

RYA The Legal Aspects of Race, Training and Event Management

The RYA's legal team has produced this publication in order to act as a guide to help anyone who is involved in the organisation or management of races, cruising, training activities and other events to understand the responsibilities that the law imposes upon them as a result of organising those activities. This guide seeks to ensure that organisers are aware of the relevant legal implications and to enable them make informed decisions and put in place appropriate safeguards. The underlying message is that recreational boating is a safe sport but race, training and event organisers need to remain vigilant to maintain this level of safety and to protect themselves against liability.

The RYA

The RYA is the UK governing body representing sailing, windsurfing, motor boating, powerboating and personal watercraft, at sea and on inland waters. It works for the good of all who enjoy these activities, campaigning for their interests at local, regional, national, European and world level.

RYA training is recognised throughout the world and every year over 130,000 recreational and professional sailors take RYA courses and exams.

RYA Publications

This book is one of over 110 published by the RYA. Some relate to specific training courses and are a valuable study and learning aid. Others provide technical, legal or general boating advice. All are expertly written, informative and authoritative.



For information about the RYA's training courses or publications, and the valuable benefits of being an RYA member, please visit our website at www.rya.org.uk.



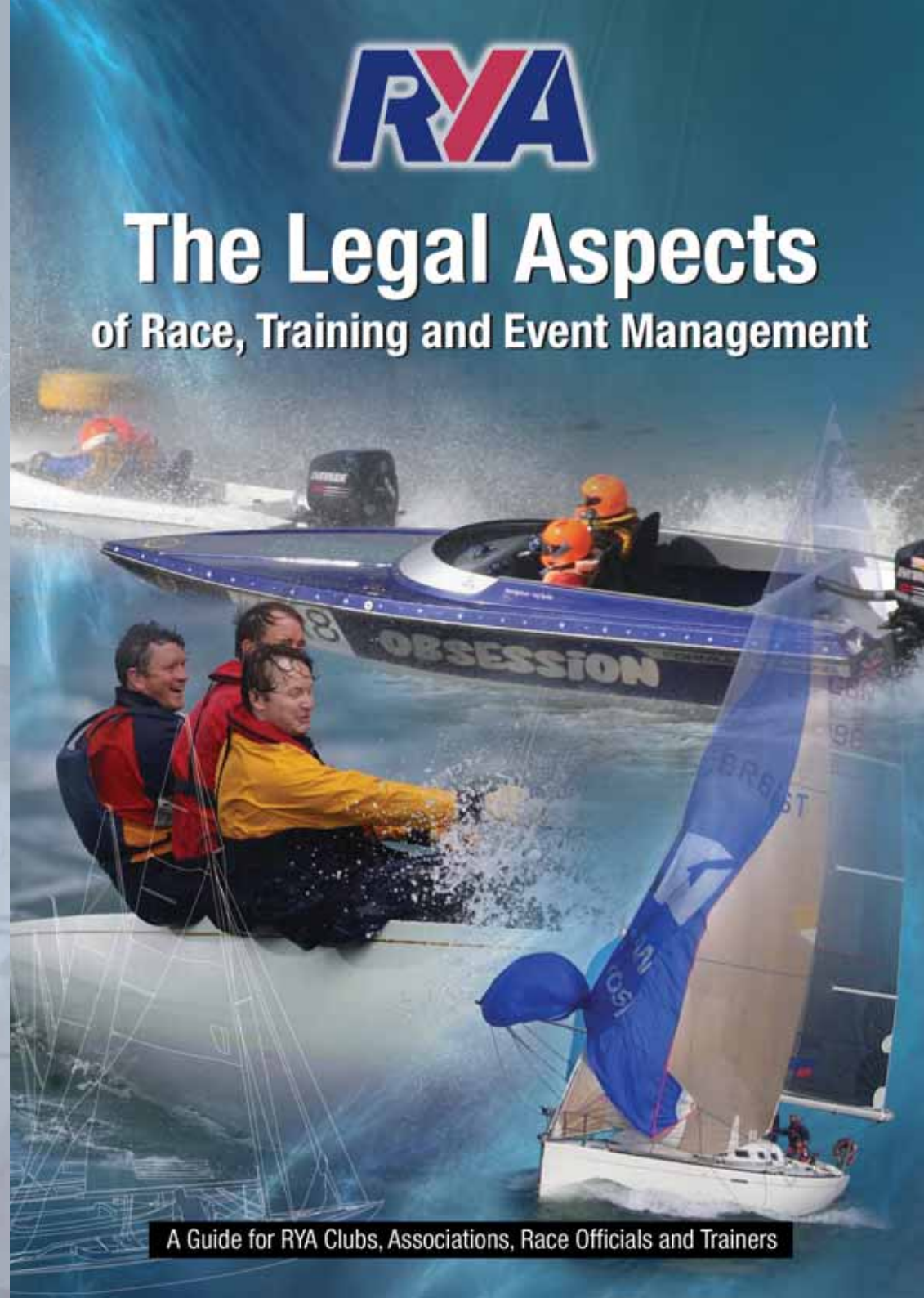
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The Legal Aspects of Race, Training and Event Management



A Guide for RYA Clubs, Associations, Race Officials and Trainers



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RYA Legal & Government Affairs

The RYA provides specialist legal advice to personal members and affiliated clubs and associations on a wide range of boating-related matters. Our Legal & Government Affairs team comprises seven members of staff, including three qualified lawyers and two environmental specialists.

On Government Affairs work, the RYA monitors the activities of a number of legislators, from international bodies such as the International Maritime Organisation and the institutions of the European Union to national and devolved administrations within the UK.

The RYA also engages with Government agencies, local authorities and harbour / navigation authorities. We seek to influence any legislation that may impact on the public right of navigation or may otherwise have the effect of making boating more difficult or expensive.

The specialist legal advice offered by the RYA includes advice to clubs with regard to their constitution, management, premises, licensing, discrimination, insurance issues and boating activities and also in relation to relevant new legislation.

The first-aid legal advice offered to personal members includes such marine-related matters as buying and selling a boat, registration, chartering, moorings, salvage, VAT, disputes with boat dealers, brokers or suppliers of goods or services and insurance issues.

The RYA also offers clubs and personal members specialist advice on planning and environmental issues, ranging from specific advice on the impact of planning and environmental legislation to more general guidance as to how boaters might seek to reduce the impact of their boating on the marine environment.

