

# SCOTTISH CANOE ASSOCIATION

## THIRD PARTY LIABILITY INSURANCE – INFORMATION FOR MEMBERS AND AFFILIATED CLUBS

### ARRANGEMENTS

Cover is arranged through the BCU/SCA brokers, Perkins Slade Limited. The cover provided is Third Party Liability Insurance.

This type of insurance (sometimes called Public Liability Insurance) is only involved when negligence has occurred causing the injury or death, or damage to property of a third party. Worldwide<sup>1</sup> cover for any one incident in connection with any BCU/SCA activity or canoeing or social activity of a BCU/SCA affiliated club is to a maximum of £5,000,000. The cover includes all legal costs and damages awarded if negligence is proven or accepted by the insurance company. Member to member liability is included, which means that the third party can be another BCU/SCA member.

Negligence sometimes resulting in six figure damages or more may occur through sheer carelessness or irresponsibility but it can also happen through unforeseen circumstances. The BCU/SCA takes the view that all who canoe must be covered by Third Party Liability Insurance and therefore the following are covered:

- all current individual members of BCU/SCA;
- current registered members of currently affiliated clubs;
- members and voluntary helpers of currently affiliated BCU/SCA clubs acting officially on behalf of their club.

To maintain insurance cover, renewal membership subscriptions and affiliation fees must be paid before the expiry of the previous membership or affiliation. There is no period of grace.

In addition, clubs must maintain accurate and up to date membership records so that a club member claimant's membership on the date of an incident can be verified and cover confirmed. The insurers or their agents reserve the right to scrutinise any such records at any time. It is not necessary to submit membership lists to the SCA Office but the correct number of members, as in the accounts for their most recent financial year to their SCA affiliation date, must be declared. Those joining the club since their last financial year end are covered provided they are entered correctly in the club membership records and have paid their club subscription in full before the incident.

### RESPONSIBILITY OF CLUB OFFICIALS

It is presumed by the Board of Management of the BCU/SCA and the insurers that elected officials of BCU/SCA clubs, or members acting officially on their behalf, are responsible persons acting in a reasonable manner. It is also accepted that canoeing is an activity which involves inherent risks.

---

<sup>1</sup> The policy provides cover in USA/Canada for individual coaches visiting, teams visiting and playing, and individual current members of the Scottish Canoe Association visiting in connection with association activities. It is standard for a UK insurer (your insurer is no exception) to limit their cover for USA/Canada related risks, mainly due to the highly litigious society and the level of damages awarded. Therefore, please check with Perkins Slade Limited before embarking on a visit to USA/Canada.

It is known that good initial training, a gradual building up of experience, the wearing and use of recognised safety gear, allied to knowledge of its use and of the canoeing environment, have provided a good track record of safety.

It is not expected, in other words, that activity should be restricted to very 'safe' canoeing, but it is expected that when others are led into more dangerous ventures this will be done in accordance with accepted precepts. There is clearly both a legal and moral responsibility to do so.

Irresponsible or careless leadership, however, will not invalidate the Third Party Liability insurance. In fact, it is only when negligence is involved that the policy is likely to be invoked! There are no grounds for compensation to be paid if those authorising the activity are not considered by a Court to have been guilty of negligence.

### RELEVANCE OF COACH QUALIFICATIONS

The BCU/SCA has provided a comprehensive Coaching Scheme in order to ensure that both basic and ongoing training of a satisfactory nature is provided, both for the participant and in the wider interests of the sport. The system is strongly recommended – it enables clubs to run a programme of open courses for the general public, which can be good fund raisers.

It is not necessary for Third Party Liability insurance purposes, for club journeys or events always to be covered by Coaching Scheme qualified members, although the holding or not of a coaching qualification by the appointed, or presumed, leaders of a canoeing venture is a factor that would be taken into account by a Court in determining whether or not negligence was involved.

In the event of an accident, should the appointed leader be held to be inadequate in experience or competence for the venture then clearly grounds for a claim could exist. The officers of the club, or members of currently affiliated clubs acting officially on behalf of their club, would be covered should they be successfully sued. So too would an individual member of the BCU/SCA or registered club member of a currently affiliated club if the prosecution was taken out against him or her personally.

### IMPLICATIONS FOR INDIVIDUALS HOLDING COACHING QUALIFICATIONS

A person holding a coaching qualification who happens to be present at an authorised club activity but who has not been specifically appointed by the club officials to run that activity may not have an automatic legal responsibility in the case of an accident occurring. He or she may well feel that they have a moral responsibility but that is not the same thing.

Should the qualified member express doubts about the general safety provision at a given activity, this should be taken into account by club officials, as the opinion would obviously carry weight in the mind of a Court seeking to determine whether or not negligence was involved in the event of a claim for damages arising.

### THOSE RECEIVING FEES FOR COACHING

The Public Liability Insurance does not exclude advice provided for a fee nor is it limited to accident or occurrence, and consequently when coaching is provided within the BCU/SCA to members or clubs liability is insured including liability arising out of errors or omissions in such instruction.

