

Mountaineering Scotland
Safety & Liability: Guidance for Clubs
Revised: May 2017

Introduction

1. Mountaineering Scotland receives inquiries from clubs (Club Members) concerning possible liability in respect of club meets and the informal tuition of members. In response, this paper aims to provide club office-bearers, committees and members with useful information.
2. The paper covers the nature of the legal risks and the "duty of care" which clubs and their members are likely to encounter in mountaineering and associated activities (such as running a hut or a social meet), the steps which clubs should take to mitigate (i.e. reduce or avoid) these risks and their consequences and the extent to which such risks are covered by the Civil Liabilities Insurance (CLI) policy issued through Mountaineering Scotland. An Annex contains details of mountaineering qualifications, further references and contact addresses.
3. The content of this paper is not, of course, legally definitive. However, every effort has been made to apply the lessons learned over the years, both on the hill, and in negotiating the outcome of unfortunate events. Feedback as to the usefulness of this paper will be welcomed.
4. Mountaineering Scotland strongly recommends that club committees discuss the information in these notes, and ensure that their members are made aware of them. The intention is not to constrain clubs or their members in their activities, but to allow them to manage their affairs in such a way as to help manage risk and liability. It is important to both avoid legal risks and also to manage the risks 'on the hill'. The measures necessary for the former will often contribute to the latter. In particular, new and prospective members should be left in no doubt about the risks involved, their responsibilities for their own safety and that deciding to rely on more experienced members is part of the risk they accept.

Safety and Risk

5. The "Participation Statement" of the [UIAA](#) (Union Internationale des Associations d'Alpinisme or the International Climbing and Mountaineering Organisation) states that:

"Climbing, hill walking and mountaineering are activities with a danger of personal injury or death. Participants in these activities should be aware of and accept these risks and be responsible for their own actions and involvement."

This statement is regarded by Mountaineering Scotland as a useful basis for the consideration of safety and risk in the sport.

6. Over the last decade, court cases and fatal accident inquiries have accepted the unpredictable nature of mountaineering. Nevertheless, experienced mountaineers and climbers should make novices aware of the risks involved and take reasonable steps to ensure that both parties have the skills and knowledge to manage these risks.
7. If an incident occurs that could lead to a claim against a club, then, as soon as possible:
 - (a) all possible detail should be recorded in writing: e.g. date, time, place, names, addresses and roles of personnel (those directly involved and witnesses), any injuries and/or losses.
 - (b) the insurance company should be informed; although complainants have 3 years to raise a court action after the date of the incident, the insurance company may not provide support if a potential claim is not notified as soon as possible.

Contact details for the insurance company are:

The Sports Team
Perkins Slade Ltd
3 Broadway
Broad Street
Birmingham B15 1BQ
Tel: 0121 698 8000
Fax: 0121 625 9000
email: sports@perkins-slade.com

The master policy with details of all exclusions etc. is available on request from the Mountaineering Scotland office.

We encourage club officials to consult the Mountaineering Scotland website section [Club Insurance](#).

The Law

8. Every incident is different and the law itself is constantly changing. Indeed, recent cases have shown that there is still some uncertainty as to what a court

might decide in the circumstances of a particular incident. Relevant differences between Scots and English law are subtle and for the purposes of these notes are not of concern.

9. Criminal Law is made by legislation and by common law. Cases are brought by the Procurator Fiscal (in Scotland) or the Crown Prosecution Service (in England).
10. Civil Law is made by legislation and by common law, but precedents may be set by court decisions. Cases are brought by individuals or by bodies with legal personality such as companies. The burden of proof is less than for cases under Criminal Law, but there is a need to prove liability (see below), for which the following must be established:
 - (a) a duty of care must be owed.
 - (b) there must be a breach of that duty of care (act or omission).
 - (c) loss, injury or damage must have resulted from that act or omission.
11. Contracts are a complicated area of law but if you agree to look after a person or persons based on greater experience or knowledge, you might be deemed to be offering a contract to that effect.
12. Under common law, liability is based on negligence, which rests on the foreseeable nature of the incident, and has to be a serious act or omission and not just be a simple mistake.
13. There are a number of defences against negligence:
 - (a) lack of foreseeability, i.e. the circumstances had never happened before and could not reasonably be anticipated to happen. If a similar accident were to occur again, this defence might not be accepted.
 - (b) "*volenti non fit injuria*" (no wrong is done to one who consents), which incorporates the concept that a person who voluntarily undertakes an activity knowing the risks cannot claim for injury which is a natural part of that activity. For this defence to be effective, the following is required:
 - I. consent was voluntary.
 - II. the injured person had full knowledge of the risks involved.
 - III. the injured person was an adult.
 - IV. there is no evidence of deliberate intent or negligence.

