



Race, Training and Event Management

The Legal Aspects

April 2018

RYA Responsibility Statement

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This Edition April 2018

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Foreword

by The Honourable Mr Justice Holman

(Member of the Council of the Royal Yachting Association from 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.

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, run our races and train the young; and in relation to the hundreds of yacht clubs, large and small, which provide the essential framework for racing, training and organised cruising. It is vital that clubs and individuals are not deterred from doing so by too onerous a burden or by the fear of being sued. But there are inherent risks and dangers in sailing, as in all worthwhile sports, and participants, especially the young, the vulnerable and the novice of any age, are entitled to standards of vigilance and care to keep them safe. We all know, too, whether we like it or not, that we live in an increasingly regulated society. However much it may sometimes be mocked, “health and safety” is here to stay. A balance has to be struck, not always successfully or fairly, between encouraging a structure in which voluntariness, selflessness and community of spirit by organisers and trainers can thrive; and creating a safe framework for participants. This requires 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 and strengthen 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 anyone who is involved in the organisation or management of recreational boating events, including racing, cruising, training, open days and similar activities, whether under power or sail, on inland or tidal waters.

This guide seeks to ensure that those organisers are aware of the relevant legal implications and the respective responsibilities of organisers and participants. It should assist organisers in understanding those responsibilities and explaining them to participants, so that all those involved can make informed decisions and put in place appropriate safeguards.

In particular, this guide should assist organisers in:

- understanding their responsibilities, as organiser (Section 1);
- focussing on managing risk (Sections 2, 3 and 4);
- alerting participants to the inherent risks of the sport by the use of risk statements (Section 7);
- drawing participant's attention to the rules of the event, including: (in the case of competitive events) ISAF and UIM rules as well as each organiser's own rules, notices of race, sailing instructions and entry forms; and
- seeking appropriate insurance (Section 6).

There have been a number of reported cases in recent years against sports organisers, notably in swimming, outdoor activity and rugby, involving injury both to young people and to adult competitors. Event organisers should therefore always be aware of their potential liabilities. In some cases this awareness will reinforce their decision to abandon or curtail an event on safety grounds. Conversely, and equally importantly, it may reinforce their decision, in appropriate circumstances, to continue an event in difficult conditions.

This guide is not intended to be safety advice. Safety issues are fully dealt with in a number of other publications available from the RYA website at www.rya.org.uk.

SECTION 1: Basic Legal Principles

There are a number of circumstances in which an organiser might hold a duty of care to participants and/or visitors and be held legally liable for an injury or property damage suffered by a participant, visitor or a member of the public in the event that that duty is breached. These include:

- Negligence; this is a breach of a general duty not to cause injury or loss carelessly;
- Occupier's Liability Act 1957 (if the organiser is the occupier of premises where the event is taking part); and
- Nuisance (if the organiser interferes with another's use or enjoyment of land or some right in relation to land).

In this section we concentrate on the general duty to take reasonable care. A breach of this duty is known as negligence. Reference should also be made to the cases set out in Appendix 1, which illustrate some of the issues explained below.

Negligence

Where individuals participate in an organised activity, particularly where those participants are young, vulnerable and/or inexperienced, an organiser is likely to be under a duty to manage those activities reasonably safely.

The basic principles of the law of negligence were explained in the famous case of ***Donoghue v Stevenson (1932)***, in which the claimant alleged that she had become ill as a result of drinking a bottle of ginger beer in which she subsequently claimed to have found a snail. In describing the general duty of care, Lord Atkin said:

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

Reasonableness and context

From Lord Atkin's quotation it can be seen that negligence, or the breach of a duty of care, cannot be defined in any hard and fast practical way because it depends on the concept of "reasonableness", which governs each of:-

- the existence of the duty of care;
- to whom the duty is owed; and
- the standard of care that would be expected in a particular situation.

What constitutes “reasonable” will depend on context. In the case of a boating event the context is particularly significant. Recreational boating and powerboat racing are by their nature unpredictable sports and therefore inherently involve elements of risk of personal injury or damage to the property of participants. This inherent risk in our sport influences what is considered to be “reasonable”.

Factors that may be taken into account when determining “reasonableness” in relation to the extent of a duty of care owed by an organiser may include: the size of the organiser, its location, how it is run and by whom (e.g. staff / volunteers), the level of training provided, the types of activities and, importantly, the age and experience of the participants.

It is likely that the extent of any compliance or non-compliance by the organiser with relevant guidance notes and codes of practice will be material considerations in considering whether an organiser has taken reasonable care.

