferred to the company  "probably not .... now whether that changes over the next two or three years I don't know, it was going to be too much of a hassle, it was too much because of the club constitutions you would have to get rid of the club constitutions you would have to call an EGM you would have to do this you would have to do that, so at the moment we've decided to keep things simple, and to run it exactly the same way as its run now with the committee in charge but just with a limited company and one or two directors instead of trustees." A14
SECTION 174 DUTY TO EXERCISE REASONABLE CARE, SKILL AND DILIGENCE	DIRECTORS FAILING TO HAVE REGARD TO THEIR RESPONSIBILITIES AS DIRECTORS AND REJECTING THE CHANGE IN FORM AS A MATERIAL ORGANISATIONAL CHANGE.	"to be honest we've got two directors for each company; they have to be the same people and the board of directors, well it doesn't exist as a board of directors. What we have, what we've continued with despite all of this is the club committee, and the club committee are all members of the club and uh that's how are decisions are carried out here by the committee doing what its always done. We do need a bit of a revamp to be honest and its an exercise we'll get round to somehow but to find the time and understand how to sort complicated stuff like that out you know it's tough for us we're volunteers... Obviously there's the companies house formalities and all the rest of it and everything we have to say that we've had a board meeting to agree the accounts and everything but what we actually have is an AGM and everything as we always have" A15.
SECTION 172 DUTY TO PROMOTE THE SUCCESS OF THE COMPANY	DIRECTORS' FAILURE TO TRANSFER MEMBERSHIPS LIMITS THOSE CONSTITUTING THE COMPANY MEMBERSHIP THUS COMPLICATING THE MATTER OF TO WHOM THE DIRECTORS NEED ACT IN THE BEST INTERESTS OF.	"I'm not aware of any responsibilities that I have that may be a problem for me financially, if I file the accounts on time everything's ok." A10  "Um, I'm not really sure.... I don't think they are." A3  "Yes and as xx the treasurer said there are things which we have spoken about in relation to the membership and perhaps what we should do and would like to do but, I don't think its top of our to do list simply because this gentlemen who is an expert on tax made us feel that it would be the wrong step for us." A3

The research proposes that in light of such findings organisational responses to changes required by law should therefore perhaps be considered more processual, with ideas relating to such matters (and even ignorance) moulded by the organisations' critical actors and the competing non-legal forces driving their behaviour. Understanding legal obligations as one element of a constellation of malleable institutional forces capable of impacting upon organisational behaviour is advanced as the more appropriate means of understanding the law's impact in the research circumstance.

### 8.3.1 Implementation and explanation

The following sections largely focus upon *how* the clubs in this study interpreted what implementation of the company limited by guarantee form required. This latter phase focusses on the embedding of the company limited by guarantee for three reasons. First, this empirical finding was considered particularly instructive as regards accounting for the role of the legal context in causative commentary.<sup>71</sup> Whereas the dominant organisational logic of clubs corresponded with legal arguments against personal liability relevant to the use of the unincorporated form, the interaction between logics as occasioned by use of the company form provided for a problematic conflict. Such conflict and the associated practices were taken to be instructive as to evaluations of the overall utility of the incorporation policy to AWRC. Second, although the legal context relevant to unincorporated associations was described in some detail within chapter 2, commentary relating to the difficulties use of the company limited by guarantee may pose for VSC was limited. By drawing on the findings from the empirical engagement of the research and applying what is argued to be a theoretically suitable framework, the legal context relevant to AWRC post incorporation can be engaged with and accounted for more effectively. Finally, such a progression was understood to mitigate Fershee's concerns that scholarship has often focussed on the positives of incorporation without giving an appropriate level of engagement to what those disadvantages of incorporation may mean for entities considering transformations of legal form.<sup>72</sup>

### 8.3.2 Law and logics

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<sup>71</sup> As depicted by figure 8.1

<sup>72</sup> Joshua Fershee, 'The Benefits and Burdens of Limited Liability' (2021) 22 *Transactions: The Tennessee Journal of Business Law* 313

In terms of understanding legality's place within the nested architecture of an institutional logics framework, consistent with previous understandings, law is taken to represent a field level force.<sup>73</sup>

Analogous to neo-institutional understandings of organisational fields, legal fields are understood to comprise of legal organisations such as courts, legislatures, and administrative agencies.<sup>74</sup> Ideas about law and compliance within legal fields are understood to evolve, are exchanged, and become institutionalised amongst the actors and organisations comprising the field in a manner similar to the ways ideas diffuse across organisational fields.<sup>75</sup>

Critical to understanding the legal context's role in the incorporation circumstance is a recognition of society as comprised of a multitude of fluid and overlapping fields. The permeability of such fields is taken as that which allows ideas to transcend their sphere of origin and what makes consideration of the legal context relevant. From a legal perspective, ideas emerging from the legal field may, for example, affect organisational fields by altering perceived costs and benefits of taking one choice over another.<sup>76</sup> Applied to the research context, the apparent litigious nature of the contemporary legal field, provided insight into how ideas emerging from the legal context were utilised by AWRC in justification of why choosing the company limited by guarantee was the more appropriate option regarding legal form.

Though occasions may exist whereby legal obligations are followed blindly, the research proposes that organisational compliance with formal rules can be understood as a product of legal ideas, obligations, and practices, interacting with an organisation's dominant logic. Reinforcing Edelman et al's views of compliance, organisational relationships with law in the research context could be seen

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<sup>73</sup> Mark Suchman and Lauren Edelman, 'Legal Rational Myths: The New Institutionalism and the Law and Society Tradition' in Walter Powell and Paul Dimaggio (eds) *The New Institutionalism in Organisational Analysis* (University of Chicago Press 1991), p.904

<sup>74</sup> To comply or not to comply- that isn't the question: how organisations construct the meaning of compliance (n 69)

<sup>75</sup> Ibid, p.105

<sup>76</sup> Neil Fligstein, "Social Skill and the theory of fields. Sociological theory" (2001) 19 Sociological Theory 105, p.108

as a circumstance in which obligations flowing from the legal field were transfigured to align with institutionalised ideas and norms supportive of the dominant logic.<sup>77</sup>

Edelman, within her 2004 paper expanding the use of a logics perspective into the legal arena stated that “institutionalised ideas about what is rational develop at the societal level in concert with institutionalised ideas about what is fair, what is legal, what is legitimate.”<sup>78</sup> Prior to this section, the importance of engaging with what appears to the participants as fair and legitimate behaviour has been developed at length. Chapter 7’s first and final themes drew attention specifically to the importance of understanding not just how organisations view what is legal but what fairness and legitimacy in the law do and *should* represent.

*“How, when, and why people follow the law is not simply a matter of enforcement or deterrence but also depends on evolving interpretive frameworks, norms and values.”<sup>79</sup>*

The research findings supported Amis et al’s contention that without congruence with existent norms, substantive change flowing from external policy, even that of a legal nature, is likely to be limited.<sup>80</sup> Indeed, rather than achieving substantive organisational change, the product of this reconstruction of legal obligations in the research circumstance meant that the effect of the legal field was often limited to little more than occasions of ceremonial conformity. Codified duties, for example, requiring directors to uphold independence of judgement and have regard to views of company members were undermined by the realities of the situation.<sup>81</sup> Implementation of the company limited by guarantee structure in the observed manner thus represented a dereliction of statutory directors’ duties as a consequence of a perpetuation of the dominant logic and how that logic manifested as notions of

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<sup>77</sup> Diversity rhetoric and the managerialization of law (n 65)

<sup>78</sup> Lauren Edelman, “Rivers of Law and Contested Terrain: A Law and Society Approach to Economic Rationality.” (2004) 38 Law & Society Review 181, p.186

<sup>79</sup> Marco Brydolf-Horwitz, “Risk, Property Rights, and Antidiscrimination Law in Rental Housing: Toward a Property-in-action framework” (2020) 45 Law & Social Inquiry 871, p.873

<sup>80</sup> John Amis, Trevor Slack, and Bob Hinings “Values and Organisational Change” (2002) 38 Journal of applied behavioural science 436, p.462

<sup>81</sup> As depicted with section 7.5.

appropriate conduct. Such findings are taken to represent an occasion in which institutional influences lead to acceptance of conduct based on what compliance should be rather than what is strictly required.<sup>82</sup>

### 8.3.3 Translation theory

The thesis aimed at developing a theoretical framework capable of explaining AWRC engagement with the incorporation policy whilst appropriately accounting for the role of the legal context. First order qualitative analysis identified a requirement for any theoretical framework to address internal and external forces influencing incorporation directed behaviour. A reconceptualisation of the data led to an understanding of the behaviour as explainable by a nested logics perspective. Within such nested architecture, external isomorphic pressures could be understood as prevalent field level logics and internal strategy advocated by decision-makers by reference to societal institutional logics. What was abundantly clear was that the product of these forces resulted in a circumstance whereby traditional conceptions of an organisation operating as a company limited by guarantee did not match that which was thought appropriate by AWRC decision-makers.

In order to explain the divergence between expectation and reality, the thesis turns to translation theory and the notion of policy treatment. Translation theory's central premise, as first introduced at chapter 3, is that organisational change can be affected by external policy, but crucially, it is necessary that the policy should be understood as treated within organisations prior to any outcome or impact of the policy becoming observable.<sup>83</sup> Accordingly, translation theory is sensitive to the impact of a combination of internal and external influences.

Translation theory holds that “new ideas are combined with already existing institutional practices and, therefore, are translated into local practice.”<sup>84</sup> Whereas traditional institutional theory relies upon

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<sup>82</sup> Lauren Edelman and Robin Stryker *A Sociological Approach to Law and the Economy* (Princeton University Press 2010), p.538

<sup>83</sup> Eivind Skille, “Understanding sport clubs as sport policy implementers” (2008) 43 *International review for the sociology of sport* 181, p.192

<sup>84</sup> *Ibid*, p.193

diffusion as a means of explaining organisational change, translation theory is far less passive.<sup>85</sup> Policy obligations, including of a legal nature, are taken to be actively imported and treated to fit into the receiving context.<sup>86</sup> Importantly, translation theory recognises the primacy of club decision-makers, given, as was also the case in this circumstance, it is taken to be their interpretation of law, responsibility, and personal liability, for example, which is important. In this sense the thesis aligns with Langevoort's conclusions that not without understanding what organisational decision-makers hear amidst the noise can we understand the suitability of regulatory strategies.<sup>87</sup> If arguments as to personal liability influence clubs but the changes required by the company limited by guarantee are considered too onerous for volunteers to action, such conclusions rely on the decision-makers interpretation of personal liability and what is too onerous. The empirically observable outcomes are in consequence a product of those interpreted notions of legal responsibility and liability within clubs.

*“Translation aims at the appropriation of the external thing, which is then given another function, an altered meaning and often a new shape in the new context.”<sup>88</sup>*

Translation theory's utility to the research is underpinned by the manner in which dominant organisational logics have been considered to represent a prism through which external policy is viewed and, if imported, is done so in a manner whereby its implementation is conditioned by dominant logics. The research understands the clubs as “receiving entities”, influenced by the dominant volunteer logic which accounts for the aforementioned divergence with legitimate company practices.

As was evident from figure 8.1 above, the incorporation policy therefore was understood to have been received and conditioned by the dominant logic resulting in the empirically perceptible behaviour.

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<sup>85</sup> Ibid, p.193

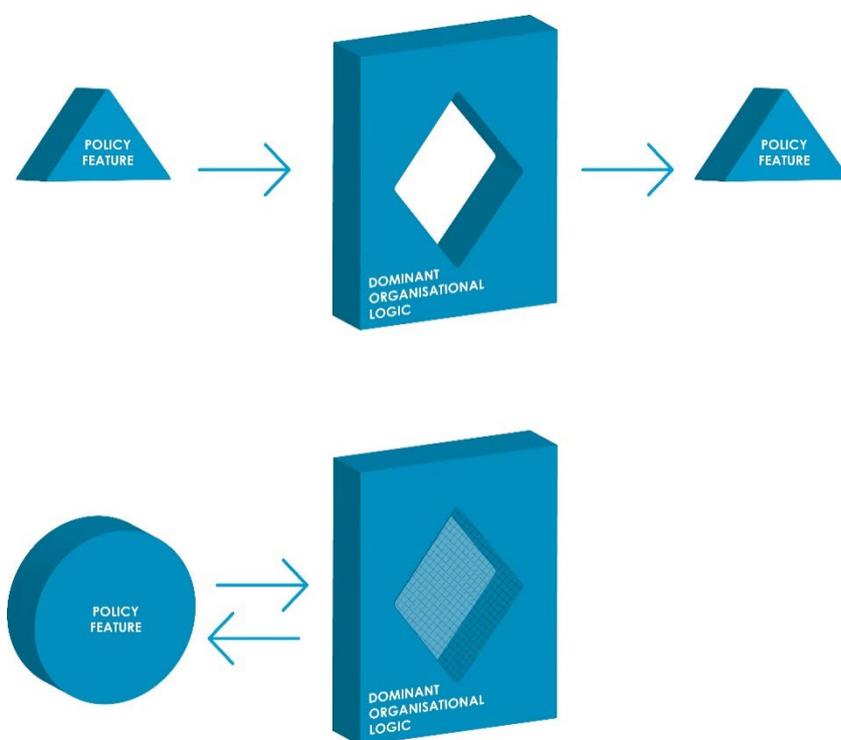
<sup>86</sup> Ibid, p.193

<sup>87</sup> Donald Langevoort, ‘The Human Nature of Corporate Boards: Law, Norms and the Unintended Consequences of Independence and Accountability’ (2001) 89(4) Georgetown Law Journal, p.832

<sup>88</sup> Richard Rottenburg, “When Organisation Travels: On Intercultural Translation” in Barbara Czarniawska and Guje Sevon (eds) *Translating Organisational Change* (De Gruyter 1996), p.214

Reducing the incorporation policy to the plethora of features, norms and responsibilities it contains and promotes, allows for an alternative understanding of the effects of logics upon the policy's implementation. By recognising the diverse features of the policy and numerable consequences for the implementing clubs, the organisational logic can be perceived as a selectively permeable membrane. If a feature of incorporation "fit" with the volunteer logic then the feature would be implemented with no or little conditioning by the organisation (Figure 8.3). Alternatively, if a feature of incorporation was ill-suited to the dominant logic, a rejection of that feature (Figure 8.4) or a modification of such feature (Figure 8.1) in alignment with the dominant logic would take place.