To contact the Legal & Government Affairs team contact legal@rya.org.uk or visit www.rya.org.uk.

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Foreword

*by The Honourable Mr Justice Holman
(member of the Council of the Royal Yachting Association 1980 to 1991)*

Every law student learns the case of the *Satanita*. In 1894, while racing on port, she collided with and sank Lord Dunraven's yacht, *Valkyrie*, on starboard. Lord Dunraven successfully sued the owner for full damages and then, if not before, the law entered the sport of sailing. It is right that it should, for participants in sport are entitled to the protection of the law like everyone else.

But the law should not intrude. This is, perhaps, particularly so in relation to the thousands of people who generously, and voluntarily, give up so much time to manage our sport and run our races; and in relation to the hundreds of yacht clubs, large and small, which provide the essential framework for racing and organised cruising. In the introduction to this revised and updated edition of this booklet, the RYA is again able to record the striking fact that it is still not aware of a single case in the United Kingdom of a club or race official being found legally liable for injury to a competitor in an organised boating event. I hope this will long remain the case. But it needs vigilance on the part of organisers and an awareness of their legal duties and responsibilities, which this booklet so clearly describes. It should be essential reading for all club secretaries, officers and committees. And if it is read, too, by all who help in any way with the organisation of racing, training or cruising activities, it may help to maintain the very high standards which already exist.

So I hope that as you read this booklet you will not feel that the law is an unwelcome intrusion into our sport, but rather that it can serve to maintain and reinforce high standards of safety and competence for the protection and benefit of all.

Sir James Holman
Royal Courts of Justice, London

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Introduction

This advice is directed at race committees, and individual officials within Clubs and Associations, organising racing, cruising or training activities, whether under power or sail, on inland or tidal waters.

This is not intended to be safety advice. Safety issues are fully dealt with in a number of other publications (see list of RYA publications at Appendix 2).

The purpose of this advice is to help committees and officials understand their potential legal liabilities in organising and managing events, help them explain the limits of those liabilities to the sailors themselves, and help them protect themselves against legal action.

Although the RYA is not aware of any reported case in the United Kingdom of a club or race official being found legally liable for injury to a competitor in an organised boating event, nonetheless committees and individual officers should always be aware of their legal position.¹ In some cases this awareness will reinforce their decision to abandon or curtail an event on safety grounds. Conversely, and equally importantly, it will reinforce their decision, in appropriate circumstances, to continue an event in difficult conditions.

The report of the Water Sports Safety Working Party published by the Government in 1993 recognised that the vast majority of participants view their activity as safe, and that most take what they consider to be reasonable safety precautions appropriate to the level of risk associated with their particular activity.

The report also emphasised that the primary responsibility for safety in boating lies with the individual participant, and that personal competence, developed through training and experience in a range of conditions, is the most important single factor in the achievement of adequate safety standards.

¹ *There have been some claims in recent years against sports organisers, notably in swimming, outdoor activity and rugby cases, involving injury both to young people and to adult competitors. The RYA Legal Department believes that the Courts' findings in each of these cases were consistent with the principles explained in this booklet.*

The RYA fully endorses the contents of the report about personal competence. This reflects the fundamental principle in all boating events (with the exception of novices under training, and child competitors) that **it is the responsibility of the skipper of each craft to decide whether to start or continue an event, in the light of his or her competence, the ability of the crew, and the suitability of the craft for the conditions likely to be encountered.**

In all competitive events, whether under power or sail, it will be appropriate to draw competitors' attention to the rules of the event. In addition to the ISAF and UIM rules, each club's own rules, notices of race, entry forms and sailing instructions should include appropriate paragraphs. Suitable wordings are suggested in Appendix 1.

The introduction of the Port Marine Safety Code in 2001 means that clubs operating in statutory harbour authority areas may now be required by the authority to undertake risk assessments for all organised activities on the water. Template risk assessments covering large, medium and small events are available from the RYA Legal Department.

Many clubs now carry out risk assessments for other activities ashore, afloat or at the water's edge, and although in most cases this is not a legal requirement it is good practice.

One issue of increasing concern to club committees is the matter of patrol boat cover and manning. This question is dealt with in Section 2 (Racing Events).

SECTION 1: Basic Legal Principles

It is a fundamental principle of maritime law that the skipper is responsible for the safety of his vessel and its crew. It is the skipper's responsibility to decide whether to start or to continue in a race, as is the decision to start or continue any other passage. The principle is emphasised by Rule 4 of the Racing Rules of Sailing which states:

“The responsibility for a boat's decision to participate in a race or to continue racing is hers alone”.

Racing involves a competition with the elements as well as with other boats. This sets racing apart from most other forms of competition. Races will often be started in testing conditions; moreover weather conditions change, competing boats are likely to be of varying fitness to meet prevailing conditions, and crews differ widely in strength and experience.

It is not possible for race organisers to guarantee that an event will be safe, still less that it will be safe for every boat and crew. Any attempt to guarantee safety would be counterproductive; it is the foundation of good seamanship that skippers exercise their own judgement whether to start a race, whether and when to retire, and, in the course of racing, what sail they carry and what manoeuvres they attempt. Too cautious an approach on the part of the race organisers to starting and continuing events would tend to encourage skippers to rely upon the judgement of race organisers in decisions for which they alone are responsible.

While legal duties of race organisers to those who compete in events are not onerous, an awareness of the legal position is likely to assist race organisers to make and afterwards justify decisions to abandon or to continue events in difficult conditions.

Claims for negligence

If a person is injured, he may take legal action against and recover damages from any person whose negligence caused, or contributed to, the injury.

To prove negligence, the injured party must show that

- the Defendant owed him a duty of care;
- the Defendant was in breach of that duty; and
- the injury was caused as a result of that breach.

Negligence can therefore be described as a duty not to inflict damage carelessly. As a consequence of the Compensation Act 2006, when considering a claim in negligence and whether a person should have taken certain steps to avoid breaching their duty of care, a court may have regard to whether such steps might prevent a desirable activity from taking place at all (or in a particular way) or discourage people from taking part in that activity, the apparent intention being to encourage the courts to consider the wider implications a finding of negligence may have.