Negligence can therefore be summarised as a duty not to inflict damage carelessly but it does *not* impose a general duty on everyone to act carefully towards everyone else.

Causation and no-fault accidents

The fact that a participant in or onlooker to an event suffers an injury, accident or loss (referred to in legal parlance as “damage”) does not of itself mean that liability automatically falls on the event organiser for that damage. It is not sufficient for a claimant merely to show that they have suffered damage in order to claim compensation. The questions to be asked would be not only: “Did the organiser fall short of what was reasonably expected of them?” but also: “Did this falling short cause the damage complained of?”

There are still such things as accidents that are not caused by the failure of anyone else to take reasonable care. For example, if a visitor sustains an injury on a well maintained pontoon because, perhaps, they simply lost their footing, the owner of the pontoon is unlikely to be found liable for the resulting injuries. The outcome is likely to be different if the owner of the pontoon was aware that the pontoon was damaged in some way but had taken no action to: warn others of the danger; close off access to it; or attempt to repair it.

Contributory negligence

Where damage suffered is a consequence not only of the organiser's negligence but also the claimant's own lack of care then the compensation payable is liable to be reduced in proportion to the claimant's own blameworthiness.

Acceptance of risk and warnings

Organisers are expected to take steps to minimise the risks associated with a sporting event where reasonably practicable. This duty does not appear from case law to extend to alerting competitors and spectators to risks which are plain and obvious. Visitors and participants are taken to have accepted such risks and do not need warning of them. The question will be whether or not a particular risk is one which in all the circumstances they should be taken to have accepted.

The dangers of organising an event at a particular venue may be distinguished from the dangers of the sport itself. A participant or visitor at a sailing or powerboating event might reasonably assume as against the organiser that the venue is reasonably safe even if he is taken to have accepted the inherent risks associated with the sport.

Acceptance of these inherent risks by a participant would support the argument that an organiser was not negligent should those risks manifest themselves.

Consideration of wider implications

When considering a claim in negligence and whether a person should have taken certain steps to avoid breaching their duty of care, the Compensation Act 2006 permits a Court to have regard to whether such steps might prevent a desirable activity from taking place or discourage people from taking part in that activity.

The Social Action, Responsibility and Heroism Act 2015 permits a Court, when considering a claim of negligence or breach of statutory duty against a person, to have regard to whether that person was acting for the benefit of society, had demonstrated a predominantly responsible approach towards protecting the safety of others or was acting heroically by intervening in an emergency.

The apparent intention behind these Acts is to encourage the Courts to consider the wider implications a finding of negligence may have. However, case law suggests that these Acts have so far had little practical impact.

Claims culture

Much is made of the so called 'compensation culture'. However, reported liability decisions, some of which are set out in Appendix 1, appear to suggest that while there may be a "claims culture", the Courts are increasingly reluctant to compensate voluntary risk takers or to impose unreasonably high burdens on defendants.

Liability of children and their parents

Children are not immune from claims of negligence and a child may be found to owe a duty of care in the same way as if they were an adult. That said, the age of a child may be relevant in determining the standard of care expected of that child. The Court of Appeal has held that the test for negligence of a child is whether an ordinarily prudent and reasonable child of the same age and in the same situation would have appreciated the risk of injury or damage.

By way of example, in the case of ***Williams v Humphrey (1975)***, a 15 year old boy was found liable for the severe personal injury he caused his father when in playfulness he had pushed his father into a swimming pool. Conversely, in the case of ***Mullin v Richards (1998)*** a 15 year old girl was held not liable when, playing at fencing with plastic rulers with a friend, one of the rulers shattered and a shard of plastic entered the friend's eye causing partial loss of sight.

Although parents would not normally be held liable for the negligent actions of their children, parents are under their own duty to exercise such control over their children as might be expected of a reasonably prudent parent. As an example, a father was held liable when he gave his 15 year old son an airgun and the son broke a window and later shot someone in the eye with it.

Liability of organisers and of individual officials

The extent to which the organiser might be held liable for the negligent actions of the individuals delivering an activity on its behalf will depend to a certain extent on the legal nature of the organiser.

Many organisers are unincorporated associations, which means that they have no separate legal identity. They are, in effect, simply a name attributed to a particular group of individuals. An unincorporated association cannot sue, or be sued, in its own name. Claims against unincorporated associations are normally directed instead at named individuals, either in their personal capacity or as representatives for the members of the association. Committee members do not normally owe members of the association a duty of care purely by virtue of being

committee members. However, neither are committee members granted immunity from liability where a duty of care might otherwise arise (e.g. the person who maintains the patrol boats may be under a duty to ensure that the boats are reasonably safe to use).