(c) contributory negligence: the injured person is also at fault (e.g. not wearing a helmet in circumstances where it might be deemed appropriate).

(d) a break in the chain of causation, e.g. an intervening and separate act or event caused the injury.

14. The Health & Safety at Work Act, and its Regulations, do not apply to a club, unless it is an employer in its own right, or has control over premises (e.g. its own climbing wall or hut). If a club contracts expert assistance from mountain guides, instructors or leaders for the purpose of providing instruction to its members, the professional's health and safety responsibilities do not transfer to the club or its members. However, if a club organises a course that is available to non-members, and employs instructors, then the Act will apply.

15. However, some aspects of the Health & Safety at Work Act and its Regulations seem useful to clubs, particularly the provision of information, opportunities to develop the ability to recognise hazards and risk assessments.

Duty of Care

16. Clubs have the common-law duty of care that every member of society has to all other members of society, that is, the obligation to exercise a reasonable degree of prudence and caution while performing any acts that could foreseeably harm others. This responsibility is reciprocal, in that each person is responsible for him or herself, and should also ensure that his or her actions do not put others at risk. Duty of care is not diminished because of involvement in a hazardous activity such as mountaineering.

17. A general principle - the "neighbour principle" - has been formulated for determining whether, in any given case, a duty of care exists:

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbours. Who then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question" (Lord Atkin, in *Donoghue (otherwise McAlister) v. Stevenson*, 1932).

18. Some examples of where a duty of care exists are:

(a) an experienced climber belays a novice.

(b) a contractual arrangement, not necessarily involving payment, is in force (e.g. arrangements for specialist services).

(c) an adult accepts, by verbal consent or action, responsibility for a child or young person less than 18 years of age.

(d) teachers supervise educational activities.

19. It is impossible, however, to be categorical about the circumstances in which a duty of care will be held to exist. The court will take into account a range of factors, such as:

(a) the age and experience of the injured party and/or the stated experience.

(b) the age, experience and qualifications of the person who is deemed to have owed a duty of care to the injured party.

(c) the season when the activity was undertaken, and the location (or premises) where it was undertaken.

(d) the equipment taken and/or used.

(e) the hazards (foreseeable risk of injury etc.) involved in the activity undertaken.

20. In the event of an accident, an action for negligence has to demonstrate how and to what degree the actions of one person damaged the interests of another and the degree of responsibility which all those involved carried for the outcome under consideration. If a person enters voluntarily and knowingly into a situation and has an accident, then the person injured may be held to be the author of their own misfortune or at least may share responsibility for the accident.

21. At common law, if an injured party has not taken reasonable precautions or if the injuries were caused partly by his or her own negligence, then he or she may find that damages are reduced or not awarded at all. In defence, a defender may seek to prove that the injured party did not in his or her own interest take reasonable care of himself or herself and contributed, by this want of care, to his or her own injury.

22. A more experienced member of a group owes an extra duty of care to its less experienced members, irrespective of whether this responsibility is explicitly accepted or not. However, election to an organisational position within a club does not in itself imply either exceptional experience or a quality of expertise sufficient to hold the elected member as being responsible for the safety of other members of the club.

The Roles of a Meet Contact, Co-ordinator or Organiser

23. A member of a club designated as a meet 'contact' or 'co-ordinator' should not be given responsibilities such as "to ensure the safety of the members on a meet" or "to check route plans, clothing, gear and competence to fulfil the

objective". This may imply a greater role, status and expertise for that person than they actually have. The term 'supervisor' should in particular be avoided.