Every case before the courts will depend on its precise facts, and the RYA is not aware of any reported cases in which there was a finding of negligence against any club officials in the organising of any sailing or powerboating events. Therefore the advice in the following sections is based not on case law but on a legal interpretation of all the above-mentioned principles as they apply to organised events.

Limitation of Liability and Exclusion Clauses

It is sometimes possible to limit or exclude liability for negligence where the parties agree to do so.

When competitors enter a race, they are required to complete and sign an entry form and, by doing so they contract with the organisers on the basis of the terms

set out in the Notice of Race. If the notice contains an exclusion clause, they may be bound by it. However, the Unfair Contract Terms Act 1977 invalidates such claims in some circumstances and so they are not always effective. Exclusion clauses are dealt with in Section 7.

Responsibility of skipper for safety of crew

It is a fundamental principle of maritime law that the skipper is responsible for the safety of the vessel and crew. Except in special cases of skippers who are children, young people or novices, the liability for any injury sustained by a crew member is likely to be attributed to the skipper rather than any event official or organising authority.

Liability of club, and of individual club officials

When a club is an unincorporated association (i.e. not a limited company) it has no separate legal identity, and thus cannot sue, or be sued, in its own name. An injured party, whether a member or visitor, is therefore likely to seek to take legal action against the committee members individually, or the specific named officials who it is alleged were responsible for causing the injury.

For this reason it is particularly important that individual officials, as well as the club as a whole, are covered by adequate legal liability insurance (dealt with more fully in Section 6).

Special position of children, young people, trainees and novices

Organisers should always be aware that a higher standard of care applies when dealing with children, young people, (see Section 5) novices (see Section 2), and trainees (see Section 4). In addition, the various defences which can be raised in a legal claim are less likely to be effective against these classes of people, and therefore special care needs to be taken.

Overseas events

Race officials who officiate at overseas events, whether on a paid or unpaid basis, should be aware that some countries' legal systems may be very different from our own. The penalties that have been imposed in France on Race Officers after fatalities in racing incidents clearly indicate the potential risk. Race officials invited to work at overseas events should find out in advance from the organisers what the potential liabilities may be, whether in civil or criminal law, in the event of an injury or fatality occurring. Where possible they should obtain an indemnity from the organisers against any damages, fines or other penalties, as well as the costs of defending any legal action or investigation, arising out of their participation in the management of the event. Better still, the organisers may agree to provide full insurance cover against these risks.

SECTION 2: Racing Events - Adults

In the organisation of sailing races, a race committee cannot guarantee that a race will be absolutely safe. Rule 4 of the Racing Rules of Sailing provides that it is the responsibility of each skipper to decide whether to start or continue a race. It is the skipper's responsibility to equip the yacht, and ensure that it is seaworthy. Some clubs or classes may choose to adopt weather limits on their races, rather than bringing the risk of making calls on the emergency services.

So far as safety regulations are concerned, the individual clubs are, and must remain, the best judge of what procedures and regulations, if any, should be laid down and enforced.

Dinghy and small keelboat races

The decision as to what regulations are appropriate will depend on a number of factors including the wishes of the membership, the risks associated with the club's particular locality, and the resources of the club in terms of both skilled volunteers and patrol boats, and any rules laid down by landlords in the case of private inland waters. The RYA publishes separate guidance on the adoption of appropriate safety regulations for clubs on private inland waters (see Appendix 2). For clubs on tidal waters or rivers with a public right of navigation, safety rules appropriate to the area are likely to have evolved over a long period of time. In either case, the legal position of clubs will be more secure if it can be shown that any rules that are applied are taken seriously, and are applied with reasonable consistency.

Keeping track of competitors

Where an event provides a single point of departure from the shore for competitors, and a single point of return, the race officer should have some means of knowing which boats are out on the water and which have returned. A tally system, or a requirement to sign out and sign back in, should be considered for medium sized and major events, and events with child competitors, although not necessarily for small events on enclosed waters.

For offshore racing, competitors are normally required to identify themselves to the race officer prior to the start, and inform the race officer or Coast Guard if retiring.

Patrol boat cover and manning

Clubs will need to decide whether they are able to offer patrol boat cover for club activities. Such decision will no doubt depend on the finances and resources of the club.

Patrol boats may fulfil a number of functions, including marshalling and providing safety boat cover. The functions that patrol boats are capable of fulfilling will depend on the size or type of craft being used and clubs should make it clear to participants in club activities if the patrol boats are not able to offer a safety boat function.

The provision of patrol boat cover is an area where a club may owe a duty of care towards competitors and patrol boat crews to take reasonable steps to ensure that the boats are reasonably suitable and properly maintained and equipped.

If patrol boats are not capable of providing safety boat cover, therefore, event organisers will need to assess whether the prevailing conditions are such that it is reasonably safe to continue with the event and, if not, consider postponing or abandoning the event.

A potential risk of liability arises where a race is started with adequate patrol boat cover, which is then reduced by some breakdown or other incident. Clubs should remind competitors in Notices of Race and Sailing Instructions, and where appropriate at pre-race briefings, that, particularly in extreme weather conditions, patrol boat cover should not be relied upon, and that they can only be given such assistance as can practically be provided in the circumstances. This is particularly relevant in winter sailing where the risk of hypothermia is highest.

Clubs should ensure that the Notice of Race, Sailing Instructions and entry forms notify participants that the provision of patrol boat cover does not relieve the skipper of his responsibilities.

Each club should also consider which of its members should be permitted to operate patrol boats. Some clubs require their crews to hold appropriate RYA Powerboat Certificates. However, for many clubs this is not an option and in such cases the RYA strongly recommends that there should be a recorded system for assessing and if necessary training patrol boat drivers.

Clubs may, depending on their individual circumstances, wish to consider imposing a minimum age for patrol boat helmsmen.

The courts are likely to regard individuals over 16 years old as being responsible for their own actions.

Each club should also consider whether propeller guards should be fitted to their patrol boats. However, power loss and the possibility of stone entrapment in

shallow water can negate the possible safety benefits of fitting propeller guards. The RYA recommends that each club should make its own decision on this matter, taking into account the pros and cons listed on the RYA Website.

The RYA also recommends that a weatherproof memo card reminding drivers of the principal safety issues should be fixed on patrol boats' consoles (see Appendix 2).

Offshore racing

Clubs organising races offshore should consider adopting the appropriate ISAF Special Regulations and should consider the self-checking forms used by the RORC (20 St James's Place, London SW1A 1NN). The RYA publishes separate guidance on racing yacht safety (see Appendix 2).