*Figure 8.3: Policy features and dominant organisational logics 1.*



*Figure 8.4: Policy features and dominant organisational logics 2.*

The research findings in this regard support Heimer's arguments that only legal tools which were found to be useful were usually adopted by organisations. Other legally mandated practices and

procedures, argued by Heimer as perhaps developed from contrasting logics, would need to be adapted to fit receiving contexts.<sup>89</sup>

### 8.3.4 The logics of law

The previous sections provided an explanation of how organisational logics may affect those rules and ideas which flow from the legal field. Consistent with Edelman's findings, the empirical data thus supports the notion that an organisation's dominant logic (and all that represents as regards notions of fairness and legitimacy) may affect its treatment of the law, its obligations, and institutionalised myths.<sup>90</sup> Though outside of the traditional legal environments engaged by Moorhead, the findings further support his contentions that an institutional logics perspective is capable of facilitating an appreciation as to those co-existing and often conflicting influences which characterise decision-making of a legal nature in organisational circumstances.<sup>91</sup>

Further application of an institutional logics perspective however provides for an opportunity to develop understanding further as to *why* an incompatibility between the law's requirements and AWRC conceptions of fair and legitimate behaviour may emerge, and why consequential translation is evident. As previously mentioned, an institutional analysis conceives of organisational fields and legal fields as porous and overlapping. As a consequence, an institutional logics perspective encourages an understanding of fields as mutually influenced.<sup>92</sup> Edelman developed this notion of fluidity by suggesting that institutionalised ideas flow from organisational fields to legal fields in the same manner as they flow in the opposite direction. The outcome of institutionalised ideas from organisational fields effecting legal fields and consequential law is described as legal endogeneity.<sup>93</sup> Arguments for understanding the law as endogenous have been supported through reference to

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<sup>89</sup> Carol Heimer, "Competing institutions: Law, medicine and family in neonatal intensive care" (1999) 33 *Law and Society Review* 17

<sup>90</sup> Diversity rhetoric and the managerialization of law (n 65)

<sup>91</sup> Richard Moorhead and others, *In-House Lawyers' Ethics: Institutional Logics, Legal Risk and the Tournament of Influence* (Hart 2018)

<sup>92</sup> Lauren Edelman, "Law at Work: The Endogenous Construction of Civil Rights" in Laura Nielsen & Robert Nelson (eds) *Handbook of Employment Discrimination Research Rights and Realities* (Springer, 2005)

<sup>93</sup> *Ibid*

judicial acceptance as to transfigured organisational interpretations of legal compliance,<sup>94</sup> as well as through consideration of those entities to whom legislators refer in discussions of the creation of new law.<sup>95</sup>

Although an interesting interpretation as to the creation of legal policy in some respects, the benefit of such claims of endogeneity appeared limited to the research circumstance in the first instance. This was owing to the apparent lack of nexus between voluntary not-for-profit organisations considered by the research and the legal framework which defines issues of liability and regulation relevant to users of the company limited by guarantee. However, by appreciating the place of historical legal development, the genesis of the law which has come to define post incorporation governance for AWRC is understood as an important issue for the research to appreciate.<sup>96</sup>

It is widely accepted that the proliferation of the incorporated company in the 19<sup>th</sup> century and specifically limited liability was exemplary of capitalism in law and the product of a market-based logic.<sup>97</sup> Both the Joint Stock Companies Act of 1844 as well as the Limited Liability Act of 1855 have been described as “emblematic legislative attempts engrained in economic liberalism signifying the privatisation of corporate law.”<sup>98</sup> At its core, the corporation was considered as a vehicle serving private wealth accumulation as its overriding social objective.<sup>99</sup> Limited liability as a consequence can be seen to represent a circumstance of endogeneity between economic and legal fields.<sup>100</sup> Applying an institutional logics perspective to law, Edelman and Stryker commented that “just as a capitalist economy is endogenous to law, law is endogenous to the economy.”<sup>101</sup>

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<sup>94</sup> Diversity rhetoric and the managerialization of law (n 65)

<sup>95</sup> Shauhin Talesh, “The Privatization of Public Legal Rights: How Manufacturers Construct the Meaning of Consumer Law” (2009) 43 *Law and Society Review* 527

<sup>96</sup> A Sociological Approach to Law and the Economy (n 84)

<sup>97</sup> Max Weber, Guenther Roth and Claus Wittich, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press 1978)

<sup>98</sup> Michael Galanis, “Corporate Law Versus Social Autonomy: Law as Social Hazard” (2021) 32 *Law and Critique* 1, p.5

<sup>99</sup> *Ibid*, p.5

<sup>100</sup> A Sociological Approach to Law and the Economy (n 84), p.540

<sup>101</sup> *Ibid*, p.535

More specifically Aguilera recognised the organisational governance of Anglo-Saxon countries as determined by a market logic.<sup>102</sup> Within such jurisdictions, what can be understood as lawful governance is primarily based upon detailed and precise codified regulations.<sup>103</sup> The detail and precision is understood to flow from the need to mitigate the effects of the knowledge asymmetry between investor and director, thereby promoting certainty.<sup>104</sup> This can be taken to serve the market logic given certainty, as prescribed by corporate governance, promotes shareholder confidence as regards the security of their investment.<sup>105</sup> The dominance of the market governance logic taken to exist at a national level by Aguilera is interpreted to define how firms are expected to act if they are to achieve legitimacy. If, as was the case in the research circumstance, organisations' directors and/or members act contrary to the regulatory framework operating to control behaviour, they are considered by Aguilera to have undertaken acts of deviant governance.<sup>106</sup>

Aguilera considers these occasions of deviant governance as the product of a conflict between national governance logics and organisational identity.<sup>107</sup> Though the research does not rely on the notion of organisational identity, an organisation's dominant logic is taken to represent a significant element of that which forms organisational identities.<sup>108</sup> A reconceptualisation of governance deviance as a conflict between national governance logics and dominant organisational logics, provides a means by which the research findings can be reconciled with Aguilera's deductions as well as Edelman's arguments of endogeneity. If one considers the market logic to be that which generally underpins the national legal regulatory framework for company governance, then Edelman's contentions of law as endogenous can be supported. The issue for voluntary organisations, such as AWRC, is that the endogeneity which defines governance frameworks seemingly originated with an eye to how law will affect profit-making business. The outcome of endogeneity in this regard has

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<sup>102</sup> Ruth Aguilera, William Judge and Siri Terjesen, "Corporate Governance Deviance" (2018) 43 *Academy of Management Review* 87

<sup>103</sup> *Corporate Governance Deviance* (n 104), p.7

<sup>104</sup> Sean Griffith, "Corporate Governance in an Era of Compliance" (2016) 57 *William & Mary Law Review* 2075, p.2122

<sup>105</sup> *Ibid*, p.2122

<sup>106</sup> *Corporate Governance Deviance* (n 104), p.11

<sup>107</sup> *Ibid*

<sup>108</sup> *The Institutional Logics Perspective: A New Approach to Culture, Structure and Process* (n 7), p.135

ultimately resulted in corporate governance frameworks driven by market logics regulating voluntary organisations. This, it is argued, proves problematic given voluntary organisations' dominant logics may be considered as in conflict with the market driven legal logic which prescribes legitimate and lawful organisational behaviour.

Whereas Edelman talked of a "legal logic" capable of underpinning the entirety of a national legal field, the research focuses more on the plurality of legal logics and the sector specific objectives which may influence respective developments.<sup>109</sup> "Environmental law embodies health and safety goals but a commodity logic as well, antitrust law promotes political democracy and the preservation of competitors, in addition to market efficiency and consumer welfare".<sup>110</sup> Law in this way is understood as "intricately interwoven with social forces".<sup>111</sup> Corporate law, in this regard, has been argued to be understandable only by reference to the capitalist logic and the ideology that follows and solidifies it.<sup>112</sup> Whereas market institutional influences partly formed the AWRC's dominant organisational logic, the communitarian element, representing the lack of personal financial motivation for those involved in amateur sport, provides for the point of difference between the more pure market logic defining the corporate legal framework and the organisational volunteer logic defining the receiving clubs. This lack of personal financial gain for those involved in AWRC is taken to be that which undermines the rationale of a corporate legal framework dictating what appropriate voluntary organisational governance should look like.

The dominance of the market logic within corporate law has seemingly, as a product of this endogeneity, perhaps provided for rules which may affect voluntary organisations, but that have not been developed as a result of a cross-pollination of norms, values, and ideas between the legal and voluntary organisational fields. Understood in this way, support can perhaps be given to the

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<sup>109</sup> The legal logic as advocated by Edelman is taken to represent an emphasis upon individual rights, constraints on the arbitrary exercise of power, due process, fair-treatment, that law is reasoned, and finally that law is applied impartially and universally to all actors and groups. To comply or not to comply- that isn't the question: how organisations construct the meaning of compliance (n 69), p.105

<sup>110</sup> Robin Stryker, "Rules, resources and legitimacy processes: Some Implications for Social Conflict, Order, and Change" (1994) 99 *American Journal of Sociology* 847, p.890

<sup>111</sup> A Sociological Approach to Law and the Economy (n 84), p.529

<sup>112</sup> Corporate Law Versus Social Autonomy: Law as Social Hazard (n 100), p.23

conclusions of the Scottish Law Commission that a significant problem of incorporation generally is that the available legal forms have not been developed for small non-profits' regulation and needs.<sup>113</sup> It is theorised that it is this lack of mutual construction which results in an understanding of deviant governance as legitimate as seen through the accounts of the interviewees.

In consideration of contributions to empirical legal research, the study's utilisation of an institutional logics perspective can be seen to be a development of how legal issues within organisations may be explainable by institutional logics. The findings of the research furthermore can be taken to align with those works which have relied upon institutional logics as a means of understanding why legal policy appears not to survive the journey from top to bottom, or perhaps more accurately, why policy occasionally results in outcomes somewhat removed from what it is assumed policy architects had in mind during conception.<sup>114</sup> Conceived in this way, the research can be taken to align with Edelman's findings of law promoting anti-discriminatory policies being subjected and transformed from their original form owing to the dominance of a managerial logic existing within the receiving contexts.<sup>115</sup> Although the thesis utilises Skille's translation theory, which perhaps provides for a different label, the explanation of how logics can condition and reshape policy, even policy with legal consequence, provides a similarity between the research findings and the conclusions of Edelman.<sup>116</sup>

#### 8.4 The place of law

The previous sections have outlined how the volunteer logic may serve to transfigure legal responsibilities in a manner which perpetuates dominant organisational norms. Furthermore, the chapter has shown how the discrepancy between organisational and legal field level logics may explain why these organisations have responded to the law in the manner which they have done. The role of law within the incorporation circumstance should however not be understood to be confined to discussions of logics. Returning to critical realist understandings that context often serves as an

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<sup>113</sup> Scottish Law Commission, *Unincorporated Associations* (Scot Law Com No. 2017 2009) section 2.7.

<sup>114</sup> The Threat of Legal Liability and Managerial Decision Making: Regulation of Reproductive Health in the Workplace (n 34)

<sup>115</sup> Diversity rhetoric and the managerialization of law (n 65)

<sup>116</sup> Ibid

inhibiting or facilitating force as regards perceptible behaviour, section 8.4 details how the legal context may facilitate the “deviant governance” as observed at section 7.5. To facilitate a greater understanding still as to the role of the legal context in assessment of the utility of the incorporation policy, the chapter progresses to consider whether deviant governance in fact matters. Section 8.4 concludes that retaining a contextual sensitivity is necessary in matters of policy evaluation.