Individual members of an unincorporated association do not owe other members a duty of care simply by virtue of being fellow members of the association, although neither are members granted immunity from liability to other members where a duty of care might otherwise arise (e.g. between competitors in a race).

The members of an unincorporated association might, however, collectively owe a duty of care towards non-member visitors or guests, for example in connection with the physical condition of the association's premises.

In addition, although the members of an unincorporated club would not normally be held liable for the negligent actions of individual club members, the club members might collectively be held vicariously liable (i.e. without any personal fault on their part) for the negligent actions of individual members to whom they have delegated responsibility for managing the club's activities, for example the committee.

If the collective liability of the members exceeds the amount of the assets of the association then individual members may each be personally liable for any legal liability for damages that the association may incur. It is therefore vital that an unincorporated association has appropriate insurance to cover its activities.

If the organiser is incorporated as a limited company, whether limited by shares or by guarantee, then it has its own legal identity and can sue and be sued in its own name. In addition, one of the key features of incorporation is that the liability of the individual shareholders or members for the liabilities of the company is limited to the amount of their respective shareholding or guarantee.

However, incorporation does not protect individuals from claims that they personally owed a duty of care and were in breach of that duty.

In addition, the directors of a company are subject to statutory duties under the Companies Acts that do not apply to the committee members of an unincorporated association. Appropriate insurance is therefore equally important for a company as it is for an unincorporated association.

Reported cases

Set out in Appendix 1 are a number of examples of cases in which a duty of care has been found to be owed by a sporting or other recreational organiser. Although none of these cases relates specifically to recreational boating, by analogy it can be seen that there may be a number of situations in which organisers of recreational boating activities might be found to owe a duty of care to participants or to members of the public.

SECTION 2: Managing Risk

On a practical basis, a duty owed by an organiser to take reasonable care and to avoid negligence is likely to translate as a requirement to plan and manage an event efficiently and with consideration for likely eventualities and risks

The essential elements of managing risk are to:

- Identify the hazards;
- consider who might be harmed, how they might be harmed and the severity of harm that may be caused;
- Evaluate the risks (in terms of both the probability of occurrence and the potential severity of harm) arising from the hazards and decide whether existing precautions are adequate or more should be done;
- Record the findings; and
- Review the assessment from time to time and revise, if necessary.

Risk Assessment

As a matter of good practice and to ensure that you have covered every aspect of their event, you should carry out a Risk Assessment. When doing so you should take into account all of the activities that you wish to offer, both on and off the water, your facilities, such as toilets, changing rooms, showers etc. and any refreshments and entertainment you intend to provide should all be factored into the risk assessment.

You should take your time to work through every aspect of a Risk Assessment that takes into account your premises, personnel, participants and all activities and equipment on offer.

These five steps to managing risks are discussed in more detail in the RYA guidance notes on risk assessment. In addition, further help on identifying hazards and the special considerations for specific types of activity and for particular participants are discussed in Sections 3 and 4 of this guide.

The RYA has produced standard risk assessment forms, which may be a useful starting point for a risk assessment. The RYA standard forms divide events into major, medium and minor impact events according to the size of the event and the likely impact it will have on harbour operations. Use of standard forms as a starting point should be helpful in enabling organisers to take a proportionate approach and will hopefully keep the paperwork involved to an acceptable level.

However, it is important to recognise that risk assessment is a process rather than a document. The purpose of recording the process is so that the organiser

can demonstrate how the process was undertaken. Risk assessment is also an on-going process and needs to be more than simply a one-off paper exercise if it is to be helpful in demonstrating that reasonable care has been taken.

If an organiser is holding an event within the jurisdiction of a Harbour or Local Authority then a documented risk assessment may be required by that authority.

Risk management and therefore risk assessment is likely to be a key ingredient in organisers being able to demonstrate that reasonable care has been taken.

SECTION 3: Special Considerations for Specific Activities

This section sets out some additional considerations that may be relevant for particular types of activity, including: racing events; cruising events; training events; and open days.

(i) Racing Events

A race organiser cannot guarantee that a race will be absolutely safe. Racing involves a competition with the elements as well as with other boats. This sets racing apart from many other forms of competitive sport.

The ability of a boat and crew to withstand testing conditions and the manner in which such conditions vary during the course of a race are part of the competition. This being the case, the skipper accepts certain responsibilities under the Racing Rules for the safety of their boat and crew (discussed below).