Yachts rated under some handicap systems are given rating certificates with STIX and angle of vanishing stability (AVS) numbers to indicate suitability for various categories of racing. Where appropriate clubs might wish to establish a method to decide the minimum STIX and/or AVS appropriate for a race, and publish this in the Notice of Race and repeat it in the Sailing Instructions.

Powerboat racing

In the case of powerboat racing, particularly in waters to which the public has access, other considerations will apply. UIM and RYA guidelines for safety parameters, designed as much for the protection of the public as for the competitors themselves, should be followed carefully. Failure to follow guidelines, where an accident then ensues, could provide evidence of negligence that an injured party might use to support their legal claim.

See PB1, 2 and 3 and documentation (including entry sheets) available from the RYA Powerboat Racing Department for appropriate clauses to be included in event paperwork.

Further considerations

Novices

A novice, even if an adult, will not be as aware of the potential dangers, and may not be able to recognise deficiencies in the boat (including its equipment) in which it is intended to race. Race committees and Fleet Captains should bear this in mind and, where practicable, warn novices of the possible risk of sailing on a particular day.

Changing weather conditions

Changes in weather conditions are publicly forecast and weather and sea state changes are often a contributory cause of casualties. When deteriorating weather could cause race officials to shorten or abandon a race (if that is part of the club's understood method of working) the officials should monitor, as far as reasonably practicable, the weather and weather forecasts. The Race Committee should be prepared to take appropriate action.

Unseaworthy boats

There is no legal obligation on race officers to impose any equipment inspection system to ensure that boats are correctly equipped to take part in an event. However, where organisers do decide to institute such a system, whether on a random or comprehensive basis, the system should be applied consistently.

The inspection should be made before the start of the event or before the first race in a series. The organisers only have the power under the Racing Rules of Sailing to stop a boat from competing if they do so before the start of the first race.

If they find that a boat has become unseaworthy during a regatta or a series of races, they should tell the competitor of their opinion. Afterwards, if the competitor goes out and finds himself in difficulties, it is unlikely that the organisers or the race officials would be found to be liable.

Consistent and competent application

Whatever system the club decides to adopt must then be applied consistently. When considering whether to impose particular rules about the carrying of safety equipment, weather limits, screening of boats or crews, or any other rules or practices, each club must also consider whether it is realistic to expect members to accept, agree and comply with those rules, and, equally importantly, whether the club will have sufficient volunteers in the future who are ready, willing and able to play their part in policing those rules. A club which adopts a particular regime which is then ignored and not policed is likely to be in a weaker position, following an accident, than if the regime had never been adopted in the first place.

SECTION 3: Cruising Events and Crew Registers

A number of clubs include cruising events, rallies, "raids", cruises in company, treasure hunts and similar outings in their programme. Many of the principles applying to competitive events (see Section 2) will also apply here.

Rallies

Where a club or other association organises a rally by simply issuing a series of meeting places with dates and times, it is unlikely that any legal liability would be incurred by the organiser if an accident occurs either while a boat is on passage to or from a meeting place, or is at the event itself. Where on-the-water activities are organised at the event, it would be appropriate to include a suitable paragraph in the club rules and in the event paperwork (see Appendix 1).

Cruising in company

Where a club organises a cruise in company with the object of encouraging less experienced boat owners to expand their cruising horizons, there is a very clear potential for legal liability. In particular, the club should be careful when organising "follow my leader" events for the less experienced, since mechanical failure, navigational error, changing wind, sea conditions or visibility, or medical emergency may put the novice skipper or crew into a position of danger. In such cases appropriate paragraphs from Appendix 1 should be included in the event paperwork, and the club should consider imposing a crew experience requirement such as the well-tryed UK Wayfarer Association cruising rally guidelines, copies of which are available from the RYA Legal Department. Some clubs provide experienced members to act as First Mate to less experienced skippers at such events.

Raids

Personal water craft and sportsboat clubs sometimes advertise their cruises in company as "raids" to appeal to the younger and more adventurous element. In addition to noting the advice under "Cruising in company" (see above) organisers should cover themselves against potential responsibility for unruly behaviour by participants. All those taking part should be reminded, both in the documentation and the event briefing, that being in a raid is not a licence for speeding, or anti-social behaviour. Any relevant harbour or coastal byelaws and speed limits should be drawn to the participants' attention, offenders should be excluded from future events, and where appropriate the prior consent of harbour authorities (often required for organised events) should be obtained.

Crew registers

Any club operating a crew register is open to the potential risk that a crew member may hold the club responsible for placing him on an unseaworthy boat, or with an incompetent or inexperienced skipper. Also, a boat owner may allege that the club had warranted the competence of a crew member introduced through the register. A suggested form of notice to protect the club against such allegations is included in Appendix 1.

SECTION 4: Training Events - Adults

This section gives advice to clubs which are not RYA Recognised Training Centres (RTCs). RTCs are required to comply with strict RYA regulations governing premises, staff qualifications, equipment, syllabus, staff/students ratios, and certification, and are required to undergo periodic inspections by the RYA. Details as to how to achieve RTC status can be obtained from the RYA Training Department.

Basic training

Many affiliated clubs provide training courses, whether on an informal or a formal basis, to members, members' families or friends, or even to the general public on a "taster" basis.

By definition, much training will involve novices, and in some cases absolute beginners. It is essential for all involved in training to put safety first and foremost, and to be aware that in the case of an accident the club and/or the instructors concerned may be found liable for negligence (apart from any criminal liability which falls outside the scope of this booklet²).

While it is quite acceptable for training, even at the most basic level, to be carried out by appropriate volunteers without a formal qualification, the club should limit this to experienced members whose suitability as trainers has been given due consideration by an appropriate officer, training panel, or committee, and the appointment, or delegated authority to appoint, properly minuted.

² Following the Lyme Bay canoeing tragedy in 1994, the Government introduced the Adventure Activities Licensing Regulations, which may apply to clubs providing instruction courses over 3 days to non-members under 18 without their parents or guardians in attendance. Further advice on this and other relevant legislation is available from the RYA.