24. The responsibilities of the 'Meet Contact' (or similar title) who will arrange one or more meets should include the dissemination of information about the area to be visited. In addition, details of possible objectives, including the distances and times involved, the technical difficulty and the necessary equipment should be provided. This information should be distributed prior to the meet allowing informal discussions and giving the less experienced the opportunity to decide whether they possess the fitness, ability, resilience and equipment necessary to participate. It may be appropriate to repeat or reinforce this information when people book on a meet. One of the considerations for individuals is to compare recent successful trips with any planned objective. If there is a large disparity between them, then it may reasonably be concluded that a less ambitious objective should be chosen.
25. On the meet, the 'Meet Contact' should not take on a role of supervision. If a group with a specific objective in mind has concerns about an individual's fitness, ability, resilience or equipment they should raise these concerns with the individual. If possible, the individual should be encouraged to join an alternative group which has an appropriate objective. If no alternative is available and/or the member insists on joining the original group, the concerned group should jointly inform the individual that he or she cannot join the group. The reasons should be given and it should be possible to draw the individual's attention to the procedure which has been followed in para 24 above.
26. If a member of the club repeatedly gets into difficulties, club office bearers should consider various means of expressing their concerns and obtaining the member's agreement not to participate in meets which are considered to be inappropriate for that member. Such means may include informal and formal discussion, through to the ultimate withdrawal of membership of the club. Any actions taken should be in line with the principles of 'natural justice', i.e. absolute fairness to both sides. It is usually a lack of fairness which leads to problems, with individuals sometimes taking legal advice which may lead to the club becoming embroiled in litigation.

'Leaders' etc. within Clubs

27. Clubs should also avoid using the terms such as 'instructor', 'leader', etc. and similar words ('leadership', 'led'). These words have ambiguous meanings, and consequently misunderstandings can occur when individuals have different ideas about the level and nature of what is being provided. Terms such as 'Meet Contact', 'Meet Co-ordinator' or 'Meet Organiser' should be used.
28. If a member of the club accepts responsibility for an activity, it should be on the basis that he or she is only helping by sharing his or her experience, and may not be qualified or regarded as a 'technical expert' in any way. Any less experienced members of the club accompanying this more experienced

member should be made aware that they take any advice on this basis, and that the onus of responsibility for deciding whether or not to rely on any such advice lies with the less-experienced member.

29. Some experienced mountaineers have expressed concern about the responsibilities they carry for people attending club meets who wish to be led and who decide to take very little responsibility for themselves. Such people may have a considerable history of participation but remain novices in all essential aspects, and they should be so regarded by the club. The information issued by the club should reflect the basis outlined in the previous paragraph.
30. Meets which include some form of training should concentrate on the sharing of knowledge and skills, but not as "instruction". Such meets may be advertised within the club as with any other normal meet but with an indication that the opportunity exists for beginners to gain experience and knowledge from other members of the club in a particular activity. For example, a meet at the beginning of the winter might include a practice session in ice axe or crampon use. A night meet could allow teams of members to test their navigation as a fun exercise or competition.
31. Members of a club who have one or other of qualifications such as the Mountain Leader Award (ML; see Annex) may, of course, assist fellow members in their club activities. However, they should not:
 - (a) be regarded by the Club or members of the club as "leaders" of particular meets or activities.
 - (b) be regarded by the Club as the only persons suitable to take out beginners or minors.
 - (c) be paid by the Club to act as a leader.

Recommended Group Size/'Buddy' system

32. Restrict group size to a maximum of six people. If more than six members want to do a particular walk then they should split themselves down into smaller sub groups before departing. Although they can plan to rendezvous at stopping points/summits etc. they should be truly autonomous groups responsible for navigating themselves and carrying all necessary individual and group kit.
33. With 'mixed ability' groups, a system of 'buddying' could be introduced, so the more experienced folk are paired up with the less experienced and as a result problems/issues would likely be picked up immediately

Equipment Pools

34. Many clubs operate a pool of gear that can be borrowed by members. Members who borrow the equipment have a responsibility to check it before

use, to use it in accordance with the manufacturer's instructions, and to report any damage or misuse. This is not the responsibility of the club's "equipment member" or equivalent. This should be made clear to members.

