



“Natural Justice” within Clubs Dealing with Unacceptable Behaviour

Introduction

When a club is formed or when a club takes on new members, there is often a presumption that as the members all have a common interest in hillwalking, mountaineering or climbing, they will all be able to get along without serious argument and that any disagreements can be resolved by talking them out on the hill or crag, or perhaps over a dram in the local hostelry. It is never envisaged that relations between members will ever get so strained that formal complaints are made or legal action becomes necessary.

Most clubs make provision in their constitutions to cover such items as membership, general meetings, the regulation of the management committee, election of officers, dealing with accounts and the expulsion of members. However, the latter clause is usually optimistically vague, leaving the club with a lack of clear process when it comes to addressing issues with members whose behaviour becomes unacceptable.

The reality is that a member whose behaviour has become unacceptable to the majority of the club, rarely sees things in the same light, and without a clear process, it can be difficult to resolve complaints amicably or fairly.

While it will hopefully never need to be called upon, setting out a clear and transparent process for managing complaints or dealing with challenging members is an important part of responsible club governance and will be valued if a difficult situation ever arises. The legal principle of ‘Natural Justice’ underpins the process we recommend clubs adhere to.

Natural justice

The principle is:

Procedures must be absolutely fair to both sides

This particularly concerns the following areas:

- Any accusation must be explored before any further procedure is taken. This means fully checking the details of the event of the complaint, particularly with any witnesses.
- The ‘accused’ must be fully informed of all the details of the complaint and no further details should be submitted at a later stage.
- The accused must be given the opportunity to present his/her version and a defence. This entails allowing evidence from witnesses and documents etc. and cross-examination of those giving evidence against.
- All proceedings must be entirely even handed. It is at this point that many clubs may fail. In general, a club must ensure that any members involved in part of the decision-

making process at an early stage should not be involved later on (i.e. the principle is that someone who has sat in judgement at one stage should not sit in judgement at a further stage, including appeals, for that individual will be automatically tainted with a suspicion of bias).

- No complainer can sit in judgement at any stage.

The process

It is best to limit the number of stages it takes to review a complaint. The number of members involved in each stage should also be minimised, as they have to disbar themselves from further stages. It is recommended that the following matters are included in the club constitution:

1. Appoint a Complaints Officer. This person need not be on the management committee and could probably be co-opted annually at the time of election of other officers.
2. Any complaint should remain directed to the committee which will remit the details to the Complaints Officer to investigate.
3. The Complaints Officer should then interview the complainer and witnesses as well as the person complained of and their witnesses. Accurate notes should be kept. The Officer should then prepare a report for submission to the management committee indicating whether the complaint is valid or not. The Officer should not be involved at any stage in the complaints or expulsion procedure.
4. The Management Committee should be empowered to form a sub-committee to deal with the complaint. This need only consist of a small number of people (3) and should be selected to ensure no bias for or against either the complainer or the member complained of.
5. The Sub-committee should review the Complaints Officer's report and interview that officer for clarification if need be. They should then either i) dismiss the complaint or, ii) undertake further procedures if they feel the complaint valid.
6. If option ii) is taken the Sub-committee should call the member complained of before it, with reasonable notice given in writing along with FULL details of the events and circumstances alleged against him/her. That member should also be given the opportunity of representation by a friend (i.e. a person to speak for him/her). This person can be from outwith the club if the club normally has open meetings but cannot be a solicitor (although the member is allowed to consult a solicitor). By appointing a representative, then legally the member is no longer his/her own advocate and can be regarded as the accused and as a witness.
7. In the meeting called by the Sub-committee a full and thorough exploration of the circumstances should be made in an even-handed fashion using the witnesses accounts as well as those of the errant member and complainant.
8. The Sub-committee should then let its findings be known to errant member and complainant and will report to the management committee. That committee can decide whether to publish the proceedings for the club as a whole. The options for action could be the following:
 - i) Dismiss the complaint
 - ii) Admonish the member & require him/her not to transgress in the future
 - iii) Suspend the member for a period of time
 - iv) Expulsion.

The Sub-committees' work has been completed.

9. There should be a right to appeal. A 14 day period is reasonable in which the member notifies the management committee (in writing) whether (s)he wishes to appeal. The Management committee is then required to call an extraordinary or special meeting of the club within a further 28 days in which to hear the appeal. It is best to continue to allow the member complained of to be a member of the club and to use all the facilities that were previously enjoyed. (s)he should not be suspended straight away if that was the ruling from the Sub-committee.
10. At the Appeal General Meeting the members of the Sub-committee and the Complaints Officer are disbarred from voting although their presence may be required for information. No new 'charges' should be brought forward. Lawfully, previous 'convictions' cannot be taken into account, although complaints closely linked in time may be regarded as being relevant.
11. The chair of the Sub-committee should give a report and the errant member should then be able to air his/her position. A debate and questions should then follow and a vote taken to finally close the matter.
12. Finally, the member should be able to scrutinise any ballot (particularly if written).

Summary

Though it will hopefully be an uncommon situation, clubs should have a process in place to ensure they are able to fairly manage complaints and deal with scenarios including the expulsion of disruptive members or those members that act against the general ethos of the club, or act in a way that brings the club into disrepute, or undertake activities with much less experienced members that places them in unreasonable risk.

All members should be aware of how this system operates and this process should be highlighted in the clubs' constitution and it should take into account the principles of natural justice outlined above to be confident that it has afforded those under complaint a fair hearing and cannot accuse the club of bias thereafter leading to litigation.