Nevertheless, race organisers should take reasonable care in their management of a race. Factors that may be relevant in establishing the standard of care that might be expected of organisers are likely to include: the expected duration and nature of the race; the types of boats competing; the skill levels of the crews; the course design; and the locations of the racing marks. For example, the weather conditions (such as poor visibility or wind strength) may be such that it would be reasonable for the organisers of an offshore race in yachts built and equipped to withstand adverse conditions and with experienced crews to start or continue a race but unreasonable for the organisers of an inshore race for small cruising yachts crewed by sailors of mixed abilities to do so.

Other factors that a race organiser might need to take into account include: the risks associated with the venue's particular locality, the resources of the race organiser in terms of skilled officials and other staff or volunteers, patrol boats, any rules laid down by landlords in the case of private inland waters and the expected level of skill of the participants. For events 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 race organisers will be more secure if it can be shown that any rules that are applied are taken seriously and are applied with reasonable consistency (e.g. a rule that buoyancy aids or lifejackets must be worn by all competitors).

Responsibility of skipper for safety of crew

It is a fundamental principle of maritime law that the skipper is responsible for the safety of his vessel and 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. This principle is illustrated by Rule 4 of the ISAF 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”.

The responsibility of a race organiser in relation to the overall management of the race and the responsibility of the skipper for the safety of their boat and crew operate in tandem. However, if race organisers consistently adopt too cautious an approach to starting and continuing races then this may over time tend to encourage skippers to rely upon the judgement of race organisers and to undermine the fundamental principle of maritime law as to the skipper's responsibility.

More specific advice and guidance on race management is available from the RYA Racing and Powerboat Racing Departments.

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 organiser 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

Race organisers will need to decide whether they are able to offer patrol boat cover for their activities. Such decision will no doubt depend in part on the finances and resources of the organiser.

Patrol boats may fulfil a number of functions, including mark laying, 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. Race organisers should make it clear to participants if the patrol boats are not able to offer a safety boat function (e.g. in the Notice of Race or Sailing / Race Instructions).

A race organiser might owe a duty of care towards competitors and patrol boat crews to take reasonable steps to ensure that the patrol boats are reasonably suitable and properly maintained and equipped. Patrol boat crews might themselves owe a duty of care towards competitors.

If patrol boats are not capable of providing safety boat cover then 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. Race organisers should remind competitors in Notices of Race and Sailing / Race Instructions, and where appropriate at pre-race briefings, that, particularly in extreme weather conditions, patrol boat cover should not be relied upon, and that competitors can only be given such assistance as can practically be provided in the circumstances. This is particularly relevant in winter racing where the risk of hypothermia is highest.

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

Each race organiser should also consider which of its members should be permitted to operate patrol boats. Some organisers require their crews to hold appropriate RYA Powerboat Certificates. However, for many organisers this is not a viable option and in such cases it is recommended that there should be a recorded system for assessing and if necessary training patrol boat drivers.

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

Each race organiser should also consider whether propeller guards should be fitted to their patrol boats. It is recommended that each race organiser should make its own decision on this matter and keep a written record of the reasons for the decision.

If an organiser borrows or charters additional patrol boats from a third party then consideration will need to be given to whether such boats have the appropriate Maritime & Coastguard Agency or local authority certification.

Novices

A novice, even if an adult, will not be as aware of the potential dangers, and may not be able to recognise their own limitations or those of the boat in which they intend to race. Race organisers and fleet captains should bear this in mind and, where practicable, warn novices of the possible risks associated with taking part.

Changing weather conditions

Changes in weather conditions and sea states are often a contributory cause of incidents. A race organiser may choose to adopt weather limits for its races. If it does, the race organiser should monitor, as far as reasonably practicable, the weather and weather forecasts. The race organiser should be prepared to take appropriate action (e.g. by shortening or abandoning a race) where necessary.

Inspection or scrutineering of boats

There is no legal obligation on race organisers 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.

Whatever system the race organiser 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 race organiser must also consider whether it is realistic to expect participants to accept, agree and comply with those rules, and, equally importantly, whether there will be sufficient individuals in the future who are ready, willing and able to play their part in policing those rules. A race organiser 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 not been adopted at all.

(ii) Cruising Events and Crew Registers

A number of organisations include cruising events, rallies, cruises in company, treasure hunts and similar outings in their programme. Many of the principles applying to competitive events will also apply here.

Rallies

Where a rally is organised by simply issuing a series of meeting places with dates and times, it is unlikely that any liability would be incurred by the organiser if an accident occurs while a boat is on passage to or from a meeting place.

