



CLUB INSURANCES

It must be recognised that recreational boating is by its nature an unpredictable sport and therefore inherently involves an element of risk. As such, notwithstanding the contents of the racing rules, club rules, or other event documentation, there will always remain the risk of injury to a participant, and the possibility of a case being taken to court.

It should always be remembered that, where a claimant has suffered injury, he may choose to pursue a legal action against a variety of defendants. Thus a crew injured in a collision between two racing yachts may seek to take action against his own skipper, the skipper of the other yacht, the skipper of the rescue boat, the club and/or individually named race officials, although this is not to say that such a claim would be successful.

Even where a competitor has a slim chance of success, the increasing availability of legal expense insurance, and the rules allowing solicitors to take cases on a 'no win no fee' basis, may make such actions more likely. The costs of successfully defending an action may be crippling high in some circumstances.

CLUBS AND ASSOCIATIONS CARRYING NO INSURANCE

In some circumstances it may not be necessary for clubs or associations to carry any insurance. Many clubs without premises or valuable equipment, simply exist as a point of contact for members who then organize their own social or cruising events. Thus a small class or single-make owners' association may organize a list of members, publish a news sheet, organize pre-arranged "meets" and arrange regular shore-based social events. However, unless any of the events involve "hands-on" management, the potential for legal liability for injury is slight, often rendering the cost of insurance unjustifiable. Each activity of the club therefore needs to be assessed as to its potential liability to third parties.

CLUB COMPREHENSIVE INSURANCE POLICY

The RYA has negotiated a comprehensive insurance policy on behalf of its affiliated clubs, which is available through Gallagher Heath insurance brokers and underwritten by Groves, John, Westrup ("GJW"). This policy is intended to cover the risks likely to be faced

by most clubs, including buildings, contents (including trophies), cash, loss of revenue following damage, employer's liability, fidelity of staff, piers, jetties and pontoons, club boats and of course public liability. A key benefit of this policy is the public liability "member to member" extension which covers members against claims between each other. Further cover also includes committee members, officers and other volunteers involved in organising events (whether racing, training or social), or otherwise in a position of responsibility, against personal liability.

However, each club's insurance needs will differ according to their individual circumstances and Gallagher Heath will be able to advise on appropriate policy coverage and tailor the insurance accordingly.

Individual volunteers organising events should check with the club secretary that the club's insurance policy is up to date, covers the club for the proposed activities (whether on or off the club premises) and extends to covering the personal liability of the individual volunteers while acting on behalf of the club.

Many standard policies do not cover race officials or instructors and special arrangements may have to be made.

CLUBS AND ASSOCIATIONS – PUBLIC LIABILITY ONLY INSURANCE

Where a club or association has no premises or equipment of value to be insured, but has a "hands on" responsibility for management of events, a public liability only policy might be appropriate. Such cover is available through most insurance brokers. Here again, volunteers organising events should check with the club or association secretary that the policy is valid for the event concerned and also covers the individual liability of volunteers.

AUDIT OF CLUB'S INSURANCE ARRANGEMENTS

Gallagher Heath may carry out a free audit of any club's or association's existing insurance arrangements should the club or association have doubts as to the adequacy of their current insurance arrangements.

RYA DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Some landlords and other contractors are prepared to include in contracts, leases, etc a provision to the effect that the overall liability of the trustees/officers etc arising out of any contract or other obligation undertaken by them on behalf of the club shall be limited to the assets of the club. The effect of this is to exonerate the trustees/officers etc from personal liability for contracts which could otherwise put their personal assets at risk

However, there may be other situations where individual trustees, officers, directors and committee members may be held personally liable for third party losses incurred whilst carrying out their club duties.

It may therefore be difficult to find club members willing to take on such duties due to the potential liabilities and it may therefore be necessary to consider taking out Directors' and Officers' liability insurance cover to provide protection to trustees/officers etc against a range of exposures.

RYA REGIONAL RACE OFFICERS AND NATIONAL RACE OFFICERS INSURANCE

The RYA, in association with Gallagher Heath provides a Race Officials Indemnity Insurance Scheme. This provides cover against claims for physical damage and personal injury or death. It is limited to RYA Personal Members who are qualified either as Regional Race or National Race Officers or have been appointed as RYA National Judges or National Umpires. Cover extends to all events within the UK and other agreed Countries (contact Gallagher Heath for a list of the agreed Countries), up to £5m, while the assured is officiating, or giving advice, at a racing event held under the Racing Rules of Sailing.

