



Guidelines for Hut Managers

No. 9 July 2011*



Hut Trustees

Scope and context

Most mountaineering clubs are unincorporated associations and therefore club property has to be vested in trustees, usually members of the club who are prepared to act in that capacity. Alternatively, the property can be vested in a trust corporation, e.g. a limited company such as a bank, which is prepared to act as a trustee.

Appointment and removal of hut trustees

The method by which trustees are appointed and removed should be addressed in club rules. It may also be addressed in the terms of the conveyance on purchase, lease or trust deed. It is important that property documentation is consistent with the rules otherwise there may be a conflict which cannot be resolved without application to a court.

Duties of hut trustees

They have a duty to safeguard the legal title to the property. This duty extends beyond simply allowing the title to be vested in them or co-operating with the club when there is a request to transfer title to others. It includes responding to formal notices that may be served on the owners or (as required) passing the notice promptly to the committee. Such notices may be sent by any local or national authority, regulatory body or neighbouring owner.

Responsibilities of trustees

This is largely a matter for the club itself. Most commonly the club will not require the trustees to do anything other than safeguard the legal title. This issue is one which ought to be covered in the club rules. The other members have a duty to indemnify the trustees against any loss, claim or expense they incur in their capacity as trustees, save as regards any act or omission that constitutes a breach of the trustee's duty to the membership. This duty should be embodied in the club rules.

Where the club expects the trustees to look after the property, the extent of that duty needs to be documented. It might be limited to simply taking an interest and checking that the hut is adequately insured, maintained and compliant with current statutory regulations, e.g. building and fire regulations.

Liabilities of trustees

With an unincorporated association all members of the club are equally liable at law in the event of any claim arising from, or in connection with, the hut. In practice, a claimant would probably address a claim to a limited number of individual, e.g. the hut warden, officers and committee members and the trustees. Any individual defending a claim would be entitled to an indemnity from the membership in respect of the claim itself and associated costs but only to the extent where these were not covered by insurance.

*See notes in the information box on page 4 re. the currency (version no.) of this guideline

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Member trustees are insured for up to £10 M against such claims by the BMC's and MCoF's respective civil liability insurance policies (see below). Thus the indemnity would apply only where the award of damages and costs exceeded £10 M.

To succeed, a claimant would have to prove that the individuals being sued had been in some way negligent in the performance of their duties, or in breach of a statutory duty. Statutory liability may arise under health and safety legislation, occupiers' liability, building and fire regulations, and other regulations. In some cases the legislation will determine the identity of the person to whom the notice or requirement should be addressed, but in many cases it will not. The trustees, in their capacity as legal owners, may well be the addressees of such notices and the persons on whom legal liability falls. However, they should have indemnity from the membership so that, to the extent that costs arising from the claim are not insured, they are shared between the members.

Club rules

In practice the rules of most clubs deal with these matters briefly, if at all. Such matters should be covered comprehensively in the rules so as to ensure that there is clear understanding as to where responsibility falls within the club, and to ensure that the trustees' duties and rights as legal owners are clearly understood by all. The rules should include a clearly stated indemnity provision for the trustees both to provide comfort for the trustees and to ensure that members, and in particular new members, cannot argue that they were unaware of this provision.

This is a complex subject and there is no legal precedent which deals with it adequately. It is not possible to provide a standard set of rules which clubs may adopt because their respective constitutions and organisation vary considerably.

Trust deed

Ideally there should be a legal document which records the duties of trustees. This document should be quite separate from the conveyance which transferred legal title to the trustees.

Land registration

Advantages –

- (i) It simplifies transactions affecting land;
- (ii) Ownership of land is a matter of public record;
- (iii) There is a reduced risk of a third party acquiring part of the land by adverse possession.