So far as the safety regime is concerned, it is for each club to decide its requirements in the light of local conditions. The club's legal position following an accident may be weak if it could not show that it had carefully considered all the potential risks to trainees including:-

- Adequate supervision afloat
- Protection against drowning, hypothermia and other physical injury
- Provision of patrol boats
- Buoyancy aids and protective clothing
- Seaworthiness of trainees' boats
- Safety equipment to be carried on each boat
- Adequate shoreside facilities (including means of contacting emergency services)
- Appropriately experienced, trained or qualified staff or volunteers
- Trainer/Trainee ratios
- Adequate supervision ashore for young people (but see also Section 5)
- Ability to swim/confidence in the water

Intermediate/advanced training

Many clubs offer training to members and others who may be classed as "improvers" or "intermediates" or even "experts". The purpose of such training may be to give less experienced members more confidence in different weather conditions, or to improve racing competence or to provide top level training to highly experienced sailors. In the case of "intermediates" or "improvers", care must be taken to ensure that the participants are not put at undue risk by being exposed to risks or dangers that are not clear and obvious to people at that level of competence, although of course they will by that stage probably be held to be competent to make their own informed decision as to whether they and their crew and boats are capable of sailing with safety in the prevailing conditions. Provided an experienced adult participating has been reminded that it is for him to decide whether or not to take part in the training event, then it is unlikely that liability for an accident would fall on a volunteer trainer, or the club. However, it is always open to a trainer to forbid someone from taking part, if he feels that the person concerned lacks the competence to do so.

Insurance

It is important for both the club, and the individual instructors, to have adequate insurance. This subject is dealt with more fully in Section 6.

SECTION 5: Special Considerations for Children and Young Persons

This section deals with potential civil liability for death or personal injury only. Clubs giving training to young people should also be aware of the following legislation

- *1989 and 2004 Childrens Acts and related legislation (general duties in relation to children).*
- *1995 Activity Centres (Young Persons' Safety) Act (set up the Adventures Activities Licensing Authority relevant to clubs providing more than 3 days training in any period of 12 months to non-members under 18 years of age for payment).*
- *Safeguarding Vulnerable Groups Act 2006 (a vetting and barring scheme applicable to individuals involved in activities with children and/or vulnerable adults).*

Fuller particulars of this legislation is available from the RYA.

This section applies to children or young people who the law would regard as being too young to make a valid decision about whether to accept the risk of taking part in a potentially hazardous activity. There is no specific age at which a young person comes of decision-making age; the courts will examine each case on its own merits, but in general terms the RYA advise that special consideration needs to be given to those below the age of 14 or so.

This section does not deal with the important issue of child abuse, either within the club training environment or the recognition of abuse elsewhere. Guidelines on child abuse issues are available from the RYA Child Protection Co-ordinator.

General principles of legal liability for young people

As discussed in Section 1, "negligence" is an act or omission that a reasonably careful person would not have carried out in all the circumstances of the case.

In the case of a personal injury to a child or young person, the club would have a number of lines of legal defence. These are the same as those applying to the case of an injured experienced adult, but in most instances will be of less effect where a child or young person is involved. In particular, clubs and individual volunteer trainers, race officers and other officials will normally have a higher standard of care towards young people than adults, the defences which can be raised in a legal claim will be harder to prove, and any disclaimer of liability or acceptance of risk form signed for or on behalf of a young person is likely to be invalid in most cases.

However, much will depend on the age of the young person in question and his level of experience. The following general guidelines should assist in establishing the right level of supervision and safety rules.

Children below the age of 11 - Inexperienced sailors

Where this age group is concerned, the standard of care is at its highest particularly where the parents or guardians are not in immediate attendance (or in the case where the parents or guardians are themselves inexperienced). Constant supervision is appropriate, and particular care must be shown in not exposing the child to danger. This would apply equally whether afloat, ashore, or at the water's edge. Volunteers are effectively in *loco parentis* and will be expected to show the same standard of care, as would reasonably careful and knowledgeable parents in the same circumstances.

Children below the age of 11 - Experienced sailors

For this group the same principles as to supervision will apply, except that the children may be expected to cope with more difficult weather conditions. Of course a balance must be struck between over-protectiveness and permitting children to take foolhardy risks. It is unlikely to be acceptable for a club or official to claim that the child willingly accepted the risk.

Children 11-13 - Inexperienced sailors

The same principles will apply as for younger children while afloat, although a lower level of supervision would be expected while ashore or at the water's edge.

Children 11 - 13 - Experienced sailors

Children in this age group will vary considerably in having sufficient maturity to make decisions about risk taking particularly when peer pressure is involved. While a degree of supervision is still expected, they can be reasonably expected to be self-reliant both afloat and ashore. However there will still be a tendency among some to underestimate the risks involved. Consideration should also be given as to whether a child is taking risks because of peer pressure.

Young people 14 - 18 - Inexperienced sailors

The same principles will apply as for younger sailors while afloat, although a very much lower level of supervision would be expected while ashore or at the water's edge.

Young people 14 - 18 - Experienced sailors

Once over the age of 14, depending on the mental maturity of the individual, young people can be expected to make sensible decisions about their exposure to risk. By the age of 16 or so they would be equated by the courts to adults, and special considerations as to the supervision of young persons would be unlikely to apply.

It should be noted however that the age of legal majority is 18, so any contractual documents, including exclusion of liability clauses, would probably be of no effect in law and should not be relied upon.

Organised racing or other group events

A special standard of care must be shown in the following matters:

- Acceptance of entries, having regard to:-
 - age and experience of competitors;
 - expected number of competitors;
 - available patrol boats;
 - anticipated weather and tidal conditions.
- The decision to cancel, postpone, or continue with racing in the light of the foregoing factors.
- Provision and maintenance of adequate patrol boats (and in this regard it is even more important to provide adequate cover). (See Section 2).
- Enforcement of appropriate safety regulations.

It is impossible to lay down criteria or guidelines that will be of general application, for example a ratio of patrol boats to competitors. Weather conditions, age, experience and competence of competitors etc vary so much from one club to another and from one event to another that it must be for the sailing committee of each club and the organisers of each event to decide what safety regulations should exist, what systems should be employed for their enforcement, and when such regulations should be imposed and/or waived. In making these decisions, the committee need not attempt to forestall or remove every single area of risk; rather they must take a common-sense approach to practical safety rules that will not be so onerous as to stifle the interest of young people or prevent them sailing in adverse conditions but will cover the most obvious areas of risk. As we have seen, the standard will vary accordingly to the age and experience of the competitors.