Cruising in company

Where a cruise in company is organised 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 organiser should be aware that when organising “follow my leader” events for the less experienced, 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, the organiser might consider imposing a crew experience requirement. Some organisers provide experienced members to act as First Mate to less experienced skippers at such events.

Raids

Organisers whose primary activities relate to personal water craft and/or small powerboats and RIBs 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 be aware of their potential responsibility for unruly behaviour by participants. All those taking part should therefore 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 and, where appropriate, the prior consent of harbour authorities (often required for organised events) should be obtained.

Crew registers

Any organiser operating a crew register is open to the potential risk that a crew member may hold the organiser responsible for placing him on an unseaworthy boat, or with an incompetent or inexperienced skipper. Also, a boat owner may allege that the organiser had warranted the competence of a crew member introduced through the register. A suggested form of notice to protect the organiser against such allegations is included in Appendix 3.

(iii) Training Events

This section gives advice to organisers 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

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.

It is quite acceptable for training, even at the most basic level, to be carried out by appropriate individuals without formal qualifications. However, the organiser should limit the delivery of such training to experienced individuals 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 recorded.

So far as the safety regime is concerned, it is for each organiser to decide its requirements in the light of local conditions. However, the organiser's legal position following an accident may be weakened if it cannot show that it had carefully considered and taken reasonable steps to address the potential risks to trainees, including:-

- Adequate supervision afloat;
- 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;
- Adequate supervision ashore for young people (see also Section 4);
- Trainer/Trainee ratios; and
- Ability to swim/confidence in the water.

As discussed in Section 2, it is much easier for an organiser to demonstrate that it has carefully considered and taken reasonable steps to address the potential risks to trainees if it has documented the process.

Intermediate/advanced training

Many organisers 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 individuals. 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.

Experienced adults participating in advanced training are likely to be able to make their own assessments of the risks associated with the proposed activities.

(iv) Open Days

The basic principle to remember is that, where an organiser invites visitors onto the premises for have-a-go sessions or open days, the organiser has a duty of care for the safety of those visitors whether ashore, afloat, or at the water’s edge. In practical terms this means that the event should be carefully planned and many of the considerations relevant to basic training are also relevant here. Competent members should be available and carefully briefed for each of their tasks. Premises, boats and all equipment should be well maintained and inspected for defects. Any equipment deemed unsuitable for the event should be locked away.

Before organising the open day, the organiser should check that the insurance policy covers all the activities of the day as well as any boats that are being used.

It is recommended that visitors are asked to complete a Booking Form on arrival. A suggested booking form is included in Appendix 2.

SECTION 4: Special Considerations for Children, Young People and Vulnerable Adults

This section only deals with potential civil liability for death or personal injury. More information about the regulatory requirements for organisers providing training to young people and vulnerable adults is available from the RYA.

Special position of children, young people and vulnerable adults

Organisers should always be aware that a higher standard of care applies when dealing with children, young people and vulnerable adults. In addition, the various defences which can be raised in a legal claim (see Section 1) are less likely to be effective against children, young people and vulnerable adults, and therefore special care needs to be taken.

General principles of legal liability for children and young people

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 child might be considered as to be capable of making their own decisions about risk and the Courts will examine each case on its own merits, but in general terms particular consideration needs to be given to those below the age of 16.

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

In the case of a personal injury to a child, the organiser would have a number of lines of defence to an allegation of negligence. 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, organisers and individual trainers, race officers and other officials will normally be expected to deliver a higher standard of care towards children than adults, the defences which can be raised in a legal claim (see Section 1) will be harder to prove, and any acceptance of risk form signed for or on behalf of a child is unlikely to be effective in avoiding liability.

However, much will depend on the age of the child in question and their level of experience. The following general guidelines should assist in establishing the right level of supervision and safety rules, although the age parameters used are purely illustrative and it is important that other relevant factors such as an individual child's maturity and competence are taken into account.

Children below the age of 16 - Inexperienced

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). A high level of supervision may be 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. Those supervising children might be expected to apply at least the same level of care as would reasonably careful and knowledgeable parents in the same circumstances.

Children below the age of 16 - Experienced

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

Young people 16 - 18 - Inexperienced

Depending on the mental maturity of the individuals, young people might be capable of making decisions about their exposure to risk but a lack of experience to inform such decision-making may mean that they require similar levels of on-water supervision to those applied to children. A lower level of supervision is likely to be appropriate while ashore or at the water's edge.