35. The club should maintain a record of all equipment (e.g. manufacturer, date and source of purchase, use and misuse). Clubs should note that, if equipment is hired out on a financial basis rather than loaned for free, there may be a more stringent responsibility to ensure that the equipment is fit for purpose and clubs should take this into account when putting procedures in place.

Children and Young People

36. Mountaineering Scotland hopes that Clubs accept young people as members in their own right, and believes that they should not be put off doing so for reasons of liability or fear of prosecution. However, children and young people (under 18 years) are not fully responsible in law for their actions, and in addition clubs may feel that their adult members and office-bearers take on an unacceptable duty of care when taking young people out climbing or hillwalking. They may feel that, when accompanying a child and acting as an adult nominated by a parent / carer, they are liable for any accident to the young person, however it was caused. However, as long as the club or individual does everything 'reasonable' to ensure the safety of any young person accompanying them on climbing or hillwalking expeditions, then they should not fear being found negligent in the event of an accident.

37. The UN Convention on the Rights of the Child defines a child as a person less than 18 years of age. When accompanying a child and acting as an adult nominated by a parent / carer, the duty is to take the care that one would expect a reasonably prudent parent to take. For club activities, written parental consent for a young person to take part should be obtained.

38. The Activity Centres (Young Persons' Safety) Act 1995 and the Regulations made under it are part of criminal law. The Adventure Activities Licensing Regulations 1996 (SI 1996/772) state:

A person is required to hold a licence in respect of the provision of facilities for adventure activities if that person provides such facilities in return for payment. ...A person is not required to hold a licence in respect of facilities for adventure activities where those facilities are provided by a voluntary association.

39. If a club sells such facilities, they will need a licence, but not if it provides facilities free, sells them to anyone over 18, or to under 18's who are their members (including the members of another voluntary association with which they have an arrangement), or to non-members who participate in events to encourage membership or interest in the club's activities during less than 3 days in any year, or who are accompanied by their parent or guardian.

40. The club should provide information to young people and their parents to ensure they are aware of the risks. This information should include the UIAA Participation Statement (see para 5 above) and summarise the details of meet organisation shown elsewhere in this document.
41. Office-bearers of Clubs which involve young people under the age of 18 in club activities are recommended to read the Mountaineering Scotland guidance relating to [Young People in Clubs](#). Such office-bearers should also be conversant with the Mountaineering Scotland [Child Protection Policy and Procedures](#).

University Mountaineering Clubs

42. University clubs differ from other mountaineering clubs in being transitional as students graduate and move on relatively frequently. University clubs may actively encourage students to participate, and it is important that the risks are made clear to all potential members. University Clubs often become active in the autumn, just as weather and conditions become wintry. The committees of University clubs should consider new members when planning meets, possibly by considering a progressive approach to trips. Committees and individuals should be objective, honest and realistic about their own level of experience; for example, the difference in experience between a fourth-year and first-year student may, in reality, not be all that great.
43. University club committees should bring to the attention of all members the UIAA Participation Statement regarding risk and responsibility, and stress that the primary responsibility for safety lies with the individual participant. Membership application forms should include the Participation Statement. University club committees should communicate with the University Sports Union or Association and follow any safety procedures in place which do not conflict with mountaineering good practice. For example, there may be an appropriate trip registration system in operation. University Sports Unions and Associations are encouraged to liaise with Mountaineering Scotland regarding written safety procedures. There may be a misconception by some students and parents that walks are guided or led. This is not the case and participants should be encouraged to inform their parents of the nature of activities, i.e. run by students for students with no qualified leadership - just sharing of experience by other slightly more experienced, but nevertheless, young students.
44. The responsibility for the safety of students involved in mountaineering activities has reportedly been interpreted as similar to, or an extension of, the University's responsibilities under the Health & Safety Regulations. As some first-year students have not yet attained the age of 18, the Activity Centres (Young Persons' Safety) Act may be relevant.
45. Mountaineering Scotland is adamant that the receipt of a grant for voluntary activities does not mean that University Mountaineering Clubs fall within the

scope of either the Health & Safety Act or the Activity Centres (Young Persons' Safety) Act; nor does it imply that those who hold elected positions have similar duties to those specified in these Acts. Mountaineering Scotland believes that University clubs should operate under the same procedures as any other voluntary club, and that, if the information contained within this guidance is adopted, then they will fulfil their duty of care and therefore their (and their University's) liability for accidents is likewise diminished.