#### 8.4.1 Matters of enforcement

Brydolf-Horwitz focussing upon laws influencing abilities noted that disagreement with a law’s underlying premise may lead to a failure of law to provide for meaningful change.<sup>117</sup> Equally, Heimer’s recognition that the effect of legal arguments are greatest when they work in tandem with arguments emanating from other institutional forces, and less when in conflict, appeared supported by the research.<sup>118</sup>

By rational extension of the above, it may be suggested that law should therefore be considered as inept at constraining or influencing behaviour. This of course is not the case. Legal history is littered with occasions of law makers seeking to go against the grain as regards dominant organisational and organisational field level values and preferences.<sup>119</sup> However, Brydolf-Horwitz qualification as to his argument that if one disagrees with legislation it ceases to be effective, provides nuance to the conclusion that law is futile in swaying the behaviour of those who disagree with its substance.

Brydolf-Horwitz stated that should actors disagree with the law, *and enforcement is weak*, then law often fails to provide for meaningful change.<sup>120</sup> For the research, in evaluation of the benefit of the incorporation policy to AWRC, matters of enforcement require consideration.

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<sup>117</sup> Risk, Property Rights, and Antidiscrimination Law in Rental Housing: Toward a Property-in-action framework (n 81), p.875

<sup>118</sup> Competing institutions: Law, medicine and family in neonatal intensive care (n 91), p.59

<sup>119</sup> See for example Action on smoking and health, ‘key dates in tobacco regulation 1962-2020’ (Action on Smoking and Health 2020) <<https://ash.org.uk/wp-content/uploads/2020/04/Key-Dates.pdf>> Accessed December 1<sup>st</sup> 2020. Andreas Hoecht, ‘Quality Assurance in UK higher education: Issues of trust, control, professional autonomy and accountability’ (2006) 51 Higher Education 541

<sup>120</sup> Risk, Property Rights, and Antidiscrimination Law in Rental Housing: Toward a Property-in-action framework (n 81), p.875

Aguilera discussing deviant governance made reference to the crucial role of enforcement should substantive improvements regarding compliance be achieved.<sup>121</sup> Low levels of enforcement, according to Aguilera, are recognised to provide latitude and accessibility of opportunity for deviant governance.<sup>122</sup> In application to this research, a weak enforcement environment as regards the behaviour of VSC decision-makers, is argued to contribute to the empirical findings as they relate to issues of compliance with the requirements of the company form. From a purely practical perspective, it is acknowledged that litigation in a common law system is expensive and time consuming.<sup>123</sup> Most individuals and organisations involved in sport are as a consequence not often in a position to incur large legal bills over an extended period.<sup>124</sup> Given the resource constraint accepted to plague VSC operations, the notion that an organisation would be willing to assign precious funds to litigate against directors failing to properly implement the company form appears unlikely.

Though there are practical reasons for concluding that enforcement of AWRC decision-maker misconduct is unlikely, a further factor disincentivising a strong enforcement context can be considered to flow from a product of the dominant organisational logic. First, the likelihood of enforcement may be diminished owing to the ambiguity which Black argues sometimes effects legal instruments seeking to regulate organisational practice.<sup>125</sup> Where there is room for ambiguity, there is room for social construction of the meaning of law.<sup>126</sup> Provision for social construction, in turn, allows for the deployment of logics. The relationship between logics and enforcement in this circumstance is important given the legal framework of companies limited by guarantee largely confers the right to enforce issues of director non-compliance on the companies themselves, and by association, any non-compliant decision-makers' fellow directors and members.<sup>127</sup> Such process, it is

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<sup>121</sup> Ruth Aguilera, William Judge and Siri Terjesen, "Corporate Governance Deviance" (2018) 43 *Academy of Management Review* 87, p.107

<sup>122</sup> *Ibid*, p. 103

<sup>123</sup> Mohd Akram and others, 'Mediation as an effective tool for resolving sports disputes' (2015) 7 *International Journal of Business, Economics and Law* 81

<sup>124</sup> Deborah Healey, *Sport and the Law* (4th edn, Newsouth Publishing 2009), p.15

<sup>125</sup> Julia Black, "Paradoxes and Failures: "New Governance" Techniques and the financial crisis" (2012) 75 *The Modern Law Review* 1037, p.1056

<sup>126</sup> *Ibid*, p.1044

<sup>127</sup> Elizabeth West, *Companies Limited by Guarantee* (Jordan Publishing 2004), p.124

argued, provides for a circumstance of an insulation of legal risk owing to the fact the potential litigators exist within the same organisation. Given the dominance of the volunteer logic is understood to exist at an organisation level for reasons as outlined previously, enforcement by fellow volunteers within clubs is theorised to be weak given shared conceptions as to how regulation should be handled likely derives from the same dominant logic. To compound such issues, what appears to be a prevalent practice of failing to effectively transfer memberships, limits possibilities of enforcement further.

This is not to say that there will be no occasions whereby the dominant organisational logic will cease to be determinative as to enforcement. Interviewee A13 for example noted how their club's current executive body were pursuing a previous committee member on the basis of a misappropriation of funds.<sup>128</sup> Occasions of enforcement are therefore possible. Such an action will however often represent a divergence from the framing of the issue which a dominant logic and the complex, expensive, protracted nature of litigation within the legal context provides for.<sup>129</sup>

#### 8.4.2 Charitable lessons

The 2021 case of *Official Receiver v Batmanghelidjh*<sup>130</sup> relating to an application of the official receiver for the disqualification of voluntary directors of the charity Keeping Kids Company, provides for an encouraging development of the law which serves to mitigate concerns a dereliction of directors' duties may undermine the benefit of the incorporation policy.

The case involved a consideration of the conduct of trustee directors of charities incorporated under the Companies Act and therefore is not entirely analogous to the company limited by guarantee model relevant to the incorporation policy. The claimant Official Receiver's case rested on the argument that the Kids Company's status as a charity was ultimately irrelevant.<sup>131</sup> The official receiver argued there

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<sup>128</sup> Interview A13

<sup>129</sup> Bringing Society Back In: Symbols, Practices and Institutional Contradictions (n 8), p.232

<sup>130</sup> Also known as *Keeping Kids Co.* [2021] EWHC 175

<sup>131</sup> *Ibid* [977]

is no express dilution of the usual directors duties and that a charity is not obliged to operate as a company, but if it does so (and receives the benefit of limited liability), then those dealing with it should be able to expect its operators to be held to the same standard as non-charitable companies.<sup>132</sup>

The court ultimately rejected the argument of the official receiver and in endorsing Sir Richard Scott V-C's remarks in *Stanway v Attorney General*,<sup>133</sup> sought to apply a more benevolent approach to the manner in which directors' duties under the Companies Act should be considered in charitable circumstances.

*"I do not think that individuals who have given long periods of their time to unpaid public service – and that is what becoming a trustee of a charity involves – do deserve to have their efforts recognised by not being sued for mismanagement unless the proposed action against them is one which anyone can see cannot be resisted."*<sup>134</sup>

The court further endorsed the findings of *Lehtimäki v Cooper* and specifically the "*Liberal interpretation taken to charities by the courts.*"<sup>135</sup> Extending this principle the court ultimately found against the claimant on the basis of the importance which should be attached to the charitable context within which these individuals were carrying out their duties as directors. The court had given further regard in judgment to the words of Lord Eldon in the case of *Attorney General v Exeter Corporation*.<sup>136</sup> Here, Lord Eldon advocated a more sympathetic approach to criticisms of charitable trustees. In doing so, Lord Eldon referenced the importance of not acting in a manner which would "deter all prudent persons from becoming trustees of charities."<sup>137</sup>

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<sup>132</sup> Ibid [977]

<sup>133</sup> *Stanway v Attorney General* [1999] 10 WLUK (Ch)

<sup>134</sup> *Keeping Kids Co.* (n 130) [980]

<sup>135</sup> *Lehtimäki v Cooper* [2020] UKSC 33 [2021] 1 All E.R. 809

<sup>136</sup> *Attorney General v Exeter Corporation* [1826] 38 E.R. 252 (Ch)

<sup>137</sup> Ibid [54] (Lord Eldon)

The findings of the court in *Kids Company* and the endorsements as provided for are encouraging for those individuals within this study, for example, who may be concerned as to the manner in which a court may consider criticisms as to the standards of their directorship.

Although arguments certainly would be made drawing on the principles of the *Kids Company* case should a AWRC director face a similar claim, unless such organisation held concurrent charitable status, it is at least arguable that the same level of sympathy may not be afforded. The court in the reasoning applied to *Keeping Kids Company* as well as in *Lehtimaki* referenced how parliament had recognised the distinct nature of charities.<sup>138</sup> With no such equivalence afforded to VSC or non-profit organisations utilising the company limited by guarantee form more widely, the findings of the court relating to charities should be viewed as encouraging yet interpreted with at least a degree of caution.

The application of a benevolent approach of the courts to standards expected of charitable directors provides for an example of how a dampening of expectations regarding conformity to a regulatory framework built from corporate logics has been recently recognised in non-corporate contexts. With the courts at least showing general sympathy in this regard, the framing of issues as provided for by organisational logics, and litigation expenses disincentivising enforcement, those legal issues flowing from a mismanagement of the implementation of the company limited by guarantee appear concerning in theory if perhaps not to the same degree in reality.

### **8.4.3 Impenetrable veils**

Interviewees bemoaning the excessive resource contribution required to successfully adhere to their regulatory responsibilities, may feel vindicated on understanding the framework to which they must conform applies equally to the private sector's remunerated equivalents. Feelings of vindication for occasions of non-compliance may further be evident if the framework prescribing how directors must operate companies is understood as a product of a corporate market logic.

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<sup>138</sup> *Keeping Kids Co.* (n KKC8) [981] *Lehtimaki v Cooper* [2020] UKSC 33 [2021] 1 All E.R. 809

Although the manner in which volunteers are seemingly “caught up” in a legal framework which has been largely developed on the basis of more commercial logics may convey feelings of sympathy, the market logics underpinning the frameworks development are not entirely negative for the AWRC decision-makers. Comments of the interviewees in some circumstances suggested that clubs were companies in name alone. With limited membership transference and a continuation of committee rule, one could argue that it may be fair for the court to use its powers to see passed the company title. It may in turn be considered equitable to consider the organisation as the unincorporated club it represented prior to incorporation, and for all intents and purposes, may continue to be.

Despite limited liability being criticised since its inception as a tool propping up a legal fiction which offends notions of natural justice,<sup>139</sup> the development of limited liability has seen the court very sparingly utilise its ability to pierce the corporate veil in circumstances whereby it appears it may be fair to do so.<sup>140</sup> It has been considered that this reluctance to utilise the judicial tool has been determined by the law in this sector’s logic of market consistency.<sup>141</sup> Accordingly, the sparing use of veil piercing powers can be seen to be a manifestation of law’s “role in stabilising markets by reducing uncertainty.”<sup>142</sup> Despite arguments that limited liability offends contrasting legal ideals of restorative justice and behavioural deterrence, the perpetuation of consistency in support of market logics is seen as a policy decision which gives primacy to the benefit to business. The development of the law to only pierce the veil in exceptional circumstances may hold its reasonings in commercial certainty but the benefit to AWRC decision-makers from a personal liability perspective is likely nevertheless.

#### **8.4.4 Law as an enabling force**

Critical realism regards context as important in terms of appreciating how the same may inhibit the

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<sup>139</sup> Marie-Laure Djelic, “When Limited Liability was (still) an issue: Mobilization and Politics of signification in 19<sup>th</sup>-century England” (2013) 34 *Organisation Studies* 595, p.610

<sup>140</sup> *Prest v Petrodel Resources Ltd and others* [2013] UKSC 34 [2013] [WTLR 1249]

<sup>141</sup> Thomas Cheng, ‘The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines’ (2011) 34 *Boston College International and Comparative Law Review* 329, p.411

<sup>142</sup> A Sociological Approach to Law and the Economy (n 84), p.536

actualisation of certain causal mechanisms. In the case of the incorporation policy the legal context appears to serve as something of a facilitating force as regards the empirical behaviour observed. Should the legal context have promoted proactive enforcement in contrast to the arguments as presented within section 8.4, then it is very possible that the causal mechanisms and associated behaviour observed would not have been actualised. Fears of sanction, for example, may alternatively have provided for instances whereby the company limited by guarantee was effectively implemented. Equally, a stronger enforcement context may have discouraged many of the clubs who have chosen to incorporate owing to the increased resource expenditure required to do so.

With the context existing as it does however questions arise as to whether the manner in which AWRC embed the company limited by guarantee does in fact matter. If the legal context minimizes those occasions by which corporate deviance is punished, then should an unwillingness or an inability to comply with directors' duties for example disincentivise incorporation? Theoretically at least, the manner in which the company limited by guarantee is embedded provides for a problem at law for those decision-makers hoping to leave behind exposure to personal liability under the previous unincorporated form. Giving due regard to the legal context however may serve somewhat to placate those fears.

Appreciation as to the role of the legal context in the incorporation policy circumstance has provided for a more empirically and theoretically grounded understanding of how issues of liability may manifest. Engagement with the legal context has further contributed to understandings of the overall utility of the incorporation policy to AWRC discussed more comprehensively within the final chapter.

## 8.5 Conclusions

Chapter 8 was comprised of two parts with each contributing to explanations of club behaviour. Part one put forth the justification for institutional logics as a theory with greater explanatory power than its rival perspectives. Presenting the empirical findings through an institutional logics lens served to justify the theory's ability to explain, integrate, and reconcile phenomena significant to the research objectives.