The BCU/SCA Civil Liability<sup>2</sup> policy wording has been amended with effect from 1 November 1998, to automatically include all registered coaches when providing tuition, whether for a fee or not, as an individual. Where any such coach is operating a business, by using a business or company name, separate insurance arrangements must be made.

Perkins Slade Limited can supply business cover but will require a completed proposal form before a quotation can be provided. Their contact details are at the end of this document.

### 'VOLENTI NON FIT INJURIA'

The principle in law of 'volenti non fit injuria' means that where an adult participates voluntarily in an activity which involves known and obvious hazards then he or she is unlikely to succeed in a claim for recompense against those leading the activity if the injury sustained is as a result of falling victim to a known and obvious danger, e.g. a canoeist pinned against a rock in white water.

This principle may have some bearing when groups of 'friends' within the club are participating in canoeing ventures which might only loosely be defined as 'club activities'. It is not known how a Court might view a given set of circumstances but in such instances it would seem unlikely that an adult complainant with personal experience compatible with that journey or venture being undertaken would succeed in a claim either against the individual presumed to be the leader, or the club's officials, where injury or death results from a 'canoeing' cause.

There could obviously still be a case to answer if the accident arose from some other circumstance. The policy would still protect the club's officers and/or an individual BCU/SCA member or BCU/SCA affiliated club member.

### USE OF 'APPROVED' EQUIPMENT

If the equipment provided for use by a club was clearly sub standard when compared to that which was commonly accepted within the sport and if the type of standard of the equipment could be shown to be a contributory cause of the accident then grounds for a claim of 'negligence' could exist on this score.

The use of properly maintained 'approved' equipment would make the establishment of a claim less likely. It is necessary for equipment to conform to generally accepted standards, however, it is not necessary for formally 'approved' gear only to be used.

### USE OF PREMISES

The law requires us to take reasonable care for the safety of others. The moral code clearly also implies this duty. In practical terms, if a large claim occurred then the renewal premium could be prohibitive. There is therefore a duty on all of us to ensure that it remains at modest cost to the BCU/SCA for the benefit of the member who may become the genuine victim of circumstance. It is important that the policy is not invoked through irresponsibility.

### DAMAGE EXCESS

In order to discourage small claims the brokers have effected a Third Party Property Damage Excess from 1 November 2001. This means, for example, if a car is damaged when removing a canoe from a roof rack the member would have to pay for the first £100 of the cost of the repair.

---

<sup>2</sup> Civil Liability covers Public Liability, Products Liability, Directors' and Officers' Liability, Libel and Slander, Professional Indemnity and Employers Liability (where applicable). A summary of this – "Civil Liability Insurance- A Summary" - is available on request from the SCA Office.

## CLAIMS PROCEDURE

Claims are handled by the brokers whose address and telephone number is shown at the end of this information document. Perkins Slade are brokers to the Central Council of Physical Recreation and have long experience in all sorts of insurance. The brokers are always willing to listen to any query or difficulty encountered and offer advice.

When it is necessary to initiate a claim, a member or club should contact the brokers immediately, quoting his/her BCU/SCA membership number/club affiliation number and request the appropriate claim form. The completed claim form should be sent to the brokers.

On 26 April 1999, the Civil Justice System was amended to reflect a number of changes now known as the Woolf Reforms, the purpose being to resolve disputes more quickly but without necessarily having to resort to litigation.

For Personal Injury claims in particular, the consequences for sport and recreation are considerable.

If an individual (the claimant) sustains injury he or she has up to three years to issue a claim against another individual or club (the defendant) considered to be negligent in causing the injury. In the case of a minor this three year period does not start until he or she reaches 18 years of age. The defendant has only 21 days to acknowledge receipt of the claim and insurers have a further 90 days either to accept or deny liability. In the case of a denial, the insurers must produce supporting documentation and evidence. Failure to support insurers to observe these timescales could give them an opportunity to limit or even deny indemnity which, of course, could have serious ramifications for the defendant.

That being the case, all those involved in sport are now required to report (to their insurance brokers) every incident, particularly those involving a personal injury, which could give rise to a subsequent claim. This will ensure that detailed records are kept, so that in the event of a claim a defence may be more quickly and accurately mounted.

We would encourage every club to immediately investigate every incident, take statements from witnesses, and file a report with the brokers whilst it is fresh in everyone's mind. The longer this is left the more likely there could be conflicting versions of the incident. This could be important to insurers when negotiating a subsequent claim. Make sure you maintain your own record of every incident. There is a responsibility on every individual member to pass on relevant information regarding any incident.

## FURTHER INFORMATION

If you require further information or advice about insurance, contact:

Perkins Slade Limited  
3 Broadway  
Broad Street  
Birmingham  
B15 1BQ  
0121 698 8000  
0121 625 9000 (F)  
info@perkins-slade.com

Information is available in large print or audio on request.

Contents correct at 12-Dec-01. Subject to change without notice.