Training activities

By definition inexperienced young people are the most vulnerable class of people to take to the water. Since young novices are also the least able to assess the degree of risk to which they are exposing themselves, instructors responsible for them require a particularly high standard of care in this regard.

While the previous paragraphs apply in most cases as much to training activities as to racing, in the event of an accident resulting from lack of proper precautions being taken, a court may have less sympathy for an instructor and the club or organisation to which he is answerable.

Liability can arise from a number of sources, whether from damage done by trainees or damage or injury to trainees. For this reason, and because it is not in practice possible to contract out of liability, clubs involved in training should make careful arrangements for specific insurance cover in respect of these activities (see Section 6).

Non-organised sailing and use of club facilities

A frequent source of concern to clubs is whether legal liability could arise from the unsupervised use of club premises, or the club's water, by children and young people at times when no adult members are present.

Appendix 1 provides a form of warning to be included on junior membership forms for signature by the parent or guardian and in club rules in cases where rescue facilities can only be provided during organised events.

Where a parent or guardian signs a declaration that he has read and understood this warning, this is of no binding effect so far as the child's rights are concerned (since the child is under 18 and cannot be contractually bound). The effect of the warning is however to bring to parents' attention that children (or their parents) are responsible for their own safety at certain times since the club does not even attempt to impose safety rules or provide rescue facilities at such times. Indeed if a club were to hold itself out as providing supervision and cover at such times, then the special standard of care referred to in the previous section would apply and a lapse of care could result in liability.

The approach now taken by an increasing number of clubs seems sensible and, more importantly, encourages young people to use the facilities, giving them total freedom to use the outdoor facilities whenever they wish, with no rules, no supervision and no rescue facilities. As long as neither they nor their parents are led to believe that supervision and cover are provided, then no question of liability should arise since there is no opportunity for a club official to be negligent. This policy always assumes that there is not some hidden danger or special trap in the premises or on the water that makes unsupervised sailing particularly dangerous.

The decision whether to allow children to use the facilities at such times is thus that of the parents or guardians who may or may not wish to impose their own safety rules - this is a matter for them to decide.

SECTION 6: Insurance

It will be clear from all the foregoing sections that, whatever exclusion or limitation of liability clauses are relied upon, and whatever is contained in the racing rules, club rules, or other event documentation, there will always remain the risk of injury to a competitor, and the risk 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 take action against his own skipper, the skipper of the other yacht, the helmsman of a patrol boat, the club (if a limited company), representatives of the club (if not a limited company) and individually named race officials.

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

Fortunately adequate insurance arrangements are available for all concerned, and a range of insurers offer policies to cover all the areas of potential liability referred to in this booklet. There are also policies available which provide general cover for legal costs. Details are available from most insurance brokers.



Clubs - Comprehensive insurance

The most established scheme developed over many years is the RYA Club Insurance Scheme brokered by Heath Lambert Group which covers some 800 RYA affiliated clubs and classes. This policy is tailored to cover all the risks facing a club, including buildings, contents (including trophies), cash, loss of profits following damage, employer's liability, fidelity of staff, piers, jetties and pontoons, club boats and of course public liability. Standard cover includes the public liability "member to member" extension which covers members against claims between each other. Further cover 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. Individual volunteers organising events should check with the club secretary that the club's insurance policy is up to date, covers the club against the activities actually being carried out (whether on or off 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 "hands on" responsibility for management of events, a public liability only policy may be appropriate. Such cover is available through most insurance brokers. Here again, volunteers organising events should check with their club or association that the policy is valid for the event concerned, and also covers the individual liability of volunteers acting on behalf of the club or association.

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 organise their own social or cruising events. Thus a small class or single make owners association may organise a list of members, publish a news sheet, organise 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 remote, often rendering the cost of insurance unjustifiable. Each activity of the club needs to be assessed as to its potential liability for third party injury or property damage.

Club race officers and other volunteers

As detailed above, volunteers should check with their club that they will be covered against personal legal liability under the club's insurance arrangements. Also, when using their own craft in an official capacity (e.g. committee boat, spectator

boat, VIP hospitality, mark, or patrol boat) the owners should check with their own insurers that their Insurance Policy covers them for any legal liability arising while engaged in that capacity. Most household policies include cover for third party liability, but they often exclude waterborne activities and should not be relied on.

RYA Regional Race Officers and National Race Officers

The RYA working with broker Heath Lambert Group has effected a Group Policy which is designed to provide public liability insurance protection for RYA Race Officials in their personal capacity. This policy is provided free of charge to appointed RYA National and Regional Race Officers, Judges and Umpires for the duration of that appointment. For further details including a summary of the cover provided, please contact the RYA Race Officials Administrator (raceofficials@rya.org.uk).

RYA qualified instructors, trainers and coaches

The RYA, in association with Heath Lambert Group, provides an instructors, trainers and coaches indemnity insurance scheme.

RYA Powerboat Racing Officials Insurance

The RYA Powerboat Racing liability policy provides insurance cover to all participating clubs and officials, at insured events, against personal injury and property damage claims. Full details may be obtained from RYA Powerboat Racing Department.

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 caused by them.

The RYA, in association with Heath Lambert Group, provides a Recognised Training Centre Insurance Scheme.

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 patrol boats 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.
- Public liability should include potential legal liability arising from all instruction, whether on land or water.

- Volunteer instructors should ensure that they have adequate third party insurance cover; they should either organise this themselves or by an extension to the club or school insurance arrangements.

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, buildings, piers, jetties and 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 make sure that all such potential liabilities are covered, both on and off the premises.

Heath Lambert Group may carry out a free audit of a club's existing insurance arrangements if there is any doubt as to the adequacy of cover.



SECTION 7: Exclusion, Limitation of Liability, Acknowledgement of Risk and Parental Consent Forms

The RYA recommends that race organisers should incorporate a clause in the Notice of Race excluding the liability of the organisers. The clause should go into the Notice of Race rather than the Sailing Instructions. The clause in Appendix 1 can be used. The clause for the entry form in Appendix 1 should also be used.

However, disclaimers and exclusion clauses are usually interpreted by the courts against the party wishing to rely on them, so they are often less effective than might be wished and organisers should still take out insurance cover (see Section 6). The general law provides that contracts such as these exclusion clauses cannot be enforced against young persons under 18. Despite this, it is sensible to require parents to sign the entry form including an exclusion clause when young persons are competing. Even against adults, the law looks very carefully at precisely what the clause says, so that they must be very comprehensive.