Although a plurality of logics has been argued to represent the relevant causative forces, it was the interaction between those forces and features of the legal context, as introduced in part two, which ultimately were understood to provide for the observable outcomes. By synthesising parts one and two, the research arrived at an empirically grounded understanding of the causal tendencies of AWRC regarding engagement with incorporation.

Figure 8.5 depicts the constellation of logics underpinning AWRC behaviour. The incorporation policy, as detailed in greater depth at 8.3.3, is understood to be conditioned (or treated) by the dominant organisational logic. The observable outcomes are however appreciated not only to be the product of logics. The figure simultaneously emphasises the place of the legal context, depicted as the blue solution, which may enable the emergence of the empirically observable themes.

*Figure 8.5: An explanatory model of AWRC engagement.*

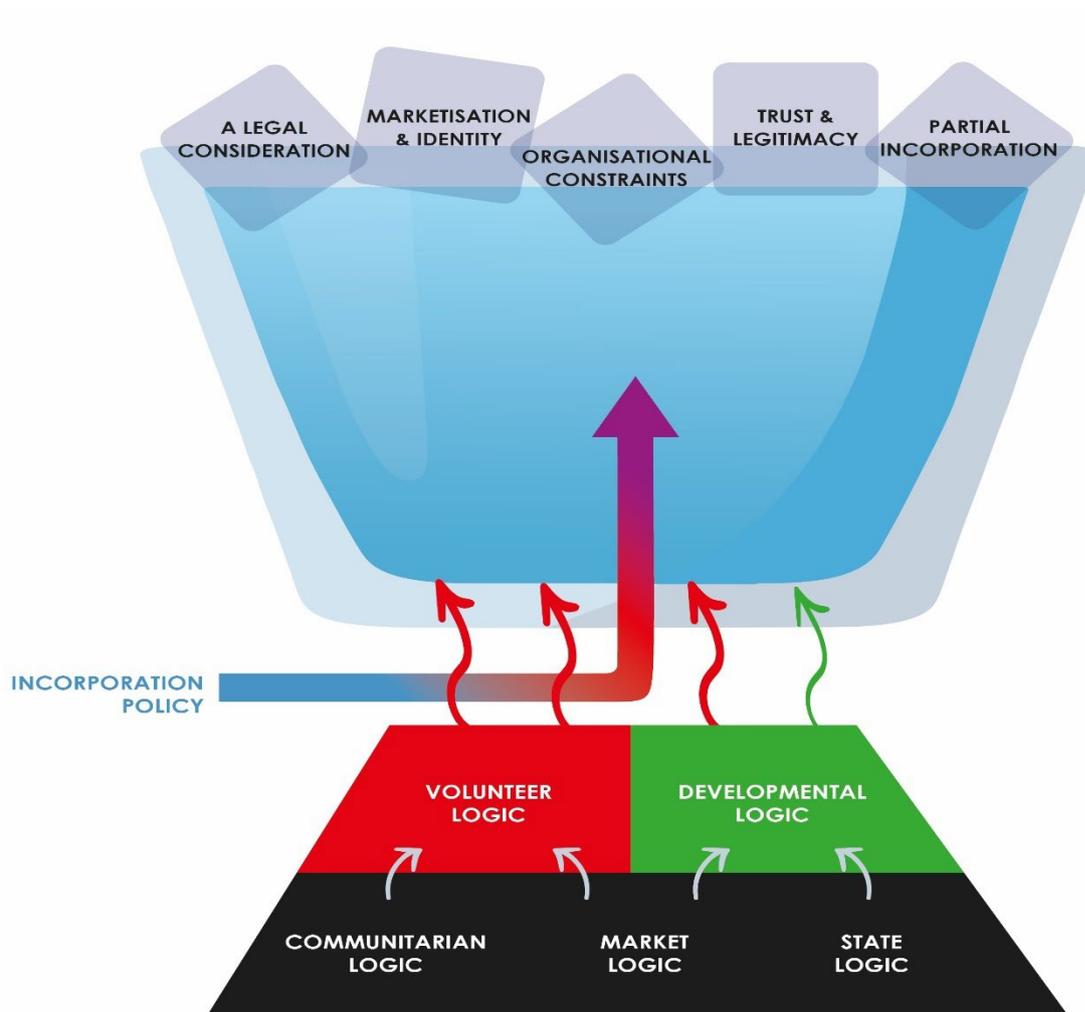


Figure 8.5 seeks to offer no more than an account of a causal tendency amongst those clubs engaged by the research, and in particular those participating within the qualitative phase. The depiction of the tendency emerging from clubs to embrace incorporation superficially whilst resisting its transformative effects substantively does not represent truth, but a starting point from which complexity and further contextual constraints may become appreciable. Contextual variety and the consequences for causal tendencies are discussed further within the concluding chapter 9.

Chapter 9 further moves to develop the final contribution of the present chapter relating to the evaluation of the benefit of incorporation to AWRC. Chapter 8 has argued that it is not only important to understand how incorporation is managed by organisations. Rather, the chapter has suggested it is necessary to properly contextualise what incorporation *actualised* means for clubs and their constituent members. Chapter 9 seeks to develop evaluative discussions whilst drawing together the substantive findings and contributions of the research.



## Chapter 9: Conclusions

The primary objective of the research was to improve understanding of the manner in which AWRC had responded to the incorporation policy. The concluding chapter seeks to draw together the findings from the preceding chapters in consideration of this objective and opens with a re-introduction to the research problem.

In chapter 1 the incorporation policy was introduced as an endeavour intended to limit the likelihood of personal financial loss for those involved with AWRC. Despite sustained promotion of the benefits of incorporating, a considerable number of clubs had seemingly rejected calls to transform legal forms away from the unincorporated association and to the company limited by guarantee. Chapter 1 introduced critical realism as a meta-theoretical perspective thought capable of facilitating understandings as to why clubs may have rejected calls to move on from the unincorporated form.

Critical realism asks what must be the case in order for events (such as clubs choosing to incorporate or rejecting the transformation) to occur as they do. In order to understand those often-latent causative forces underlying events, critical realism advocates an appreciation of the role of context.

Critical realism's formulaic understanding of events as causal mechanisms + context = outcome, led chapter 2 to engage with the legal context considered pertinent to matters of incorporation. A comparative analysis demonstrated how a transformation of legal form to the company limited by guarantee may serve to mitigate, if not exclude, risks of personal liability. As well as providing for an understanding as to the effects of incorporating for AWRC, the chapter considered how the perceived litigious nature of the legal environment may serve to incentivise incorporation. Section 2.7 however engaged with counter arguments which questioned whether the company limited by guarantee indeed provided a fitting solution to the unincorporated association problem.

Chapter 3 provided for a "critical realist review". Consistent with prior descriptions of what incorporation may represent for not-for-profit organisations, the thesis conceived of incorporation as a

policy with professionalising consequences.<sup>1</sup> The review sought relevant extant theory and empirical engagements as a means of facilitating a “head start” in understanding the receptiveness of AWRC to incorporation. Chapter 3 however stopped short of advocating a potential causal framework owing to the perceived benefit a multi-theoretical perspective may afford. Nevertheless, chapter 3 did conclude that an expectation could be drawn from the literature that those causative mechanisms driving and inhibiting professionalisation of clubs generally, may apply to the incorporation circumstance specifically.

The original research of this thesis provided for a two-stage approach as detailed by chapters 4 through 7. First, the thesis applied a statistical analysis to survey data. Second, a thematic analysis was applied to data drawn from 16 interviews with representatives of AWRC. Both the quantitative and qualitative empirical endeavours were undertaken as a means of identifying demi-regularities.<sup>2</sup> The process by which such demi-regularities were synthesised into a model of explanation based upon causal mechanisms was the final analytical objective reserved for chapter 8. In addressing what may have caused those demi-regularities as drawn from the empirical data, chapter 8 relied on an institutional logics perspective appreciative of a nested architecture. The relevance of such findings to the research objectives will now be addressed.

## 9.1 How and why, a question of logics

The contributions of the research to the respective voluntary sports club and empirical legal fields most prominently relate to the use of logics as an explanatory tool for organisational behaviour. The use of a logics perspective is taken as that which serves to move understandings of choices of legal form beyond purely legal and quantitative explanations. In turn, the use of logics as a means of developing understandings of VSC organisational change is extended by this enquiry.

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<sup>1</sup> See section 2.7

<sup>2</sup> See section 1.3

As regards the impact of field level influences, the research supports Robinson, Minkin and Palmer's conclusions that sports clubs felt they were "required to do more and to do it professionally."<sup>3</sup>

Arguments of a professionalising agenda, built on a growth of regulation (if not specifically competition) at the VSC organisational field level were supported by the findings of this research.<sup>4</sup>

The quantitative findings showing high organisational professionalism scores provided for apparent examples of how clubs had seemingly sought to keep up with these pressures to professionalise. High professionalism scores, coupled with interviewee rhetoric denouncing previous organisational practice and procedure in favour of a willing acceptance of modernisation, drew attention to evidence of a developmental logic within the participant organisations. Ultimately however, the need to appreciate not just what is said, or indeed what is superficially done, but to afford consideration to the manner in which organisational development is actualised, provided an understanding of causation drawn not exclusively from these developmental forces.

In terms of understanding why clubs incorporate, the research findings first supported McGregor-Lowndes and Hannah's conclusions that fear of liability and funding opportunities were often capable of overshadowing volunteer concerns of greater regulation.<sup>5</sup> Contrary to perceptions that legal arguments had perhaps failed to "cut through", the interviewee accounts emphasised the importance of law to choices of legal form. The personal liability consequences of utilising the unincorporated form within a legal environment afflicted by a claims culture was felt by all but one participant to be unpalatable. Developing why these legal arguments took hold, analysis drew attention to the role of fairness and how the "halo effect" as described by Flannigan appeared to extend to the psyche of the AWRC executive body members.<sup>6</sup> The research as a consequence builds upon those works suggesting that fears of litigation and a claims culture are prevalent amongst VSC contributors.<sup>7</sup> Such perceptions

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<sup>3</sup> Leigh Robinson, Brian Minkin and Dick Palmer, "The future of management in voluntary sport organisations" in Leigh Robinson & Dick Palmer (eds) *Managing Voluntary Sport Organisations* (Routledge 2011), p.260

<sup>4</sup> Ibid, p.260

<sup>5</sup> Myles McGregor-Lowndes and Frances Hannah, 'Unincorporated associations as entities: A matter of balance between regulation and facilitation?' (2010) 28 *Company and Securities Law Journal* 197, p.202

<sup>6</sup> Robert Flannigan, "Tort immunity for nonprofit volunteers" (2005) 84 *Canadian Bar Review* 1

<sup>7</sup> Graham Cuskelly, Russell Hoye & Chris Auld. *Working with Volunteers in Sport: Theory and Practice*. (Routledge 2006)

as drawn from the qualitative data are understood to both discourage existing and prospective volunteers from contributing whilst also serving as a driver for organisational professionalisation.

Moving passed this initial adoption phase, the study's findings aligned with the works of Edelman,<sup>8</sup> Fahlen et al,<sup>9</sup> and Arvidson and Lyon<sup>10</sup> who drew attention to the practices of decoupling and ceremonial conformity. Evidence of decoupling in the research circumstance served perhaps to qualify the support for Mcgreggor-Lowndes and Hannah's conclusions that concerns of legal precarity may override the discouraging prospects of incorporation's greater regulation.<sup>11</sup> The study's contribution in terms of moving beyond legal and quantitative explanations of choices of legal form is therefore perhaps also somewhat methodological. The inability of the quantitative phase of the research to look beyond the company limited by guarantee label and understand how the clubs and their constituent decision-makers understood the change, and operationalised its requirements, was a limitation somewhat remedied by the more dominant qualitative strand. The inability of quantitative accounts to depict decoupling and perhaps to look behind what Meyer and Rowan described as organisational "window dressing"<sup>12</sup> reinforces Skille's suggestion that to understand a policy's true impact one must engage with an organisation's representatives.<sup>13</sup> As Lipsky stated, "policy implementation in the end comes down to the people who actually implement it."<sup>14</sup>

Resistance to policy requirements on the basis of preference for existing institutionalised practices is a well described element of the VSC literature. Where the thesis develops understandings of resistance

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<sup>8</sup> Lauren Edelman, 'Legal Ambiguity and Symbolic Structures: Organisational Mediation of Civil Rights Law' (1992) 97 (6) *American Journal of Sociology* 1531. Sebastian Peyer and Rob Heywood, 'Walking on thin ice: the perception of tortious liability rules and the effect on altruistic behaviour' (2019) 39 *Legal Studies* 266

<sup>9</sup> Josef Fahlen, Inger Eliasson and Kim Wickman, "Resisting self-regulation: an analysis of sport policy programme making and implementation in Sweden" (2015) 7 *International Journal of Sport Policy and Politics* 391.