RYA QUALIFIED INSTRUCTORS, TRAINERS AND COACHES INSURANCE

The RYA, in association with Gallagher Heath, provides an instructors', trainers' and coaches' third party liability indemnity insurance scheme.

RYA POWERBOAT RACING OFFICIALS INSURANCE

The RYA Powerboat Racing Third Party Liability policy provides insurance cover for all affiliated, organising clubs, and licensed competitors participating in RYA approved Powerboat Racing events. There is a separate policy for all RYA Officials, who are officiating and 'signed on' to an approved event.

Full details of these policies may be obtained from the RYA Powerboat Racing Office.

TRAINING ACTIVITIES AT A CLUB OR SAILING SCHOOL

Liability can arise from a number of sources, including damage or injury done by a pupil or cause to them. Insurance should cover all aspects of the club or school's training activities.

- Small craft insurance. There should be adequate insurance for all training and rescue craft for damage and third party liability, whether in the hands of instructors or trainees.
- Establishment insurance, covering the liabilities of the school or club itself.
- Employer's liability insurance for the paid instructors.
- Volunteer instructors obviously require adequate third party insurance cover; they should either organise this themselves or the establishment should gain an extension of their own insurance arrangements.
- Public liability

All those responsible for organising training events would be wise to consider all possible areas of liability. Apart from accidents occurring on the water, incidents arising from defective premises (including car parks, boats parks, jetties, pontoons), accidents at a residential centre (including food poisoning) or from defective moorings or flare demonstrations are all examples of potential liability. The whole range of a club or school's activities should be discussed with the insurance broker to ensure that all such potential liabilities are covered, both on and off the premises.

PROPOSAL FORM

The representative of the club must provide truthful statements when completing the proposal form and disclose every material circumstance in the knowledge of the applicant club which they believe may affect the insurance cover. The insurance company

may chose to remove any insurance cover issued to the applicant club if the insurance company has not been informed of a material circumstance or a statement made on behalf of the club is found to be untrue.

INSURABLE INTEREST

An insurance policy may only be gained for property in which the club has an interest and for identifiable risks. Therefore, insurance may be gained for any property which the club owns, leases and uses, and will not be gained for members' personal property.

TERMS OF INSURANCE

The policy will identify the nature of the insured interest, whether that be property or a liability of the club. The insured interest may be subject to general exclusions, therefore the insurance company may refuse to cover loss or damage to property or a claim on liability in given circumstances.

It is also important to identify the exact risks against which the insurance policy is to address, such as accidental damage, damage caused by high tides or high winds, or malicious damage. Beware of a policy which simply states "ALL RISKS", as in reality this will still only relate to only some risks and namely only risks of direct accidental physical loss or damage which are subject to numerous exclusions.

BUILDINGS INCLUDING PIERS, JETTIES AND PONTOONS

Building insurance covers the material structures owned by the club. For building insurance, it is necessary to define exactly the premises to be covered by the insurance policy. It is necessary to identify such features as car-parks, boat-parks, ramps, slipways and seawalls.

Insurance for piers, jetties and pontoons is normally an extension of the building insurance, but must be expressly stated in the insurance policy. The cost to insure these structures may be calculated along lines of floating barges.

Moorings should be expressly insured.

Insured damage to buildings is generally damage caused by accident, and under certain policies this includes malicious acts. Insured damage to buildings is not damage caused by wear and tear, encroachment or gradual weathering, or erosion. Insurers are reluctant to pay for damage caused to the building due to failure to undertake maintenance works.

It is worth considering what damage the building could suffer, such as high tides coupled with high winds causing damage not only to the building, but also the surface of a boat park or car park, as well as structures forming ramps, slipways and sea walls.

CONTENTS AND DETERIORATION OF STOCK

Clubs based in remote sites may not be able to gain contents insurance, either because the underwriter will not cover the risk or because the premium is too high.

It is necessary to identify large items of value, such as silverware, trophies, pictures and furniture. Clubs should arrange special insurance cover for trophies which they allow sailors to take off of the premises. Few trophy winners will have sufficient personal or household insurance to cover the loss or destruction of theft and most will expect that trophies will be covered by the club's own arrangements. In the case of old trophies in particular, the replacement value may be much more than the raw metal value. A regular re-evaluation is essential.