In addition the Unfair Contract Terms Act 1977 was passed to protect the consumer. It only applies to "businesses" and invalidates any clause in a business contract excluding liability for death or injury. Whether a club is or is not a business, or whether a particular event is or is not a business activity will depend on the circumstances of each case and may well have to be tested by the courts.

Another point to consider is the position of the crew. A crew will normally only have a claim if he can prove that someone is negligent and his main claim will be against his skipper. There is a long history in maritime law which looks to the skipper as the person responsible for injury to his crew. However, it is sensible to have the crew sign the entry form as well as the skipper, so that they become bound by the exclusion clause as well. This is more likely to be feasible at open meetings and championships where the skipper nominates his crew for the whole event, than in a club series going on for most of the summer.

Thus although the clauses may help to limit the organisers' liabilities in some cases, they should not ever be regarded as an alternative to the basic principles laid down in this booklet of

- Understanding your potential legal liability
- Having proper insurance arrangements in place
- Applying good judgement and common sense at all times.

The various rules and clauses set out in Appendix 1 are designed to cover a wide variety of different events and organisers and race officials looking for a suitable form of wording for their own purposes should be able to adapt the appropriate paragraphs to suit their own particular circumstances.



APPENDIX 1: Model Exclusion and Limitation of Liability Clauses

Before including any of these model clauses in your documentation, please refer to the relevant sections in this booklet, particularly Section 7, and make your colleagues aware that, no matter how well drafted an exclusion clause may be, there are many circumstances in which it will be of little or no legal effect.

There is no substitute for

- *Proper care and attention on the part of the organisers at all times.*
- *Proper insurance cover.*

Organisers should ensure that the existence of exclusion and limitation clauses are acknowledged by obtaining the signature of an adult or where the persons involved are under 18 years of age a parent or guardian. For example:

Name _____

Age (if under 18) _____

Signature _____

1. Model rule for limitation of club's liability

(To be added to the club rules by the requisite majority at a general meeting). Members of the club, their guests and visitors, may use the club premises, and any other facilities of the club, entirely at their own risk and impliedly accept that:

- (i) The club will not accept any liability for any damage to or loss of property belonging to members, their guests or visitors to the club.
- (ii) The club will not accept any liability for personal injury arising out of the use of the club premises, and any other facilities of the club, or out of participation in any race organised by the club, whether sustained by members, their guests or visitors, or caused by the said members, guests or visitors, to the maximum extent permitted by law.
- (iii) Before inviting any guests or visitors onto the premises or to participate in events organised by the club, members will draw their attention to this rule.

Paragraphs 2, 3, 4 and 5 have been adopted by most RYA affiliated clubs over many years, and are regarded as satisfactory for continued use.

However, clubs wishing to redraft their Notices of Race may prefer to adopt the simplified alternative wording at paragraph 6.

2. Draft rule to be inserted in notices of race, entry forms, and other relevant literature

The race organisers shall not be liable for any loss, damage, death or personal injury howsoever caused to the owner/competitor, his skipper or crew, as a result of their taking part in the race or races. Moreover, every owner/competitor warrants the suitability of his boat for the race or races.

3. Model wording to be included in entry forms

Legal Liability

- (i) By signing this entry form, participants accept that they are responsible for themselves, their crew, and their boats, whether afloat or ashore.
- (ii) Nothing done by the organisers (i.e. the club, race management team, patrol craft and anyone helping to run the event) will relieve participants of their responsibilities.
- (iii) By launching (or putting to sea) participants imply the suitability of their boat and the competence of the skipper and crew for the expected or forecast conditions.
- (iv) The provision of patrol craft does not relieve participants of their responsibilities. Although reasonable efforts will be made to provide patrol boat cover, competitors are reminded that, particularly in extreme weather conditions, cover should not be relied upon, and in any event they can only be given such assistance as can be practically provided in the circumstances. This is particularly relevant in winter and spring sailing where the risk of hypothermia is at its highest.

4. Model clause additional to 2 or 3 above suitable for a club organising offshore racing

The safety of a boat and her entire management including insurance shall be solely the responsibility of the owner/competitor who must ensure that the boat is thoroughly seaworthy, suitably equipped and manned by a crew sufficient in number and experience who are physically fit to face bad weather. The owner/competitor must be satisfied as to the soundness of the hull, spars, rigging, sails and all gear. He must ensure that all safety equipment is properly maintained, stowed and in date and that the crew know where it is kept and how it is to be used.

5. Clause additional to 4 above suitable only for a club which inspects competing yachts, whether regularly or by spot-checks

Neither the establishment of these conditions, their use by the race organisers, nor the inspection of the boat under these conditions in any way limits the absolute responsibility of the owner/competitor. The crew are nonetheless advised to satisfy themselves as to the experience of the skipper and the adequacy of all safety equipment and insurance arrangements.

6. Model exclusion clause for Notice of Race (as an alternative to 3, 4 and 5 above,

- (i) A boat is entirely responsible for its own safety, whether afloat or ashore, and nothing, whether in the Notice of Race or Sailing Instructions or anywhere else, reduces this responsibility.
- (ii) It is for the boat to decide whether it is fit to sail in the conditions in which it will find itself. By launching or going to sea, the boat confirms that it is fit for those conditions and that its crew is competent to sail and compete in them.
- (iii) The boat is required to hold adequate insurance and in particular to hold insurance against third party claims in the sum of at least £2m.
- (iv) Nothing done by the organisers will reduce the responsibility of the boat nor will it make the organisers responsible for any loss, damage, death or personal injury, however it may have occurred, as a result of the boat taking part in the racing. The organisers encompass everyone helping to run the race and the event, and include the organising authority, the race committee, the race officer, patrol boats and beachmasters.
- (v) The provision of patrol boats does not relieve the boat of its responsibilities.

Although reasonable efforts will be made to provide patrol boat cover, competitors are reminded that, particularly in extreme weather conditions, cover should not be relied upon, and in any event they can only be given such assistance as can be practically provided in the circumstances. This is particularly relevant in winter and spring sailing where the risk of hypothermia is at its highest.