<sup>10</sup> Malin Arvidson and Fergus Lyon, "Social Impact Measurement and Non-Profit Organisations: Compliance, Resistance and Promotion" (2014) 25 *Voluntas: International Journal of Voluntary and Nonprofit Organisations* 869

<sup>11</sup> Unincorporated associations as entities: A matter of balance between regulation and facilitation? (n 5)

<sup>12</sup> Konstantinos Pitsakis, 'Resisting change: organisational decoupling through an identity construction perspective' (2012) 25 (6) *Journal of Organisational Change Management* 835, p.844

<sup>13</sup> Eivind Skille, "Understanding sport clubs as sport policy implementers" (2008) 43 *International review for the sociology of sport* 181

<sup>14</sup> Michael Lipsky, *Street level bureaucracy: dilemmas of the individual in public services* (Russell Sage Foundation 1980), p.8

however is the focus upon the rationale for decoupling.<sup>15</sup> Resource dependency theory has previously been utilised as a means of exploring those reasons why clubs outwardly attempt to display a certain behaviour, whilst in reality undertaking activities quite different. Indeed in some respects, issues of resource constraint drove arguments for incorporating in the first instance, and the decoupling behaviour evident thereafter in this study.<sup>16</sup> Critically however, engagement with why the participants considered their actions as fair and appropriate, both at the decision and adoption stage of incorporation, provided a common articulation which suggested a depth to decoupling behaviour removed from more rationalistic considerations of resource maximisation. Rather than represent evidence of more rationalistic arguments, normative explanations based upon what was believed to be the right and legitimate way for the organisations and their constituent individuals to conduct themselves, gave rise to the appreciation of the effects of a volunteer organisational logic and the consequential importance of societally embedding decision-makers.

This research suggests there is something of a tension in the incorporation circumstance (and perhaps professionalisation of clubs more widely) between what is legitimate behaviour according to field level pressures and what is legitimate as derived from wider societal norms. The overshadowing of the developmental logic by the volunteer logic has shown that appreciating what is considered legitimate by an organisation's leading individuals can be illuminating of the organisation's ultimate behaviour. In this sense, Edelman's suggestion as to the importance of engaging with what is considered fair, legal, and legitimate from a societal perspective in accounting for observable conduct appears corroborated.<sup>17</sup>

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<sup>15</sup> Catherine Turco, "Difficult Decoupling: Employee Resistance to the Commercialization of Personal Settings" (2012) 118 *American Journal of Sociology* 380

<sup>16</sup> See section 7.1 and 7.5.

<sup>17</sup> Lauren Edelman, "Rivers of Law and Contested Terrain: A Law and Society Approach to Economic Rationality." (2004) 38 *Law & Society Review* 181, p.187

## 9.2 Context and cause

Chapter 1 first introduced the importance of context in a critical realist study seeking understandings of causality. Chapter 2 thereafter detailed how the legal context largely served to incentivise incorporation. Chapter 8 developed the importance of the legal context in understanding AWRC engagement with matters of incorporation. Chapter 8 submitted that without the legal context enabling AWRC conduct and omissions through a weak appetite for enforcement, such causative influences affecting the empirically observable phenomena may not have emerged.<sup>18</sup>

Such context applicable to all was therefore understood as important in the construction of causative commentary. Those specific circumstances of individual clubs however also proved instructive in understanding club behaviour. Chapter 7's discussions of clubs not being able to incorporate rather than choosing not to do so provided for an appreciation as to how a consistently present mechanism across the interviews, judgment proofing the deserving, was counter-acted by a further causal mechanism being the will of an external creditor. The relevant club expressed a host of causal mechanisms understood to result in a tendency to incorporate such as possession of an executive body with professional skills and modernising motivations. However, such tendency did not materialise as a transformation of legal form owing to the inhibiting effect of the counter-mechanism and its own tendency.

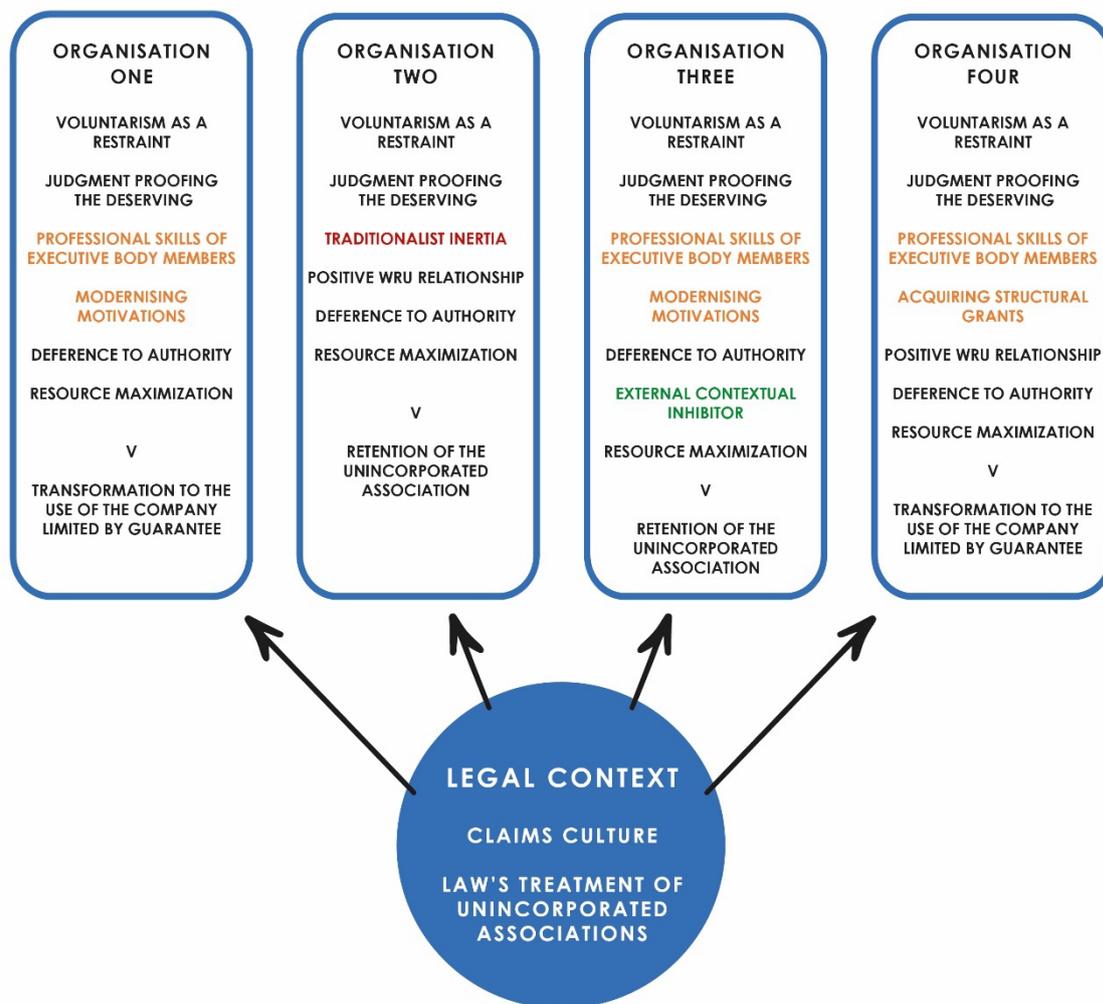
The finding exemplified how the interaction of mechanisms within a certain context may account for contrasting outcomes. Figure 8.5 provided for an explanatory model of AWRC tendencies based on demi-regularities as drawn from the qualitative data. It is appreciated however that such figure ultimately represents no more than a tendency amongst participant clubs with the account of interviewee A8 and the overriding effect of the creditor's reluctance serving as a useful example of how contrasting mechanisms may provide for alternative outcomes.

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<sup>18</sup> See figure 8.5

The lack of generalisability attached to critical realist studies appreciates that causative explanation provides only for a tendency which may not be replicated more widely. Drawing on accounts of the interviewees, including beliefs as to why clubs won't rather than simply can't incorporate, figure 9.1 theorises how collections of mechanisms may serve to account for a diversity in engagement with incorporation. The research therefore has provided only for an account of mechanisms drawn from demi-regularities across the available data. Critical realism does nevertheless advocate a development and testing of causative explanations outside particular contexts as a means of refining understandings of organisational action.

Figure 9.1: AWRC and causation from a critical realist perspective.



### 9.3 Incorporation, an effective solution?

Chapter 1 appreciated that any endeavour to understand engagement with the incorporation policy would lead to an evaluation as to incorporation's utility to AWRC. Chapter 2 showed that law's recognition of unincorporated associations provided for something of an intellectual incoherence. Whether the unincorporated association was recognisable by the law appeared on occasion to depend upon what area of law one is considering. Unincorporated associations for example may be criminally liable<sup>19</sup> but cannot be contractually liable.<sup>20</sup> This uncertainty provides for outcomes which often offend what are perceived as factual realities as interpreted by participant members, decision-makers, and even perhaps third parties.<sup>21</sup> Colin Tyre's conclusions that the law "has got into a mess" appeared as a consequence well founded.<sup>22</sup>

Of perhaps more pressing concern than intellectual incoherence however are the significant consequences of utilising the unincorporated association should fears of personal liability ever manifest. The social detriment of law's failure to attribute legal personality to unincorporated forms, as recognised by this research, may also result in a loss of current and prospective third sector contributors owing to anxieties of liability. On account of these arguments, the benefits of incorporation appear cogent. However, as Randall and Baker observed, endeavours to minimise occasions of legal liability may provide for problematic unintended consequences at law.<sup>23</sup>

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<sup>19</sup> R v RL & JF [2008] EWCA Crim 1970.

<sup>20</sup> See section 2.4.1

<sup>21</sup> Scottish Law Commission, *Discussion Paper on Unincorporated Associations* (Scot Law Com DP No 140 2008)

<sup>22</sup> Colin Tyre "Persons Unknown" *Law Society of Scotland* (19 January 2009)

<<https://www.lawscot.org.uk/members/journal/issues/vol-54-issue-01/persons-unknown>> Accessed 12<sup>th</sup> February 2021.

<sup>23</sup> Donna Randall and Douglas Baker, "The Threat of Legal Liability and Managerial Decision Making: Regulation of Reproductive Health in the Workplace" in Sim Sitkin and Robert Bies, *The Legalistic Organisation* (Sage 1994)

AWRC may, as an alternative to the unincorporated form, opt for the second most popular legal form for sports clubs, being the company limited by guarantee. Though possessing distinct legal personality the alternative is nevertheless developed from corporate principles. Such a structure limits the prospect of personal liability affecting members yet requires greater administrative diligence for volunteers running such entities and a development of organisational practices. The additional resources required to operate legitimately as a more formalised company limited by guarantee appear to represent a prospect perhaps too onerous for some clubs' strategic decision-makers, or at the least, too incompatible with their ideas of legitimate behaviour. The consequences at law for those individuals controlling the newly formed companies, as drawn from chapter 7 and 8's qualitative analysis, is a continuing threat of personal liability, albeit in an altogether different form and characterised by a legal context disincentivising enforcement.

A failure to transfer memberships, potentially concentrating decision-making powers in a less easily challengeable executive body, further compounds practical and legal issues for clubs utilising the corporate form. First, such behaviour may provide for something of a depowering of the general membership, with the company and its assets often in the hands of the limited number of directors, at least from a legal perspective. Perhaps consistent with Tacon and Walters predictions, the professionalising of clubs may indeed therefore serve to undermine democratic ideals.<sup>24</sup> Second, should the approach of clubs to legal responsibilities post-incorporation be typical of engagements with legal responsibilities more widely, then potential contravention of further obligations such as those under the Criminal Finances Act, for example, may provide a further issue which incorporated clubs need to be mindful of.

The social benefits and costs of incorporating finally appear to be finely balanced. The benefit thought to be drawn from incorporation in the form of attracting volunteers to clubs on the basis of protection from personal liability appears volatile. Incorporation may not be geared towards professionalising

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<sup>24</sup> Richard Tacon and Geoff Walters, 'The promises and pitfalls of codification of governance in sport as legitimacy work' in Arnout Geeraert and Frank Eekeren (eds) *Good Governance in Sport* (Routledge 2021), p.230

organisations but the ancillary effects are a need to professionalise nevertheless. Countervailing concerns such as those perceptions of the increased bureaucracy required to facilitate a transformation to a corporate form, sustain such a structure, and the responsibilities of directors in comparison with committee members, were seen to have the potential to deter some from contributing to the continuity of community clubs.<sup>25</sup>

Accounting for those positives and negatives of incorporation as drawn from the research, a transformation of clubs where possible to the company limited by guarantee form is ultimately advocated. This is largely on account of the argument that the policy seems to ultimately serve its function, a mitigation of the risk of personal loss for individuals involved with AWRC. Key to such conclusions however is the somewhat internalisation of legal risk incorporation provides for. For those reasons as detailed at section 8.4, manifestations of personal liability when utilising the company form would appear to constitute circumstances which go against the grain.

Such advocacy and its grounding are not entirely however without issue. Supporting Mcgreggor-Lowndes and Hannah's conclusions, it ironically is perhaps a lack of enforcement that has led to a failure to provide for a truly suitable legal form for small non-profit organisations.<sup>26</sup> Their point being if the problem was more evident something would have been done. McGregor-Lowndes and Hannah's perspective that the lack of enforcement for non-compliance with governance frameworks had perpetuated circumstances in which only unsuitable legal forms existed led them to advocate widescale reform.<sup>27</sup> For similar reasons, the chapter now considers options for policy development.

