

South Wales Caving Club – AGM 2014

The Club's Legal Status ~ a summary

(For the full report look in the member's area on SWCC website)

1. Introduction

Like many clubs, SWCC was set up as, and has the governance structure appropriate to, a traditional 'club'. However the world has moved on since 1946 and society, expectations, attitudes to health and safety, statutory obligations and indeed the Club have all changed significantly in the intervening years. Yet as a club we are still structured and endeavour to operate as we did in 1946 although we are in fact now, and have been for some time, a business - we run a hostel.

The Committee has become increasingly concerned about the risk, exposure and liability that Members, Club Officers and our assets may be exposed to as a result of our current status. We are not alone. A number of other clubs and societies, including some highly respected Northern caving and potholing clubs, are also concerned about, and have debated, the same issue and have come to varying conclusions as befits their situation and activities. As a result some have changed their legal status to reduce risk and provide improved protection, but with the attendant increased formality, complexity and cost of operation, others have chosen not to.

Following the 2013 AGM the SWCC Committee set up a sub-committee (SC) to look into this with a mandate to produce a report for the Committee by Dec 2013 and the 2014 AGM. In the best traditions of the Club the SC was asked to spend only a very limited amount of money to support this work and to use contacts and expertise to develop its recommendations. This it has done and the work of the SC is complete. In Dec 2013, the report was presented to the Committee; it has considered and endorsed the recommendations and is now presenting them to the AGM.

The SC investigation was thorough and its report is comprehensive and quite lengthy – a copy has been placed in the Members' area of the Club website. This document is a précis of the SC report and seeks to present the main issues.

At this point I would like to thank all the members of the SC (Andy Freem, Fred Levett, Jem Rowland, Kevin Diffey and Clark Friend), for giving up their time and energy to review this important issue for us.

2. Background

In law, SWCC is an 'unincorporated association' (UA). It has no independent legal existence separate from its Members, Committee members or Trustees. As mentioned earlier, organisations similar to ours have reviewed their position and have become, or are seeking to become, 'incorporated associations' (IA) of one type or another, which do have an independent existence in law separate from the Members. Others have chosen not to change.

There is no right option or wrong option, rather it is a case of considering the advantages and disadvantages of each option and then selecting the one that best fits our circumstances and our attitude to risk, liability and exposure.

3. Liability

The book *Ashton and Reid on Clubs and Associations*, is a definitive work on law relating to clubs and associations and has been the primary source of reference by the SC.

A UA is governed by common law and case law, of which there is a large amount, and this leads to uncertainty over the outcome of any legal action. An IA is governed largely by statute law, giving greater clarity in the case of legal action. An IA has a separate legal existence and the liability of all members is definitely limited (often to £1).

Action is not normally possible against a UA (such as SWCC) because it is not a legal entity. However, there are cases where action has been taken against all or some members by an aggrieved third party. In cases, judges have limited the liability of members to the value of their entrance fee and cumulative subscriptions. However, committee members are personally liable without limit and this is seen as the biggest risk with a UA.

For example, after say, an injury, an aggrieved third party could sue some or all of the Committee, who would need to mount (and pay for) a defence in court or risk losing the case. Trustees, who own the property, may also be the occupiers under the *Occupiers Liability Act* and face similar action despite our constitution requiring them to act only on the instructions of the Committee. Adequate insurance could provide some protection and the Club has two insurance policies providing protection up to a certain limit. The use of disclaimers in certain circumstances is also important. Previously our insurer has paid out £10,000 following an injury to a Visitor to settle a claim.

Since 2009, using complex legal argument, it has been recognised that a criminal prosecution can be brought against a UA rather than individual committee members but this appears to be rare in comparison with action against members or committee members, e.g. there is a recent prosecution in mid-Wales against nine committee members of a UA under the *Health and Safety at Work etc. Act 1974* following an accident. At the time of writing this case is on-going.

4. The Sub-Committee's Recommendations

The SC recommends that insurance is vital, noting that it appears to have been a claim in excess of the insured value that has created the current interest in changes elsewhere. The Committee is confident about our insurance arrangements.

The SC has also recommended that SWCC should implement a more formal, transparent and demonstrable approach to effective risk management.

This means actively identifying risks, quantifying them, and then managing them to a level with which we are all happy. The SC recommended a methodology and developed a preliminary Risk Register to demonstrate the point. The Committee supported this approach and, as part of its day to day management of the Club, has set up a small group to manage the register and advise the Committee.

The SC does NOT recommend that SWCC should become an IA. Its view is that such a change would have a negative effect on the Club atmosphere which we recognise is at the heart of the Club. To quote from the report *“the choice is determined by relative priorities – ease of management or peace of mind. However it is far from simple. Ashton & Reid further state that if the club is well run, financially secure and does not want to borrow money then ‘unincorporated’, in their view, is satisfactory”*.

However in developing an risk register the SC has highlighted that many of the significant risks which have been identified, and which have to be managed, arise from Visitors and our hostel operations which generate over 50% of our income. The SC has therefore recommended that the club considers creating a type of IA / company, sitting within the club and limited by guarantee, to which the hostel could be leased to operate and maintain. The members of the IA / company would be the Club Members and a small Board of Directors who would answer to an AGM for its operation.

5. Conclusions

The SC has done an excellent job in reviewing the issue and presenting its conclusions and some recommendations. The Committee has endorsed the SC report and also notes that some members are reluctant to serve on the Committee because of the uncertainty of their perceived exposure. The Committee is sufficiently concerned that it believes that the Club should take proper legal advice to inform the debate about the true nature of the current risk and exposure what, if any, changes could be made to the way the Club operates to better protect its assets, Members and Officers.

This AGM is not being asked to consider what the options might be, nor the advantages and disadvantages or any particular option but rather whether, in the light of the SC report and this précis, they are also sufficiently concerned about the issue that they wish the Club to take paid legal advice to confirm our understanding of the risks, and the options for mitigation. This advice to be used to inform future debate and consideration at a subsequent General Meeting.

The following motions are therefore presented to the AGM for endorsement:

6. Proposals to be voted on at the AGM

- 6.1 The AGM notes and supports the continuing, and possible improvement to, insurance for all Members and Officers and the active management of risk.
- 6.2 The AGM authorises the Committee to obtain legal advice concerning:
 - a) the true nature of the liability facing Members, Committee members and Trustees in confirmation of the report of the Sub-Committee
 - b) the options to reduce the exposure and risk to assets, Members and Officers, including advantages and disadvantage of each option. These options particularly to include the potential for a legal entity to sit within the Club to operate aspects of the Club. This advice to be reported to, and considered by, a future General Meeting.

Paul Meredith

Chairman