Young people 16 - 18 - Experienced

Depending on the mental maturity of the individuals, young people who are experienced boaters might be expected to make sensible decisions about their exposure to risk. However, it is important to recognise that peer pressure may influence their decision making.

General principles of legal liability for vulnerable adults

A vulnerable adult is a person:

- "who is or may be in need of community care services by reason of mental or other disability, age or illness"; and
- who is or may be unable to take care of themselves; or
- who is or may be unable to protect themselves against significant harm or exploitation

A higher standard of care is likely to be required when organising activities for vulnerable adults. However, the level of supervision or support required for such individuals will depend upon the activities undertaken and the particular vulnerabilities of the individuals concerned. Booking forms and any risk statements will need to be tailored to ensure that participants' individual needs are identified. More information on how to deliver particular boating activities for vulnerable adults is available from RYA Sailability.

Organised racing or other group activities

Particular care must be taken in the following matters:

- Acceptance of entries, having regard to the age and experience of competitors, the expected number of competitors, the availability of patrol boats and the 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
- 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 organiser to another and from one event to another that it must be for the committee of each organiser 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 from experiencing adverse conditions but will cover the most obvious areas of risk. As we have seen, the standard will vary according to the age and experience of the competitors. It is important that organisers keep a written record of their decision making process.

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 may be expected to provide a particularly high standard of care.

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 organiser. For this reason, and because it is not in practice possible to contract out of liability, organisers involved in training should make careful arrangements for specific insurance cover in respect of these activities (see Section 6).

Non-organised activities and use of facilities

A frequent source of concern to clubs is whether legal liability could arise from the unsupervised use of the clubs premises or water (e.g. lake or reservoir) by children and young people at times when no adult members are present.

Many clubs allow children and young people to use their facilities out of hours, with no supervision and no rescue facilities. As long as neither they nor their parents are led to believe that supervision and rescue cover are provided then a club allowing children to sail out of hours should not be liable simply by virtue of the absence of supervision or rescue cover.

SECTION 5: Medical Information

Organisers will need to decide on a case by case basis, depending on the nature of the activity taking place, whether or not it is appropriate to collect personal medical information from those participating in the activity. The decision relates to reasonableness: Is it reasonable for the organisers to gather medical information relating to the participants? What action might the organisers reasonably be expected to take on the strength of the information in their possession? If the information serves no purpose it should not be collected.

Training activities

Where the event is a training, coaching or squad session it may well be reasonable for the organisers to hold participants' medical information and be expected to act on the basis of it in the event of an incident. In such cases, each instructor/coach is likely to have a limited number of participants under his or her supervision and might reasonably be expected to make himself or herself aware of any special medical issues affecting his supervisees.

In addition, if those participating in the activity are children and their parents are not present throughout the activity then the organisers may well find themselves acting *in loco parentis* for the children and it may limit their ability to discharge their duty in this regard if they have not sought relevant medical information from the participants' parents.

Organised racing or other group activities

In contrast, for racing or other group activities that do not involve the same level of supervision, it may well be unreasonable to expect the officials, patrol boat crews and others involved in delivering the activity to act on the basis of medical information collected by the organisers for what might be a large number of participants.

If the organisers do not intend to pass any medical information gathered to those who might need to act on it then there would seem to be little merit in gathering the information in the first place.

Moreover, if there is no mechanism for ensuring that any medical information gathered by the organisers is passed on to those who might need to act on it then this might of itself give rise to a degree of liability and the organisers might thus find themselves in a worse position than they would have been in had they not gathered the information at all.

Fitness to participate

The questions of whether or not to collect medical information from participants and, if gathered, what to do with it need to be distinguished from the matter of determining whether a participant is fit to participate in the activity. For example, a person may have no medical complaints but nevertheless be unfit to participate through having consumed alcohol or drugs. Equally, a person may suffer from a condition that might have an impact on their treatment in the event of an emergency but that does not prevent them from being fit to participate in the activity.

Determining fitness to participate should generally be the responsibility of the participant or, in the case of those under 18, their parent or guardian. It is suggested that risk statements (see Section 7) should include an acknowledgement to this effect.

Accordingly, the medical information questions in the Model Booking Form in Appendix 2 have been written in such a way as to provide a facility for participants to disclose medical information if they believe that it may affect their ability to take part.

An organiser should be cautious of drawing conclusions regarding fitness to participate from any medical information provided, as incorrect assumptions may result in liability, however a participant who declares that they are fit but lists a number of medical issues may alert the organiser to the need for further discussions with the participant regarding fitness to participate.