## 9.4 An issue in need of reform

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<sup>25</sup> Such a finding aligns with Nagel and Schlesinger's arguments that difficulties exist in recruiting volunteers to do more demanding and administrative tasks. Torsten Schlesinger, Christoffer Klenk and Siegfried Nagel, 'How do sport clubs recruit volunteers? Analyzing and developing a typology of decision-making processes on recruiting volunteers in sport clubs' (2015) 18 Sport Management Review.

<sup>26</sup> Unincorporated associations as entities: A matter of balance between regulation and facilitation? (n 5)

<sup>27</sup> Ibid, p.220

What appears crucial to considerations of the utility of incorporation to AWRC is their role as “outsiders” as regards their treatment under the law. As stated by Zakreski in their consideration of unincorporated associations:

*“The central tenet of this body of law, which is that unincorporated associations are not legal persons, has borne the brunt of this criticism. But concerted efforts at law reform have recognised that the problems with this area of law run deeper than this one point. It is the lack of a comprehensive legal framework for unincorporated associations that is the real problem.”*<sup>28</sup>

As outsiders, the first option available to AWRC appears to be to continue with an unincorporated association which, owing to the law’s lack of consistency in its treatment, provides for a legally precarious as well as confusing choice. By contrast, AWRC may choose legal forms requiring greater regulation and professionalising perhaps inconsistent with club and decision-maker values. As is often the outcome of research with an exploratory element, the findings therefore provide for questions as well as answers. With the law in its present form, not-for-profit clubs and associations such as AWRC looking to minimise the risks of legal liability may feel they have few available and suitable choices.

Glennon, in advocacy of statutory reform relating to unincorporated associations’ lack of legal personality, stated that legal intervention in the area was necessary in order to avoid straining reality for the sake of inadequate theory.<sup>29</sup> We have perhaps seen such straining in the context of development of the common law. Chapter 2 referenced erosions of the general principle that unincorporated associations are a non-entity at law. However, such developments are context specific

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<sup>28</sup> Kevin Zakreski, “Reform on the Law Relating to Unincorporated Nonprofit Associations” (2008) 41 UBC Law Review 115, p.133. As referred to Flannigan has further described the laws as they relate to associations as a “residual regime.” Robert Flannigan, ‘Contractual Responsibility in Non-Profit Associations’ (1998) 18 Oxford Journal of Legal Studies 631, p.632

<sup>29</sup> Lisa Glennon, ‘Questioning the legal status of unincorporated associations’ (2000) 51 Ireland Legal Quarterly 120

and may indeed lead to further confusion. Turnour criticised the lack of statutory intervention in this area, stating the following “in practical terms, this means that both persons involved in unincorporated associations across the common law world and plaintiffs suing such associations are subject to the vague, slow, expensive and sometimes uncertain development of the common law.”<sup>30</sup>

The thesis agrees with arguments advocating statutory intervention and suggests affording a separate legal personality to unincorporated associations by way of parliamentary reform could remedy those problematic issues of personal liability. In turn, a development of jurisprudence relevant to such entities could provide for an appreciation of those communitarian features of not-for-profit organisations. A legal consistency, currently absent from the law’s treatment of unincorporated associations, could be facilitated by such a progression with the further potential to tighten expectations upon those who wish to retain use of the company limited by guarantee. Denigrating from traditional understandings of what should constitute appropriate director conduct, as perhaps depicted by *Kids Company*, could thus be avoided if a more bespoke alternative for small non-profit organisations was available.

It could be argued that the same objectives could be achieved by reform of the law relating to the governance of companies limited by guarantee. The courts may for example in due course extend the more sympathetic approach to director conduct in *Kids Company* to all not-for-profit directors.<sup>31</sup> Yet as the Cabinet Office report stated in 2002, “the companies legislation was not designed with the needs of smaller scale community-based social enterprises in mind .. the company “brand” is almost exclusively associated with profit-making.”<sup>32</sup> Reconfiguration of the corporate framework thus may in fact require more engagement than something of a fresh development which lacks the constraints a connection with the “company” label affords.

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<sup>30</sup> Matthew Turnour, ‘Should Australians Have a Revised Uniform Unincorporated Nonprofit Associations Act?’ (2020) 37 *Company and Securities Law Journal* 279, p.284

<sup>31</sup> It is appreciated however that sensitivity to context will have its limitations on account of competing policy interests. See Woodward for justifications for maintaining high standards of director conduct in not-for-profit circumstances. Susan Woodward, “Not-for-Profit Motivation in a For-Profit Company Law Regime: National Baseline Data.” (2003) 1 *International Journal of Civil Society Law* 37, p.41

<sup>32</sup> Cabinet Office, ‘Private Action, Public Benefit: A review of Charities and the Wider Not-For-Profit Sector’ (Cabinet Office 2002), p.53

The conferment of legal personality need not however represent the seismic shift in policy it may appear to represent. As mentioned at chapter 2, trade unions have already been afforded quasi-legal standing with the ability to sue and be sued in their own right.<sup>33</sup> To extend even such quasi-legal standing to unincorporated associations generally could alleviate several of those issues arising from tort, employment, and contract as described above and argued by Glennon.<sup>34</sup>

Glennon's advocacy of the conferment of legal personality upon unincorporated associations aligns with the Scottish Law Commission's report that any evolution in the law should limit increased administrative requirements and red tape.<sup>35</sup> Incorporation, and use of the company limited by guarantee specifically, certainly affords for increased administrative requirements; however, to suggest all further effort on the part of clubs in exchange for the conferment of separate personality can be avoided appears unlikely. This in part can be seen as a consequence of a wariness that any reform should not detriment third parties. Such argument specifically was referenced by the UK Government.<sup>36</sup> The UK Government contended that third parties engaging with such entities should be freely able to identify the type of organisation (as regards legal form) they are engaging with by reference to a publicly accessible register.<sup>37</sup> Any reform suggesting registration as a contingency upon which separate personality should be afforded however may take insight from the problems of engagement experienced by the incorporation policy as advocated by the WRU and the views of the Scottish Law Commission.

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<sup>33</sup> Section 2.5

<sup>34</sup> Questioning the legal status of unincorporated associations (n 29), p.138

<sup>35</sup> Discussion Paper on Unincorporated Associations (n 21), p.25

<sup>36</sup> Scotland Office, 'Reforming the law on Scottish unincorporated associations and criminal liability of Scottish partnerships: the Government's response to consultation' (2012)  
<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69171/Consultation-Response-Partnerships-Bill.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69171/Consultation-Response-Partnerships-Bill.pdf)> accessed 3rd April 2019

<sup>37</sup> Scotland Office, 'Reforming the law on Scottish unincorporated associations and criminal liability of Scottish partnerships: the Government's response to consultation' (2012)  
<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69171/Consultation-Response-Partnerships-Bill.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69171/Consultation-Response-Partnerships-Bill.pdf)> accessed 3rd April 2019

*“The disadvantage of a system of voluntary registration in order to obtain legal personality is that, like incorporation, it subjects associations to an administrative burden which they can presently avoid by deciding not to incorporate. Many would choose to remain unregistered and would not benefit from the reforms we are proposing.”*<sup>38</sup>

Drawing on the research experience, even with the offer of professional support to actualise the process, financial incentives to do so, and a prolonged advocacy, transformation to a new form, if requiring registration, may not gain traction amongst all those entities likely to experience benefit. Fahlen et al argued further that in contrast to the manner in which the WRU seemingly incentivised incorporating, sports federations have been observed more generally to forward the responsibility for development to the organisations below them in their respective sporting pyramids.<sup>39</sup> This disconnect between policy architects and implementers has been argued to facilitate a circumstance where responsibility for meeting governmental goals have not been embraced by amateur community clubs.<sup>40</sup>

The advocacy of automatic conferment of legal personality most notably removes in large part those additional bureaucratic responsibilities presently required to access structures conferring limited liability. In doing so, this provides the greatest adherence to governmental objectives of doing whatever possible to reduce the administrative burden upon voluntary organisations.<sup>41</sup> The Scottish Law Commission, advocating a similar opt out model, concluded that not only would such an amendment in the law prove beneficial for those individuals involved in such organisations, but may also benefit the third sector generally as more people might be prepared to devote time to third sector

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<sup>38</sup> Discussion Paper on Unincorporated Associations (n 21), p.26.

<sup>39</sup> Resisting self-regulation: an analysis of sport policy programme making and implementation in Sweden (n 9), p.401

<sup>40</sup> Ibid, p.11

<sup>41</sup> Scotland Office, ‘Reforming the law on Scottish unincorporated associations and criminal liability of Scottish partnerships: the Government’s response to consultation’ (2012) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69171/Consultation-Response-Partnerships-Bill.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69171/Consultation-Response-Partnerships-Bill.pdf)> accessed 3rd April 2019

purposes.<sup>42</sup> Without the administrative deterrent of incorporation and that expected by a commercially defined regulatory framework, the empirical findings of the research support such conclusions.

Ideas of automatic conferment may appear attractive however actualising such a reform provides for practical issues as well as the balancing of competing interests. In summary, the thesis supports a development of the law in which legal personality should be conferred upon non-profit organisations as a matter of course on the basis of adherence to certain minimum criteria. Such information would need to be evident within the organisation's constitutive document and made available on the organisation's website, at the organisation's premises, and/or made available on request.

1. Name of the organisation.
2. Registered address.
3. Criteria for membership.
4. Provision for appointment and/or election of office bearers and, where appropriate, a governing body such as a management committee.
5. The duties and scope of authority of office bearers and members of the governing body.
6. The formalities for alteration of the constitutive document of the association.
7. Provision for disposal of the assets of the association on dissolution.

The UK Government expected that the one-off cost to create or amend an organisation's constitution would represent 3 hours of work estimated as of 2010 to equate to approximately £37.44 of paid equivalent labour.<sup>43</sup> However, for those most informal organisations, this may still prove too onerous. There will almost inevitably be circumstances in which clubs may slip through the net, where very informal clubs without written rules fail to appreciate the need for a constitution until it is too late, and

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<sup>42</sup> Discussion Paper on Unincorporated Associations (n 21), p.59.

<sup>43</sup> Scotland Office, 'Reforming the law on Scottish unincorporated associations and criminal liability of Scottish partnerships: the Government's response to consultation' (2012) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69171/Consultation-Response-Partnerships-Bill.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69171/Consultation-Response-Partnerships-Bill.pdf)> accessed 3rd April 2019

where a constitution is unintendedly altered in a manner which fails to provide for the conferment of separate legal personality. The empirical research has shown that dominant volunteer logics may further serve to disincentivise any move away from institutionalised practices, which has included a staunch commitment to the traditional governing principles and documents by the participant organisations.

The volunteer logic which defines such clubs suggests that there may continue unfortunate circumstances whereby the intentions of club members and decision-makers do not align with the legal reality flowing from their choice of legal form. Nevertheless, given the comparative benefits of the conferment of a separate personality to the managing committees and members of such entities, it is suggested that the burden of creating or amending a pre-existing constitution in exchange for the conferment of separate legal personality seems proportionate to the benefit available.

## 9.5 Limitations and future research

Much in the same way Seippel noted that a single theory is limited in its explanatory qualities, so this single study is limited by the practical limitations of the research, as well as the researcher. The use of a critical realism framework provides scope for criticisms of a researcher's decision-making as arbitrary. However, it is not clear that those issues of arbitrariness are any less detrimental to the robustness of conclusions in comparison with research, for example, utilising a positivist perspective lacking the ability to appreciate the integrated causative complexity of society, or social constructionist studies less open to the scrutinising of empirical accounts of participants. Several limitations of the research are nevertheless detailed below which are combined with suggestions for future research. In this manner, the thesis seeks to appreciate the shortcomings of the study whilst proposing a means of meeting those limitations through future research.

1. Interviewee A6's statement that their club were considering remunerating the club secretary role supports Robinson, Minkin and Palmer's viewpoints that sports club volunteering may be

undergoing a transformative development.<sup>44</sup> Stebbins and Graham suggested an erosion of willingness to volunteer may come to pass owing to the hegemony of the cash nexus.<sup>45</sup> Evidence of clubs considering remunerating executive body members within the research may somewhat support their contentions. However, examples of such remuneration were understood to be limited in the research context. Robinson, Minkin and Palmer's hypothesis is perhaps more balanced and reflective of the research experience with arguments that formal volunteering is likely to develop in a manner in which decade long service is likely to become less regular, with short intensive periods of volunteering associated with cogent rewards taking its place. Those rewards are not exclusively considered to be financial but the suggestion that the more formalised volunteering environment will soon perhaps require some form of benefit accords somewhat with the resistance to professionalisation drawn from the strictly voluntary interviewee accounts. The thesis provides however only for a snapshot of what appears to be a constellation of logics relevant to AWRC. At present, the research argues AWRC remain primarily defined by a volunteer logic. That is not to say however that such finding is static. A deinstitutionalisation and reinstitutionalisation of dominant logics is accepted to be a protracted process. With this in mind, a longitudinal consideration of the professionalisation of sports clubs may allow for an appreciation as to whether the developmental logic may come to dominate AWRC and how that may in turn effect engagements in matters of legal form.