CASH

This is really an extension of the contents insurance. It is advisable to state the amount of cash the club expects to hold on its premises at any given time. The insurance company may make provisions for the manner in which it is held. The club must consider whether it is necessary to get additional cover for cash in transit to and from the bank.

LOSS OF PROFITS AND LOSS OF LICENCE

While it is inaccurate to speak of a members club making a profit or a loss, this concept is easier for the insurance underwriter to grasp than surplus or deficit and accordingly insurance policies for clubs are phrased in those terms. The club should identify all its activities which could be deemed as intended to make profit, such as

transactions at the bar or for food, and especially the hosting of sailing events requiring a participation fee.

Loss of profits is valued as the profits which the club would have been certain of having received but for an event such as fire or cancellation of sailing. As in the case of any undertaking whose business could be affected by fire, flood or other damage to premises, or by burglary or malicious damage, a club which has to cancel an open meeting at short notice could find itself short of the budgeted income required to avoid a deficit.

A large part of profits for clubs will be generated by sales of alcohol in the club bar. Insurance for loss of profits should expressly recognise losses resulting from the bar licence being suspended or withdrawn.

EMPLOYER'S LIABILITY

There is statutory requirement that an employer insure itself for employee's accidental injury claims, and for the certificate of insurance to be exhibited prominently for inspection by all employees. Therefore, all employees, whether full time, part time or seasonal should be noted on the insurance proposal form.

An employee for the purpose of insurance is defined as a person who works for or on behalf of the club and under the direct or general supervision of the club. Thus for an example, a club which doubles as a training establishment and employees sailing coaches on a seasonal basis, at however a modest wage, will be obliged to insure against potential claims by such staff. If on the other hand volunteers are appointed to coach and are given a general brief to conduct training courses, without any day-to-day supervision of the club, then the volunteer coach is not an employee for the purpose of gaining insurance cover.

Paid staff, such as stewards, secretaries and bosuns, fall within the category of employees.

FIDELITY COVER

Fidelity policies protect the employer against breaches of confidence on the part of the employee. The narrowest form of such insurance covers theft by employees, usually cash. In its widest form the policy may insure the employer against any form of dishonesty by the employee.

Fidelity cover does not insure the employer for his liability for acts done by the employee, namely a claim by a third party for loss or damage caused to him by the employee during the course of the employee's employment.

PUBLIC LIABILITY

It is possible to structure the club's activities to reduce such liabilities to a minimum, such as recognizing temporary members or not hosting open events. This insurance covers claims, including death and personal injury, against the club from visiting workmen, to visiting sailors who have not been awarded temporary membership and passers by entering the premises from off of the street.

PERSONAL INJURY

Members of an unincorporated association, injured in the course of club activities, can rarely sue the club itself due to the principle that the club has no separate legal identity from its members. A member may sue another member where that other member caused the injury by his own negligence.

The extent to which claims for personal injury may be insured must be clearly stated in the insurance policy. This category ought particularly to include persons undertaking specific duties for the club. The policy should cover not just a claim for personal injury, but also claims for other necessary expenses related to the claim for personal injury such as medical treatment, travel and loss of earnings.

CLUB BOATS

Insurance of club boats will be subject to a marine policy, although motor boats with a design speed in excess of 17knots will be subject to special conditions. The club may limit premiums owed by stating the period of the year for which the boats will be used in the water and the period for which they will be laid up. Should a club take such measures then the boats must strictly be laid up in the stated period.

The policy is not normally transferable unless prior approval from the insurers has been gained.

When a vessel is being used to earn money, the marine insurance policy for recreational craft will not be effective. If club-owned boats are made available for charter by its members, then the club should seek insurance expressly for charter boats.

The policy will state the territorial limit for which the insurance policy extends. Sailors should inform their insurers immediately if they intend to sail further than the limit normally imposed by their insurance policy. Usual limits are:

- Full coastal and sea-going cruising within the UK waters and continental coast from Brest to Elbe. The applicant should state on the proposal form if they intend to cruise outside of the UK waters, including whether they intend to cruise on the continental inland waters.
- Coastal cruising within ten miles of the home port or permanent mooring.
- Non-tidal waters within the UK.