Disabilities

46. In law, a "disability" includes impairments in mobility, vision or hearing, and suffering from diabetes, epilepsy, asthma or chronic depression. Thus some members of mountaineering clubs may fall into the legal category of being disabled.
47. The Disability Discrimination Acts 1995 and 2005 make it unlawful for any club, public or private, to discriminate against the disabled through its membership or use of club facilities. The responsibility lies on both sides - the individual must make its requirements known to the club, and the club must do what it can (make "reasonable adjustments") within budgetary and resource constraints to accommodate the needs of those members.
48. The most basic provision for the disabled could be making large-font newsletters available for visually impaired members or hearing induction loops available at AGMs or club functions for members with hearing difficulty. sportscotland provides example statements on the 'Help for Clubs' website at: <http://www.helpforclubs.org.uk/>
49. The social aspect of mountaineering clubs often encourages members to gather at a local pub or to hold a business or social occasion (such as an AGM or a holiday party) at a specific location. Locations should make it possible for all members and guests to attend without loss of dignity, e.g. having to be carried upstairs in the event of having no lifts available.
50. If the Club maintains a mountaineering hut with reciprocal rights, or lets the hut to the public, then the club must bring the hut to standards within the spirit of the Disability Discrimination legislation. Access audits, changes in signage, contrasting colours in door and window frames; ample seating and possibly grab bars for the more frail (perhaps older) members are examples of removing barriers. Many of these things can be incorporated over the years through thoughtful planning of maintenance work.

Civil Liability Insurance

51. Club Members of Mountaineering Scotland are covered by third party civil liability insurance, which provides cover for clubs and members of clubs declared (usually by the club's secretary and according to the Mountaineering

Scotland Articles of Association) as active members of the club to Mountaineering Scotland.

52. Access to full details of the policy may be found via the [Your Insurance](#) page on the Mountaineering Scotland website.
53. The policy covers Club Members for any claim made for any civil liability arising in connection with mountaineering or other club related activities. The cover has no territorial limits and is not subject to an excess. The limit of indemnity in respect of any claim made during the period of insurance is (at December 2012): £10 million in respect of public liability for any one event; £5m in respect of civil liability for any one event; £2.5m in respect of liability for child abuse for any one event.
54. Cover is also provided for 'professional duty' but only in situations in which a member of a club provides tuition to fellow members on a voluntary basis. The policy does not cover a situation where tuition is provided by a professional who charges a fee for such a service (this should be covered by his or her own professional insurance).
55. The Club Member, and members of its committee who are resident in the UK, are insured for any mountaineering-related event or activity - social, business or sporting - that they organise and participate in. The scope of Civil Liability Insurance cover applies to members of the club (who are resident in the UK) for a range of all-season mountaineering activities, undertaken in the UK and overseas, including:
- Mountaineering and Alpinism
 - Climbing (indoor and outdoor)
 - Scrambling
 - Bouldering
 - Hill Walking and Winter Walking
 - Ski Mountaineering and Ski Touring, including incidental use of a piste for access
 - Canyoning
 - Coasteering
 - Incidental use of hand propelled watercraft (i.e. kayak and canoe) when used to gain access to, or as part of a mountaineering journey
 - Incidental use of a bicycle when used to gain access to, or as part of a mountaineering journey
 - Members should note that cover for the use of kayaks, canoes and bicycles (typically mountain bikes) is restricted to their use to enable a member to reach a particular mountaineering or climbing route, and not for use in their own right as an activity which is not related to mountaineering.
56. A Club may also advise members to take out additional life insurance or warn them that life insurance policies often exclude provision of cover when

undertaking mountaineering activities. [Summit Financial Services](#) is a specialist provider of life insurance and other financial products for mountaineers, which is recommended by Mountaineering Scotland. [BMC Travel Insurance](#) is available direct from the BMC which recognises Mountaineering Scotland membership as equivalent to BMC membership for insurance purposes.