Addition for offshore races

- (vi) The boat is responsible to ensure that it is equipped and seaworthy so as to be able to face extremes of weather; that there is a crew sufficient in number, experience and fitness to withstand such weather; and that the safety equipment is properly maintained, stowed and in date and that the crew know how to use it.

Addition where boats are checked

(vii) The fact that the race committee conducts inspections of a boat does not reduce the responsibilities of the boat set out in this paragraph.

Declaration to be contained in the entry form immediately above the signature of the competitors

"I agree to be bound by the Racing Rules of Sailing and all other rules that govern this event. In particular I have read Paragraph [] of the Notice of Race and confirm that I agree to its provisions and that my boat will conform to its requirements throughout the event."

7. Model clause to be included on junior membership forms (for signature by parent or guardian) and in club rules where rescue facilities can only be provided during club racing

Parents and guardians are warned that the club is only able to provide rescue facilities during the hours of club racing. Outside these hours, parents and guardians have sole responsibility for their children and wards and must appreciate that the club cannot be expected to exercise supervision or control. Even during club racing the club cannot accept responsibility for children, or any other persons, not engaged in racing.

8. Model clause for signature by parent or guardian at a youth event

"Under law, this helm (crew) is my dependant, and I accept paragraph [] of the Notice of Race which excludes my dependant's right to claim compensation in certain circumstances. I declare that during the event the boat will have valid and current third party insurance of at least £2m. I confirm that my dependant is competent to take part and that I am responsible for my dependant throughout the event. During the time my dependant is afloat I will be in or around [] Sailing Club or I will inform the race officer in writing who is acting in *loco parentis* during my absence."

9. Model wording for crew register schemes

The club warns all applicant crew and skippers that in providing this list it is not warranting the seaworthiness of boats or the competence of crew or skippers. Applicants should satisfy themselves as to seaworthiness and competence and should also make their own insurance arrangements.

10. Model "Acknowledgement of risk" clause to be included on entry forms and other relevant literature for cruising events

"I acknowledge that it is up to me personally to assess whether any event or activity on the water is too difficult for me, and whether or not my personal safety or that of my crew could be endangered. I acknowledge that the safety of my boat and her entire management including insurance is solely my responsibility, and I am satisfied the boat and crew are adequate to face the conditions that may arise in the course of the event."

11. Model clause for skippers and crews on races and cruises to sign where the participants are likely to include a number of novices (e.g. an organised cruise in company designed to encourage members to widen their cruising range)

"Persons who sign this form declare that they are physically fit to go to sea, in possibly changing conditions, that the possible dangers have been explained to them and that they understand that in the event of personal injury or other loss the responsibility (if any) will lie with their owner/skipper and not with the event organisers."

Persons under the age of 18 must have a written authority signed by a parent or guardian acknowledging that the above conditions have been read and agreed.



APPENDIX 2: Further Reading

- Boating Safety - Inland Waters (RYA G28/94)
- The Club section of the RYA website - www.rya.org.uk

RYA memo card recommended to be fixed to safety boat consoles

APPENDIX 3: Insurance Check List

You have a legal responsibility to act with reasonable care as a race officer, particularly where young people and novices are taking part. For further details, read the RYA booklet on Race, Training, and Event Management.

In the event of an accident you may have to look to the club's insurance policy for protection.

1. Does the club's insurance policy cover the potential legal liability of individual race officers and their team including safety boat crews?
2. Is the insurance policy in date?
3. Does the policy provide cover for incidents occurring off the club's premises?
4. If using your own boat as a committee, mark or patrol boat, does your boat policy cover use for this purpose, and liability for any personal injury to those aboard, whether paid or unpaid

The RYA recommends that a copy of this check list be displayed at the Race Officers' starting position.

APPENDIX 4: Inspection of Insurance Certificates by Clubs Managing Racing

Following the introduction of the Unfair Contract Terms Act 1977 ("the Act"), clubs were warned that by inspecting competitors' insurance certificates, they may be laying themselves open to the risk of legal action in the event that an invalid certificate is overlooked and a fellow competitor or his or her boat is injured or damaged by the uninsured competitor. This warning still remains valid.

THE ACT

The following points should be noted:

The Act applies to "businesses". To the extent that a club's activities constitute a business, the Act will be relevant. As a result, the usual "Notice of Disclaimer" appearing on club notice boards, exonerating the club from liability for negligence, may not necessarily be valid. That is not to say that such notices should be removed, but simply that they may not give a club the protection which might otherwise be assumed.

The main provision of the Act may be summarised as follows:

- An organisation can no longer, whether by a term in a contract or a public notice, exclude or restrict its liability for death or personal injury caused by its negligence.
- An organisation can only exclude or restrict its liability for any other damage (i.e. property damage) caused by its negligence in so far as the exclusion or restriction of liability is reasonable in all the circumstances.

CLUBS AND THE ACT

Where a club regularly inspects insurance certificates, a negligent omission to ensure that a competitor has a valid certificate may lay the club open to a legal action. For example, a competitor who is injured (or whose boat is damaged) by an uninsured competitor may allege that the club, having made it known that the competitors' insurance certificates are regularly checked, thereby undertook a duty towards other competitors to ensure that all competitors' certificates would be valid and that all competitors complied with any insurance declarations. As a result of the club's negligent breach of this duty, the injured competitor has suffered loss

in so far as he is unable to recover damages from the uninsured competitor. This loss, the injured party may say, should be recoverable from the club.

Whether or not a court would uphold such a line of argument, it is clear that a clause which seeks to exclude or restrict the club's liability for this type of incident is unlikely to be effective.

If a club wishes to continue inspecting competitors' certificates, then it should check with its own insurers that it is covered for any claims which might be made against the club for death, personal injury or damage to property taking place during events in circumstances where the club may have negligently failed to check for valid insurance cover.

It is for these reasons that the RYA's Standard Sailing Instruction clauses (see the RYA publication "Racing Rules of Sailing") stress that all boats are responsible for their own safety, and require them to hold adequate insurance. If a club adopts a policy of inspecting insurance certificates, some of this responsibility is likely to revert to the club.

In order to encourage competitors to maintain third party insurance cover, we suggest that a written declaration is signed by all competitors along the following lines:

"I _____ declare that I hold valid and current boat insurance which covers me for third party claims whilst racing and that I will continue to do so whilst engaged in racing at the _____ Sailing Club".

Signed _____

Dated _____



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