

Club insurance – why bother?

Several people have been asking about the issue of club liability and why it is necessary for all members of a club to be insured in order for the club itself to have protection. I'm not big on scaremongering, but if we accept that there is a need for insurance at all, then it's worth examining in detail what the circumstances are in which that insurance might be used.

It may help if I explain it from the point of view of what would happen if there is a claim.

Let's imagine for a minute that an incident occurs which results in a claim. Take for example the circumstances of the only significant claim that has ever taken place within the UK caving community which happened in 1974 when some members of a Mendip caving club were caving in Lamb Leer. In this incident, an un-lifeline caver fell off a ladder and a novice caver who was at the bottom of the ladder was badly injured. His family sued the club for damages.

This is not the place for a detailed treatise on liability law, but it is important to acknowledge that there is a distinction between the costs of a claim being made and damages being awarded. Even if liability is not found to rest with the club, the costs of the case are likely to run into the tens of thousands, particularly since there is so little case law as regards liability for caving accidents that various appeals are likely before a final judgment is reached. It is therefore self evident that the actions of a club need not be negligent for the club to be put in a position where it has to fund legal costs of tens of thousands of pounds. If the club is found to be negligent, the damages and costs could run into millions.

If a case is launched against a club, it is likely that it will be taken out in the name of the club itself, and also in the names of the principle members of the club, viz the Chairman, Secretary and Treasurer. Unincorporated organizations such as caving and mine exploration clubs are a rather nebulous legal concept, so it is actually possible that the claimant's lawyers could choose not to sue the club itself at all, but instead focus on certain named individuals in the club. If the case goes in the claimant's favour, the individuals are then saddled with a huge debt and would have no alternative but to seek to reclaim this off their fellow club members. Even if the debt is only a few tens of thousands of pounds in legal fees, most people would be forced to sell their homes in order to be able to pay it unless they can spread the cost among a large number of people. Non-payment of the debt could result in bankruptcy for the individuals concerned.

Caving and mine exploration club members have joint and several liability for the club's debts which means that all members are equally liable, but also that a single member could be forced to pay the entire debt and then left to attempt to recover that money from their fellow club members. In the first instance the club's assets would have to be sold to pay the debt, so if the club has a hut then this might raise a few hundred thousand pounds, but if the claim has resulted in a damages payment in the millions then the remainder will come from the club member's pockets.

If the club as a whole has insurance sufficient to cover the debt, then the possibility of claims between club members is removed since the insurance picks up the debt and (except for the payment of any excess) the club has nothing to pay but an increased premium the following year (if they can get insurance at all!).

If the club is not insured as a whole but instead has a mix of insured and uninsured members, then the situation is quite different. The most likely outcome is that the club loses its hut and any other assets as the first part of payment of the debt. The remainder of the debt is divided among the members. Those who are insured are OK

because they can offload their debt to the insurance company, but those who have no cover are left to find the money from personal resources. It's not difficult to see that if the claim is in the millions, this could result in the uninsured members of the club losing their homes in order to pay their share of the debt.

Ironically, it is the clubs with the biggest assets who have the most to lose. Lawyers don't generally recommend claimants to sue people with no assets since if there's no pot of money to pay damages and legal fees at the end of the case then they (the lawyers) won't get paid. On the other hand, where a club is seen to have a lot of assets, or to consist of a number of reasonably well-off people who have personal assets which might cover a decent claim, then the case might well look like an attractive prospect to an ambulance chasing lawyer (yes, they do exist). A claimant who strikes a no-win/no-fee deal with their legal advisers has nothing to lose.

We used to be able to buy insurance to protect ourselves against this danger for a few pence a year. Nowadays, the cost is far higher, but even so it's little more than what you might spend on a quiet evening in the pub, and is probably a fraction of what you will spend in driving to go caving at the weekend. Yes, it rankles that big business can push us around like this, but if you have assets worth more than a few thousand pounds, it's still a bargain for peace of mind.