A standard marine policy for recreational use of boats will generally include four sections:

- Loss of or damage to the boat due to marine perils up to the value of the insured. The cover includes sinking, stranding, fire, collision, theft of the vessel and, following forcible entry, theft of fittings and equipment belonging to the boat, for which purpose an inventory of fittings and fixtures should be provided with the proposal form to the insurance company.
- Damage to other craft caused by collision with the insured for which the insured would by law be held liable. This includes damage to piers, jetties, pontoons and such like. The cost of removal by the authorities would be included within this section.
- Any legal liability for death, personal injury or loss of property by a guest or other persons aboard, but not employed and paid crew who should be insured separately.
- Salvage charges claimed by salvors. Reasonable charges for preventing losses are likely to be paid by the insurer but this can be an area of doubt in some insurance policies.

Although yacht and small craft insurance policies differ considerably, most will cover specifically the following items.

- The hull, rigging, sails, motor, tender and other equipment which includes a specified list which, in the case of cruising yachts at least, includes one each of the most obvious necessities.

- Trestles and tarpaulins but not trailers unless added by payment of an additional premium.
- Navigational risks and risks of launching.
- Fire risks. This is valid throughout the year and covers fire, explosion, lightning, aircraft or objects falling from an aircraft.
- Theft and wilful damage. This is also valid throughout the year and covers damage caused by a person who is not a member of the club. If the theft or damage occurs other than within the area of a recognized boat club the insurance will only cover (except for theft of the entire boat) equipment belonging to the boat which is locked up, locked to the boat or otherwise fixed to the boat. Outboard engines must be attached to the boat by means of a lock. The words forcible entry or forcible removal are often important to proving a claim. Payment of a claim on most marine policies is only made 'following forcible entry' and even then only on 'gear, equipment or property specifically insured under the policy'.
- Personal belongings. If loss or damage can be classified under theft and wilful damage, underwriters will compensate for the loss of the insured's personal belongings, but not in the event of total loss of the boat unless this requirement has been expressly stated in the insurance policy and a higher premium paid. There will be a maximum compensation payable, even if the total value of the goods is higher, and a maximum compensation for each object. No compensation is paid for certain objects such as jewellery, money and objects of art. Personal belongings do not really form part of marine insurance and are often best covered under other sorts of policy such as home contents.

The club should take careful note of the value for which its boats are insured. The boat is not necessarily valued on its market nor replacement values. The boat may be valued at a price agreed between the parties. A court may refuse to enforce an insurance policy where the value stated in the insurance policy is not the market or true replacement value and therefore the club should ensure that the insurance policy clearly states how and why the boat has been so valued.

There is a considerable list of exceptions of circumstances when an underwriter will refuse to compensate for a loss.

- Where the underwriter has not insured the boat to be used for the purpose of making money.
- Where damage is caused deliberately or through gross negligence.
- Where the boat is not properly equipped.

- Loss of an outboard engine dropped overboard.
- Damage caused by or consisting of faulty construction or materials, neglect or contamination.
- Loss of time or other indirect losses.
- Damage to buoys or moorings and such like. These should be separately insured.
- No payment will be made for compensation unless the loss arose from an external accidental cause. Thus insurers will not compensate for a loss which would have happened in any event in the normal course of recreational yachting. Particularly the insurer will not compensate for failure to maintain the yacht.

Regulations made under the Merchant Shipping Act 1995 limit liability for death and personal injury caused by "vessels used in navigation" to approx. £1.25m (2006). However, in *Curtis v Wild* (1992) the High Court did not apply the limits set in the Merchant Shipping Act 1995 because the accident occurred between two dinghies sailing on an inland reservoir. Following the case of *R v Goodwin* (2005) it is also doubtful whether any craft simply going out for a sail (as opposed to "A to B" navigation) could claim limitation of liability.

CONTACTS:

Gallagher Heath (contact Ben Bennett)

Tel: 01384 822279

Website: www.heathlambert.com

Email: bbennett@heathlambert.com

RYA Powerboat Racing Department on 0844 5569522 or email powerboatracing@rya.org.uk

For more information kindly contact the RYA Legal Team on 0844 5569519 or legal@rya.org.uk

Disclaimer:

The RYA Legal Team provides generic legal advice for its members, affiliated clubs and RTCs. This leaflet represents the RYA's interpretation of the law. It takes all reasonable care to ensure that the information contained in this leaflet is accurate. The RYA cannot accept responsibility for any errors or omissions contained in this leaflet, or for any loss caused or sustained by any person relying on it. Before taking any specific action based on the advice in this leaflet, members are advised to check the up to date position and take appropriate professional advice.

mep[Leaflets/Clubs/Duty of Care/Club Insurances]