That said, an organiser may need to ensure that it has sufficient information to enable it to determine whether (and if so how) it can accommodate any special requirements participants may have, in accordance with the Equality Act 2010.

Timing

An individual's fitness to participate or medical information may change between the entry date and the event date. Organisers should therefore have in place a procedure to ensure that any information collected remains up to date. This may be achieved by relying on a term in the booking form obliging the individual to notify the organiser of any changes which the organiser should be aware of, or asking for a fitness declaration or medical information (if required) at the time of the event.

Medical information and data protection

Medical information, if collected, will be classed as “special category data” under data protection legislation and should be treated accordingly.

This means that it is necessary to have both a “lawful basis” for collecting that information (in the same way a lawful basis is required for collecting any other personal data) and, in addition, it will be necessary to satisfy one of the specific conditions set out in the data protection legislation relating to special category data. The relevant specific condition is likely to be explicit consent, and appropriate wording should be included on the relevant form to provide explicit consent.

Special category data should not be retained for longer than necessary, and adequate steps must be taken to protect the information. Further guidance on data protection can be found on the Club Zone section of the RYA website.

SECTION 6: Insurance

It will be clear from all the foregoing sections that, however careful the organiser may be and whatever is contained in the racing rules, organiser's rules, or other event documentation, there will always remain the risk of injury to a participant and/or visitor and the risk of a case being taken to Court.

It should always be remembered that, where a claimant has suffered injury, they may attempt to pursue a legal action against a variety of defendants. Thus a crew injured in a collision between two racing dinghies may try to claim against their own skipper, the skipper of the other boat, the helmsman of a patrol boat, the organiser and individually named race officials.

Even where a participant's claim 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. Just the costs of successfully defending an action may be cripplingly high in some circumstances.

Individuals organising events should ensure that they have or, if organising the activity on behalf of an organisation, the organisation has an insurance policy in place that is up to date, provides an appropriate level of indemnity and covers the organisers against the potential liabilities arising from the activities actually being organised, wherever they might take place. The policy should also cover any personal liability of staff or volunteers while acting on behalf of the organisation.

Clubs and Associations - Comprehensive insurance

An established scheme developed over many years is the club insurance scheme brokered by Gallagher, which covers some 900 RYA affiliated clubs and class association. 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 for the club's activities.

Standard cover includes the public liability "member to member" extension which covers members against claims between each other. Further cover includes committee members, officers, race officials, instructors and other staff or volunteers involved in organising events (whether racing, training or social), or otherwise in a position of responsibility, against personal liability.

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. Individuals 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 staff or 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, staff and 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 laying or patrol boat) the owners should check with their own insurers that the Insurance Policy covers them for any legal liability arising while engaged in that capacity.

If a committee member or volunteer tows a club boat (or a boat owned by a third party) behind their own vehicle, they should ensure that their vehicle insurance policy covers the Third Party risks of the vehicle and trailer combination while on the road.

Organisers should ensure that any third party engaged to provide goods or services in connection with the event also carry appropriate insurance.

Directors’ & Officers’ Insurance

While public liability insurance covers an organiser against its liability for personal injury or damage to property caused by its negligence, it does not provide protection to individual committee members, officers or directors against their liability for financial loss caused by other “wrongful acts”.

The expression “wrongful acts” in this context includes a wide range of circumstances, including breaches of contract, breaches of confidentiality, breach of trust, wrongful trading and defamation. The personal liability of committee members, officers or directors for such “wrongful acts” is generally covered by Directors’ & Officers’ Insurance.

RYA Regional Race Officers and National Race Officers

Gallagher has effected a Group Policy which is designed to provide public liability insurance protection for RYA Race Officials (sailing). 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).

Training activities at a club or Recognised Training Centre

Insurance should cover all aspects of the organiser’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;
- Public liability insurance, covering the liabilities of the organiser itself to participants and the general public;
- Employer’s liability insurance for the paid instructors;
- Professional indemnity should include potential legal liability arising from all instruction, whether on land or water;
- Instructors should ensure that they have adequate third party insurance cover; they should either organise this themselves or by an extension to the organiser’s insurance arrangements.

(N.B. Recognised Training Centres are required by the RYA’s conditions of recognition to include their instructors (whether employed, self-employed or volunteer) on their own public liability insurance policies).

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 an organiser’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.

Gallagher brokers a policy aimed at RYA Recognised Training Centres. Gallagher may carry out a free audit of an organiser's existing insurance arrangements if there is any doubt as to the adequacy of cover.