2. A longitudinal analysis may be of particular relevance to the research topic given the findings of a uniform intention amongst interviewees for their clubs to incorporate, if they had already not done so. Should incorporation be considered a professionalising process in a field experiencing a shifting of logics, then conceptualising organisations as "early adopters" and "late adopters" as advocated by Lounsbury, may be useful.<sup>46</sup> The research appreciates that the

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<sup>44</sup> The future of management in voluntary sport (n 3), p.262

<sup>45</sup> Robert Stebbins and Margaret Graham, *Volunteering as Leisure/Leisure as Volunteering* (Cabi 2004)

<sup>46</sup> Michael Lounsbury, 'Institutional rationality and practice variation: New directions in the institutional analysis of practice' (2008) 33 *Accounting, Organisations and Society* 349, p.350

conformity of viewpoint in terms of willingness to incorporate may however not be explainable by a longitudinal study of early and late adopters but may be the product of a bias amongst participants within the study. It is appreciated that response biases such as social desirability bias may have played a part in the willingness of clubs to participate in the research. Owing to the long-standing advocacy of incorporation by the WRU and the researcher's disclosure of the body's funding of the project, there was a possibility that a pre-determined understanding of what the researcher may "want to hear" may have formed.<sup>47</sup> A social desirability bias in this regard may have attracted unincorporated clubs open to the prospect of incorporating whilst disincentivising clubs who may have perceived their resistance to incorporation as an issue which the researcher, and by proxy the WRU, may not have wanted to hear. Linked to this is the possibility of bias connected to self-protection. As referred to earlier in the thesis, the WRU are the regulator of the member clubs with power of sanction. The funding relationship may therefore have discouraged potential participant clubs from engaging with either the first or second stage of the empirical process on account of anxieties as to what detrimental remarks may occasion. The anonymity offered to the clubs was perceived as a means of mitigating such concerns, with the remarks of A2 criticising the union's intentions, perhaps evidencing how anonymity may have alleviated concerns for some clubs.

*"If a club goes bankrupt now the WRU has an element of responsibility to cover them doesn't it, they were all WRU clubs, if we're all incorporated we're all separate entities so when a club goes bankrupt again the WRU they can finally say well to hell with it I don't care that's a company" A2*

The researcher appreciates the possibility nevertheless of such bias affecting the research.

Despite this, critical realism's preference for scrutiny of empirical data alongside the

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<sup>47</sup> Claire Anderson, 'Presenting and Evaluating Qualitative Research' (2010) 84 (8) American Journal of Pharmaceutical Education 141, p.146

limitations the perspective places upon generalisability allows for such accounts to be understood as contextually effected and influenced, but nevertheless possessing utility as regards causative explanations.

3. The exploratory nature of the research in what is accepted to be a niche context has provided for context specific findings. The extrapolation of arguments as to causation, and ultimately to that which defines organisational behaviour in this sector, to a wider sample, provides for a logical development of the research. It is however acknowledged that the research explored the issues of legal liability within a sport where the governing body have advocated for several years a change of legal form. The consequential enthusiasm for the project and the experiences of those interviewees may therefore not represent a more typical situation for sports clubs across the UK and further afield. A disparity between resources, both financial and otherwise of respective sports, is acknowledged to perhaps impact upon the transferability of the present findings. With this considered, transference of the causative explanations from the present research to other sports which lack the resources and profile of rugby within Wales may prove a challenge and a limitation as to the theoretical development of the conclusions advanced by the thesis. Nevertheless, the study attempts not to establish universal generalisability but rather attempts to provide for a development of knowledge and theory in a particular field which can then itself be subject to challenge and refinement in differing contexts.
4. This study touched on various aspects of private civil law. However, owing to practical constraints and the exploratory nature of the research, the thesis was unable to delve too deeply into any one specific area. The research does not claim to provide an exhaustive consideration of how incorporation may affect legal liability of all descriptions. The doctrinal element of the research was initially structured around three instances of case law emerging specifically from a Welsh rugby context. The consideration of liability for breach of directors'

duties emerged by contrast organically from a review of the VSC literature and was later substantiated by qualitative engagements. In the context of contemporary sporting concerns, more focused research emphasising potential liabilities of volunteer executive body members perhaps in circumstances of brain injury claims, as well as historical sexual abuse torts, may be timely.<sup>48</sup>

5. In contrast to the VSC literature, the research found little evidence of new entrants to the “sport as leisure market” pushing clubs towards professionalisation. Pressures to professionalise were instead understood to flow from regulatory bodies and in the incorporation circumstance specifically, a more litigious legal environment. The project’s interviews were however undertaken at a time when the Covid19 pandemic was in its infancy. With data beginning to emerge which suggests that team-based sports have suffered participation losses to other sports and competing leisure activities, matters of competition may emerge as a further determinant affecting AWRC professionalisation, competition for resources and in turn choices of legal form.<sup>49</sup>
  
6. “The only thing that I’ve said for years, what I think the union lack, they do a lot of courses for if you want to be a first aider, a coach, they do courses for all that referees and everything, they don’t do anything for administration.”<sup>50</sup> It is without doubt that coaches and referees have a great deal of legal responsibility when undertaking their respective roles, with the case of *Vowles v Evans*<sup>51</sup> and similar incidents highlighting the importance of effective training for individuals fulfilling such positions. However, the variety of exposure which affects executive body members specifically, whether serving within incorporated or unincorporated entities, appears to require some form of engagement should the volunteers be given the confidence to

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<sup>48</sup> See Phillip Morgan ‘Judgment-proofing Voluntary Sector Organisations from Liability in Tort’ (2020) 6 Canadian Journal of Comparative and Contemporary Law 220, p.229

<sup>49</sup> Murray Drummond and others, ‘Youth Sport and COVID-19: a potential generation lost’ (2020) Emerald Open Research. <<https://emeraldopenresearch.com/articles/2-27/v1>> Accessed 6<sup>th</sup> March 2021.

<sup>50</sup> Interviewee A11

<sup>51</sup> *Vowles v Evans* [2003] EWCA Civ 318 [2003] 1 W.L.R. 1607

deal with their responsibilities appropriately. The Scottish Law Commission considered a “non-statutory option” being an effort to increase awareness and education of the current legal position of club members and decision-makers as they relate to unincorporated associations.<sup>52</sup> The commission concluded that the detriment of such a policy of education outweighed any perceptible benefit. Such conclusions were based on concerns that knowledge of the issues, without a means of addressing the problems, may lead to an increased unwillingness to participate.<sup>53</sup> High volunteer turnover may also inhibit effective training programmes as a result of a need to roll out assistance on a continuing basis. However, such issue may be mitigated through the development of external relationships and the harnessing of specialised knowledge as exemplified by the current research.<sup>54</sup> By coupling advocacy of incorporation, or a separate legal form, should any come into being, with appropriate educational training for executive body members, it is felt that the operations of the clubs may be somewhat improved and the legal risks minimised. In terms of achieving the provision of training, such benefit could be drawn from community partnerships. Robinson, Minkin and Palmer stated that partnerships between clubs and external organisations are a means by which clubs may more effectively navigate an ever increasingly professionalised environment.<sup>55</sup> McGregor-Lowndes and Hannah further referenced the importance of the pro-bono work of accountants in enabling not-for-profit organisations to meet appropriate standards of compliance.<sup>56</sup> The research findings supporting suggestions that volunteer executive body members are willing to defer to those they consider to hold specialist and professional knowledge legitimises the advocacy of such a development. Investigation as to the relationships between clubs and external entities, outside of sports specific governing bodies, may therefore provide for a development of knowledge which appreciates how these relationships serve to affect club behaviour and how the same relationships may be maximised to the sustainability of

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<sup>52</sup> Discussion Paper on Unincorporated Associations (n 21), p.63

<sup>53</sup> Ibid

<sup>54</sup> The future of management in voluntary sport (n 3), p.264

<sup>55</sup> Ibid, p.263

<sup>56</sup> Unincorporated associations as entities: A matter of balance between regulation and facilitation? (n 5), p.205

community sport more generally.

## 9.6 Concluding remarks

Contemporary challenges of modern society are argued to have resulted in clubs turning more readily to external entities to assist in problem-solving.<sup>57</sup> This research investigating how clubs engage with external assistance promoting organisational change is therefore perhaps timely. For sports federations and policy makers more generally, it is argued that the probability of positively facilitating organisational change processes may be increased by understanding the conditions within which clubs operate, intrinsic features which may impinge on the efficacy of the inputs, and finally those values and norms which may impact the policy's form through implementation.<sup>58</sup> The research has highlighted how it must be borne in mind that values and institutionalised processes, conceptualised as a product of logics in this study, provides for the lens through which change is perceived and enacted. In consequence, a misalignment between that which exists and that which is proposed may lead to a lack of engagement and suboptimal implementation.<sup>59</sup>

Contrary to some of the existing literature, the research suggests that club decision-making should not be defined by reference to decision-makers seeking power through the pursuit of much needed resources. These decision-makers exhibit bounded rationality owing to a lack of resources but are also institutionally directed which requires consideration of their immediate surroundings as volunteers and wider forces as societal contributors. The use of institutional logics within a critical realist framework accounted for such causal forces whilst simultaneously providing appropriate consideration as to the place of law. In this thesis, the notion of law as institutionally neutral and immutable rules of the game was challenged.<sup>60</sup> The legal context was further conceived of as an

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<sup>57</sup> Christopher Clenk, Benjamin Egli and Torsten Schlesinger, "Exploring how voluntary sports clubs implement external advisory inputs" (2017) 22 *Managing Sport and Leisure* 70, p.71

<sup>58</sup> Exploring how voluntary sports clubs implement external advisory inputs (n 56)

<sup>59</sup> *Ibid*, p.75

<sup>60</sup> Julia Black, "New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision Making." (1997) 19 *Law & Policy* 51, p82-83

enabling force for the organisational behaviour observed, relevant both to questions of why incorporation as well as matters of implementation.

Those concerns as to the professionalising implications of the policy which held back many clubs from incorporating previously, and perhaps continue to do so more widely outside the qualitative sample, are almost simultaneously well founded and perhaps over-stated. Theoretically at least, transformation from an unincorporated association to a company limited by guarantee does require a professionalising of club structures and increased responsibilities for decision-makers. Practically, the manner in which incorporation had been described as implemented, largely suggested an occasion of organisational continuity. Incorporation may not therefore require a professionalisation of practices as suggested by the empirical findings. The risks associated with such continuity however remain unclear. The incorporation policy's primary objective was and is to minimise occasions of personal liability upon individuals involved with clubs and arguments have been advanced to suggest the lack of effective implementation of the policy may not undermine this aim. Any such conclusion in this regard however should be considered with caution given the practical and legal implications of incorporation for clubs have perhaps not yet come to fruition. Action to mitigate those issues of implementation now, may serve to sustain and improve the attraction of the WRU's endeavour to better circumstances for volunteers argued to be the life-blood of the game.<sup>61</sup> To do so appears to involve working against volunteer logics and a legal context enabling "deviant governance." For these reasons the task should not be understated.

The problems of using the company limited by guarantee, a vehicle with a corporate genesis, to achieve notions of legitimacy and fairness grounded in a communitarian perspective may be considered as inevitably problematic. Without governmental attention to reform however, the promotion of the company limited by guarantee seemingly provides for the most accessible means by which a national governing body may facilitate an alignment of how the law should treat volunteers and how the law does treat such individuals. Questions of how the law "should" apportion liability is

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<sup>61</sup> Judgment-Proofing Voluntary Sector Organisations from Liability in Tort (n 46), p.257

of course a balancing act requiring attentive consideration to the interests of the club volunteer, as well as the hypothetical debtor and/or the injured spectator. Conclusions that the interests of the latter should prevail over the former may be justifiable. However, given the apparent governmental appetite to pursue the interests of those contributing to social utility in recent history, it appears timely for Parliament at the least to abandon its reticence for consideration of whether the law and its legal forms remain appropriate for today's third sector organisations.



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# Appendix 1: Participant Information Sheet, Questionnaire.

## Information Sheet



TITLE OF RESEARCH:      Formality and Incorporation: An Analysis of Amateur Welsh  
Rugby Club Decision-making

RESEARCHER:              Rhys Evans

CONTACT DETAILS:        Cardiff School of Law and Politics  
Cardiff University  
Law Building  
Museum Avenue  
Cardiff CF10 3AX  
Email Address: [evansrm10@cardiff.ac.uk](mailto:evansrm10@cardiff.ac.uk)

### Who is doing the research?

The research is to be undertaken by Cardiff University PhD student Rhys Evans.

### What is the purpose of the research?

The purpose of the research is to explore how a club's formality effects its decision-making behaviour in relation to the WRU's incorporation policy.

Formality will be assessed by reference to the responses given to the questionnaire. The answers to a version of this questionnaire have been used to assess formality previously in published research relating to UK netball clubs.

**Who is being invited to participate?**

Committee members and Board members of Welsh Amateur Rugby Clubs.