Qualifications

57. Mountaineering Scotland recognises the following formal awards. Clubs officials should ensure that anyone who is paid to instruct or guide members holds the appropriate award. Details of award holders are available from the [Mountain Training](#) website:

1. [Walking Group Leader Award](#) (WGL; Summer conditions in non-mountainous hilly terrain, known variously as upland, moor, bog, hill, fell or down)
2. [Mountain Leader Award](#) (ML; Summer only; excludes all climbing and planned use of the rope)
3. [Winter Mountain Leader Award](#) (MLW; This award trains and assesses candidates in the skills required to lead walking groups in winter conditions in the mountains. The use of crampons & axes is covered in the scheme)
4. [Mountaineering Instructor Award](#) (MIA; summer climbing in the U.K.)
5. [Mountaineering Instructor Certificate](#) (MIC; summer and winter climbing in the U.K.)
6. [British Mountain Guide](#) (BMG; summer and winter climbing, Alpine and glacier work, ski-mountaineering)
7. [Single Pitch Award](#) (SPA; For the supervision of climbing activities on single pitch crags and climbing walls)
8. [Climbing Wall Award](#) (CWA; For the supervision of climbing activities on indoor or outdoor climbing walls and structures in the United Kingdom)
9. [Climbing Wall Leader Award](#) (CWLA; For those who wish to teach lead climbing skills on indoor or outdoor artificial climbing walls and structures with fixed protection)

APPENDICES

A: Information about Mountain Safety:

The Mountaineering Scotland website section on [Safety and Skills](#) contains a wide range of guidance, far more than may be summarised here, so the best policy is to check it out!

Mountaineering Scotland encourages dissemination of its mountain safety guidance and there is no copyright restriction regarding its use, although we recommend that the source is cited on any website where the information is published.

The information provided by Mountaineering Scotland is not prescriptive and is offered as guidance. The advice is based on current good practice and Mountaineering Scotland cannot be held responsible for any omissions:

B: Navigation

There is a wealth of information on navigation in the Mountaineering Scotland website in our [navigation section](#).

Are you the sort of person who learns from getting out there and doing it, rather than reading about it? Follow this link to our subsidised [navigation training courses](#).

If you're planning to climb Britain's highest mountain, follow the link to our dedicated [Ben Nevis page](#), with information on equipment, skills and navigation.

The [use of GPS devices and smartphones as navigation aids](#).

C: First Aid

[First Aid Courses](#) (Mountaineering Scotland)

[First Aid kit](#)

D: You Tube Videos

A range of [skills videos](#) can be viewed in our Essential Skills section

E: Highly Recommended Sources of Information:

The official handbooks of the Mountain Leader schemes, including Hillwalking, Winter Skills, Rock Climbing, Navigation in the Mountains, International Mountain Trekking.

F: DVDs – available from the [Mountaineering Scotland Shop](#)

Hillwalking Essentials - in addition to the film, the technical chapters include: Navigation, Scrambling, Weather, River Crossings, Mountain Rescue, Ticks and Hazards. 40 minutes documentary and 100 minutes of technical chapters

Winter Essentials - film and 11 chapters dealing with skills and techniques for winter

Alpine Essentials - film and 19 chapters dealing with skills and techniques for alpine mountaineering

Water Hazards in the Mountains - film which raises awareness of the dangers of mountain streams and rivers

G: Useful Contacts

Mountaineering Scotland – info@mountaineering.scot

Heather Morning, Mountain Safety Adviser, Mountaineering Scotland – heather@mountaineering.scot

The BMC (British Mountaineering Council) – office@thebmc.co.uk

Scottish Mountain Rescue – info@scottishmountainrescue.org

Sportscotland - <https://sportscotland.org.uk/>

sportscotland Avalanche Information Service - <http://www.sais.gov.uk/>

Mountain Training UK - <http://www.mountain-training.org/>

British Association of Mountain Guides – <http://www.bmg.org.uk/>

Association of Mountaineering Instructors – <http://www.mountain-training.org/associations/ami>

British Association of International Mountain Leaders – <http://www.baiml.org/>