Insurance

Trustees who are members of a club which is affiliated to the British Mountaineering Council or the Mountaineering Council of Scotland are covered by civil liability insurance (see guideline no. 6). The policy is very comprehensive. It includes public liability, which protects them against liability in respect of accidental bodily injury to third parties (guests/visitors) sustained while in or on the property, and owners' liability, which protects them against liability arising out of the use, ownership or possession of any club premises, e.g. mountaineering huts. The limit of indemnity for one event is presently £10 M.

Note: Where the trustees who act for a club that is affiliated to the BMC or the MCoF are not club members, or members of another affiliated club, or individual members of the BMC or MCoF, they will need to arrange their own insurance as they will not have civil liability insurance cover under the scheme described above.

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CHECKLIST – CLUB RULES

The club rules should include provisions to deal with following –

◆ Club property

To vest the club's freehold or leasehold property in trustees for them to hold on behalf of the members.

◆ Maintenance and management of club property

Undertakings by the committee –

- To be responsible for the maintenance and management of club's property and or insuring it for full value against all normal risks;
- To deal with these matters on behalf of the trustees;
- To consult with the trustees about any alterations to the property and all issues relating to health and safety, occupiers' liability, child protection and disability discrimination;
- To provide the trustees with an annual report covering insurance, maintenance and use of the premises and of any other matters which may be relevant;
- To allow the trustees to inspect all records and information regarding these matters.

◆ Indemnity for the trustees

An undertaking by the members jointly and severally to indemnify every trustee against all costs, charges, losses, expenses, liabilities and claims incurred by an individual while acting as a trustee and legal owner of the club's property.

◆ Duties

Undertakings by the trustees –

- To safeguard the legal title to the property of the club vested in them;
- To notify the committee of anything that may cause damage or loss of value or amenity to that property;
- To deliver to the club secretary any official notice relating to the property that they may receive;
- To co-operate with the committee in doing whatever is required from time to time to minimise such risks, including taking professional advice when it is considered necessary.

◆ Powers

- To entitle the trustees to request the committee to convene an extraordinary general meeting if they consider there are serious issues relating to the property which need to be discussed by members.
- To entitle a trustee who has been removed without his/her consent to give written notice requiring the committee to convene an extraordinary general meeting of the members.

◆ Number

Not less than two but not more than four.

◆ Appointment and removal

Trustees to be appointed or removed by the chairman acting in accordance with a resolution of the committee or of the members. The resolution should be recorded in the minutes of the meeting and evidenced by a certificate signed by the secretary.

◆ Resignation >>

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◆ Resignation

To entitle a trustee to resign at any time by giving written notice to the chairman or secretary to that effect.

◆ Termination

A trustee's appointment terminates forthwith if they –

- (i) Become bankrupt or make any arrangement or composition with their creditors or;
- (ii) Become incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs or;
- (iii) Commit any criminal act and they are sentenced to a term of imprisonment, whether immediate or suspended or;
- (iv) Resign office by notice in writing to the secretary or;
- (v) Cease to be a member of the club that appointed them.

◆ Execution of documents

By accepting appointment as a trustee an individual agrees to appoint the chairman as their attorney for the purpose of executing any document relating to a transaction concerning any property vested in them as an individual, or to give effect to their removal as a trustee where they are unable or unwilling to execute the document in person.

Note: These guidelines outline general principles only. The law relating to trusts in Scotland differs in certain respects from that of England and Wales and clubs in the respective countries should seek professional legal advice.

Hut Guidelines

These guidelines have been produced by the Huts Group of the British Mountaineering Council and the Huts Advisory Group of the Mountaineering Council of Scotland to assist those operating mountain huts in Britain.

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Websites: www.thebmc.co.uk and www.mcofs.org.uk

Disclaimer: These guidelines were revised on the date shown below and the information herein is believed to be accurate at the time of writing. No responsibility can be accepted for any loss of benefit or entitlement arising through use of these guidelines – they are not intended to be definitive.

Version no. 4 – July 2011

These guidelines are updated periodically; to check on the currency of this version go to one of the websites above where the latest version will always be displayed.