**What is the type of information gathered during interviews?**

The information sought will consist of ticking yes/no boxes to closed questions.

**What happens if I wish to withdraw?**

A participant is free to withdraw themselves from the study at any time. Should a participant wish to do so, any reference to their (or their clubs) inclusion will be deleted and will not be included within the presentation of results in any format.

**Confidentiality and privacy: what will happen to my data?**

The paper questionnaires will be collected by the researcher and will be held in locked storage facilities. The data from these paper questionnaires will then be analysed within the university, with a database constructed upon Cardiff University computers. From this point, the database will be saved upon the encrypted University network. The option of anonymity is open to you and should you prefer the information provided to be kept anonymous this will be adhered to. The data collected will be destroyed in line with approved University processes in relation to both physical and electronic documents.

### How will I be referred to in the study?

The term “Director or Committee Member of xxxx Rugby Club” will be utilised as the term of reference in any written document or oral presentation involving this stage of the research.

<b>Additional Contact Information</b>	
Researcher’s Supervisor	<p>Supervisor’s Name: Professor Julie Price</p> <p>Supervisor’s Contact Details:</p> <p>xxxx@cardiff.ac.uk</p>
Cardiff School of Law and Politics Research Ethics Committee (SREC)	<p>This project has received ethical approval from the Cardiff School of Law and Politics Research Ethics Committee (SREC) on 20/12/2018 (Internal Reference: SREC/201118/04).</p> <p>The Cardiff School of Law and Politics Research Ethics Committee (SREC) can be contacted at:</p> <p>School Research Officer</p> <p>Cardiff School of Law and Politics</p> <p>Cardiff University</p> <p>Law Building</p> <p>Museum Avenue</p> <p>Cardiff CF10 3AX</p> <p>Email: <a href="mailto:LAWPL-Ethics@cardiff.ac.uk">LAWPL-Ethics@cardiff.ac.uk</a></p>

## Appendix 2: Consent Form and Information Sheet, Interview.

### Consent Form



TITLE OF RESEARCH:      Formality and Incorporation: An analysis of Amateur Welsh  
Rugby Club Decision-making.

RESEARCHER:              Rhys Evans

CONTACT DETAILS:        Cardiff School of Law and Politics  
Cardiff University  
Law Building  
Museum Avenue  
Cardiff CF10 3AX  
Email Address: [evansrm10@cardiff.ac.uk](mailto:evansrm10@cardiff.ac.uk)

### Research Overview

As you may be aware, the Welsh Rugby Union has for a number of years, advised clubs that it would be sensible to alter their legal structure from an unincorporated association to a company limited by guarantee, a process known as incorporation. This research project is looking to gather information relating to how Committee Members and Directors of amateur Welsh Rugby Clubs, such as yourself, have engaged with the incorporation policy promoted by the Welsh Rugby Union (WRU). The study is looking to gain an insight into the practices of clubs, and explore the experiences of Committee Members and Directors, in an attempt to understand the influences that affect decisions relating to incorporation. Through a mixture of surveys and interviews, I'm hoping to be able to gain a better understanding of how and why decisions relating to incorporation have been made. The project is funded by the Economic & Social Research Council and the Welsh Rugby Union (WRU).

### **Involvement in Research**

If you are happy to take part in this research, you will be asked to participate in an interview over the telephone. The interview will be recorded with the recording then transferred to a Cardiff University computer, following such transfer the audio recording will be deleted from the recording device. I will then type up the interview and analyse the information you've provided for evidence of themes. Following the completion of the transcription process the audio file will be deleted. You will only be referred to in the research as Committee Member/ Director of Rugby Club (A).

It is intended that the findings from this research, which includes any interviews, will be written up as part of my PhD (postgraduate research degree). I may also look to use the information obtained through the interview for articles and conferences. In accordance with the policies of the funders of the project, the transcribed data that has been collected may, after the end of the project, be made available to other researchers, for legitimate research purposes. This process will be managed by the UK Data Archive, who will be responsible for approving or rejecting applications to use the data. The data provided to the UK Data Archive will be anonymised in the manner set out below to minimise the possibility of identification.

### **Anonymity**

I will do my best to make sure that your identity is not revealed. To do this I may use different names and remove or change any information that might identify you. A possibility will still exist however, that an individual or organisation engaging with the research, may be able to identify a club through the piecing together of different information contained within the project.

### **Consent Form**

I understand that my participation in this project will involve being interviewed regarding the matter of rugby club incorporation.

I understand that participation in this study is entirely voluntary and that I can withdraw from the study without giving a reason.

I understand that I am free to ask any questions at any time. If for any reason I wish to withdraw I may do so.

I understand that the information I provide will be held anonymously, such that only the researcher can trace this information back to me individually, subject to the possibilities mentioned above. The data will be stored in accordance with the Data Protection Act (2018).

**Please indicate whether you agree with the following statements, please initial box:**

	<b>Initials</b>
I have read and understood all the information provided, and have received adequate time to consider all the documentation.	
I have been given adequate opportunity to ask questions about the research.	
I am aware of, and consent to the written and/or digital recording of my discussion with the researcher.	
I consent to the information and opinions I provide being used in the research.	
I consent to the information I provide being considered and presented as the personal knowledge of a Committee Member/Director of the rugby club I am a member of.	

**Interviewee Declaration**

I consent to participate in the study conducted by Rhys Evans, Cardiff School of Law and Politics

Signature:

Print Name: ..... Date: .....

<b>Additional Contact Information</b>	
Researcher's Supervisor	Professor Julie Price xxxxx@cardiff.ac.uk
Cardiff School of Law and Politics Research Ethics Committee (SREC)	This project has received ethical approval from the Cardiff School of Law and Politics Research Ethics Committee (SREC) on 13/03/2020 (Internal Reference: SREC/220120/05).  The Cardiff School of Law and Politics Research Ethics Committee (SREC) can be contacted at:  School Research Officer Cardiff School of Law and Politics

	<p>Cardiff University Law Building Museum Avenue Cardiff CF10 3AX Email: <a href="mailto:LAWPL-Ethics@cardiff.ac.uk">LAWPL-Ethics@cardiff.ac.uk</a></p>
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**Information Sheet**

**TITLE OF RESEARCH:** Formality and Incorporation: An Analysis of Amateur Welsh  
Rugby Club Decision-making

**RESEARCHER:** Rhys Evans

**CONTACT DETAILS:** Cardiff School of Law and Politics  
Cardiff University  
Law Building  
Museum Avenue  
Cardiff CF10 3AX  
Email Address: [evansrm10@cardiff.ac.uk](mailto:evansrm10@cardiff.ac.uk)

**Who is doing the research?**

The research is to be undertaken by Cardiff University PhD student Rhys Evans.

**Who is funding the research?**

The research is funded by the Economic & Social Research Council and the Welsh Rugby Union.

**What is the purpose of the research?**

The purpose of the research is to explore the decision-making of Committee Members and Directors of Amateur Welsh Rugby Clubs' relating to the Welsh Rugby Union's incorporation policy. The information provided by you, should you be willing to participate, is intended for use in the publication of a PhD project (postgraduate research degree). Any information provided may also be used for presentations at conferences and within publications. Presentation of the data in any of these forms will be treated the same regarding anonymity, the details of which are outlined below.

Please note that given the research is a stand-alone project any participation or non-participation in these interviews will not affect your club's relationship with, nor ability to access any assistance offered by, Cardiff University, the Welsh Rugby Union or any other institution.

**Who is being invited to participate?**

Committee members and Board members of Welsh Amateur Rugby Clubs.

**What will be the type of information gathered during these interviews?**

I will carry out an interview to gain information as to your club's practices and your experiences of incorporation. The interview will be one-to-one, over the telephone, and will last approximately 50 minutes to an hour and 15 minutes. The interview will take place at a time convenient to you.

**What happens if I wish to withdraw?**

You may withdraw yourself at any time during the interview or decline to respond to any questions. You may also withdraw yourself following the interview, although such requests for withdrawal need to be communicated to me by the 1<sup>st</sup> of August 2020. Should you wish to withdraw from the study, any reference to your (and your clubs) inclusion will be deleted and you (and your club) will not be included within the presentation of results in any format.

### **Confidentiality and privacy: what will happen to my data?**

The recorded data will be saved to a digital voice recorder, utilised exclusively for the purpose of recording such interviews. The data from these interviews will then be transferred to a password protected University computer. After this, I will delete the recording from the device, type up the interview and analyse the information provided. The work will be saved regularly upon the University network. The data collected will be destroyed in line with approved University processes in relation to both physical and electronic documents. Any electronic personal data held by the researcher will be deleted through the use of overwriting software, whilst physical data will be destroyed through shredding. All personal data held by the researcher will be erased at the latest by the 1<sup>st</sup> of September 2031, or earlier, should the data no longer be necessary for academic purposes.

As stated within the consent form, in accordance with the policies of the funders of the project, the data that has been collected may, after the end of the project, be made available to other researchers for legitimate research purposes. This process will be managed by the UK Data Archive, who will be responsible for approving or rejecting applications to use the data. The measures attempting to prevent your identification, as outlined under the anonymity sections of the consent form and information sheet, will also be applied to any data deposited with the UK Data Archive.

### **How will I be referred to in the study?**

The term “Director or Committee Member of Rugby Club (A)” will be utilised as the term of reference in any written document or oral presentation involving this stage of the research.

### **Anonymity.**

I will attempt to protect your anonymity within my written PhD work and any connected publication or presentation. Any non-essential identifying information will either be excluded or amended in line with the accepted practices of research of this type. However, it remains the case that a possibility exists that a club, or even an official of a club, may be identified within the presentation of the research, through their disclosures of specific information during the interview (such as information revealed by a participant, of a judgment against a club as a reason for incorporating.) I would further draw your attention to the fact that information disclosed within any interview could potentially be obtained by law enforcement bodies in their investigation of criminal activity, should such bodies consider this appropriate.

<b>Additional Contact Information</b>	
Researcher's Supervisor	<p>Supervisor's Name: Professor Julie Price</p> <p>Supervisor's Contact Details:</p> <p>xxxxx@cardiff.ac.uk</p>
Cardiff School of Law and Politics Research Ethics Committee (SREC)	<p>This project has received ethical approval from the Cardiff School of Law and Politics Research Ethics Committee (SREC) on 13/03/2020 (Internal Reference: SREC/220120/05).</p> <p>The Cardiff School of Law and Politics Research Ethics Committee (SREC) can be contacted at:</p> <p>School Research Officer</p> <p>Cardiff School of Law and Politics</p> <p>Cardiff University</p> <p>Law Building</p> <p>Museum Avenue</p> <p>Cardiff CF10 3AX</p> <p>Email: <a href="mailto:LAWPL-Ethics@cardiff.ac.uk">LAWPL-Ethics@cardiff.ac.uk</a></p>

## Appendix 3: Example Interview Questions.

### Example Interview Questions.

#### Preliminary Questions:

- A. How long have you been a member of your club's Committee/Board of Directors?
- B. What do you do for a living?
- C. (If incorporated) How long has your club been incorporated?

#### Decision Making:

1. Why did/has your club decided to incorporate/not incorporate?
2. Can you tell me how the decision was made to incorporate/not to incorporate? (Prompts: what information was relied on, were alternatives to co. ltd by guarantee considered, who decided?)
3. Who is involved in the decision-making process within the club?
4. Is the membership of the club different from the membership of the Company?/Do you think the membership of the club will be different from the membership of the Company if/when you incorporate?
5. Have you noticed a change in how the club's decision-making body operates since the club incorporated? /Do you expect a change in how the club's decision-making body operates if/when you incorporate?  
Probe if yes or no.

#### Legal Responsibilities:

6. Can you tell me what your understanding is of how incorporation may (has) affect(ed) your legal standing as a member of your Club's decision-making body?
7. Has your club faced a legal claim during your time as a Committee Member/Director?
8. There was an employment tribunal case reported in the Welsh News which involved stewards of an amateur club succeeding in a claim based on unfair dismissal, an award of £85,133.00 was made and it is reported that the treasurer faced losing his home when a land registry charge was placed on the property. Were you aware of this case? How did it/does it make you feel about your position as a Director/Committee member within your club?
9. Are legal risks and/or responsibilities something which concern you?  
If so, why? If not, why?
10. Do you view legal risks and responsibilities differently now that the club have incorporated?/ Do you think you would view legal risks and responsibilities differently once you are/if you became incorporated?

11. How do you feel about the workload expected of you as a Director/ Committee member?
12. Do you think more is expected of you today as regards legal responsibilities than was the case when you first became a committee member/director? If so why?  
Prompt:  
- Additional regulations and reporting requirements.
13. What do you think are the main barriers your board of directors/committee encounter when attempting to get things done? Was/is this an issue with incorporation?
14. Were you concerned about any additional/different duties or responsibilities you have as a director as opposed to the responsibilities and duties you had as a committee member?/ Are you concerned about any additional/different duties or responsibilities you may have as a director as opposed to the responsibilities you hold as a committee member?
15. Has the WRU's policy regarding incorporation made you think about your legal responsibilities differently?
16. How do you consider your club's relationship to be with the WRU? Has this changed post incorporation?/ Do you think this would change if you incorporated?