Skippers, instructors, trainers and coaches

Personal professional indemnity insurance is available for skippers, instructors, trainers and coaches. This normally covers any claims made against them arising from a negligent error or mistake in the advice or services they provide to their student or client. This is often combined with personal public liability insurance, which covers their legal liability for personal injury and/or property damage caused to third parties by their negligence.

Personal accident insurance

Public and professional liability insurance is designed to cover liability arising from the insured person's negligence, in other words it is "fault-based". Personal accident insurance, on the other hand, is designed to cover circumstances in which the insured person has suffered personal injury as a result of an accident, regardless of whether the accident was caused by anyone's fault.

Personal accident insurance is available as a free-standing policy but may also be an optional extra on some public and professional liability insurance policies.

Boat insurance

Comprehensive insurance policies are widely available for most types of boat and some insurers offer third party only policies. Many organisers insist on participants who use their own boats having such insurance in place as a condition of taking part in a particular activity.

If a boat is not covered by comprehensive insurance then the cost of repairing any no-fault damage sustained by the boat will fall to the owner.

Set out in Appendix 5 is advice on the inspection of insurance certificates by organisers.

SECTION 7: Disclaimers – do they work?

Disclaimers of liability are an attempt to excuse organisers from all or part of a liability that the law may otherwise place on them, such as that arising from their negligence in the organisation of an event. A disclaimer is an attempt to deny liability for a breach of a duty, rather than denying the existence of the duty. Historically organisers have included disclaimers of liability using notices or contractual clauses in their event paperwork. However, disclaimers can be challenged on various grounds. Some of the grounds for challenge will depend on whether the nature of the relationship between the organiser and the participants in an event is properly construed as a trader-consumer relationship or a consumer-consumer relationship. The law on trader-consumer contracts was consolidated by the Consumer Rights Act 2015.

In both trader-consumer and consumer-consumer situations:

- it may be possible to argue that a disclaimer has not been properly incorporated into a contract between the organiser and the participant or otherwise brought to the participant's attention and is therefore not effective;
- a disclaimer will usually be interpreted by the Courts against the interests of the party wishing to rely on it and it cannot normally be enforced against a minor (i.e. a person under 18 years of age).

In addition, in trader–consumer situations;

- a disclaimer that fails the general fairness test and/or transparency test under the Consumer Rights Act 2015 will not be legally enforceable against the consumer;
- a disclaimer which attempts to exclude or limit the legal rights of the consumer for non-performance or inadequate performance of contractual obligations will fall within the so called “grey list” under the Consumer Rights Act 2015 (i.e. the illustrative list given in this Act of terms that are under suspicion of unfairness but not necessarily unfair). Such contractual obligations include a duty implied into trader-consumer contracts by the Consumer Rights Act 2015 to provide services with reasonable skill and care;
- the Competition & Markets Authority has indicated in its Unfair Contract Terms Guidance (issued in July 2015) that a disclaimer which is written so broadly as to have the effect of excluding or limiting liability for death or personal injury caused by negligence in the course of a business, even if qualified by an expression such as “so far as the law permits”, is liable to be construed as misleading and may give rise to criminal prosecution as

an unfair, misleading or aggressive commercial practice under the Consumer Protection from Unfair Trading Regulations 2008.

A number of these issues are discussed below.

Incorporation or notification of disclaimers

In order for a participant to be bound by a disclaimer included in event terms and conditions it must be incorporated into the agreement between the parties. If a participant signs a contract with the organiser or otherwise indicates acceptance of terms and conditions (such as via a website tick-box) the presumption is that the participant will be bound by the terms even if they have not read them.

If the disclaimer is set out or referred to in a document which is simply handed to the participant or displayed at the point where they agree to take part in the activity then the organiser would have to show that the disclaimer was brought to the attention of the participant before or at the time they agreed to take part. If the disclaimer is not communicated to the participant until after they have agreed to take part then it will be of no effect irrespective of whether it stands or falls by reference to the other arguments that may be available to challenge the validity of a disclaimer.

The relationship between the organiser and participants at an event

From the legislation referred to above it is apparent that the question of whether an event organiser is acting for purposes related to a business or trade in relation to the participants in an event is very relevant to whether any disclaimers used will be enforceable or perhaps even criminal (see below).

If an organiser is an unincorporated association then, in respect of the relationships between each and every member, it will not normally be carrying on a business. In respect of any arrangements that include non-members, such as events open to non-members where an entry fee is charged, it is likely to be acting as a business. If so, the event terms and conditions may be subject to challenge under the Consumer Rights Act 2015 and the Consumer Protection from Unfair Trading Regulations 2008 will be applicable.

If a membership organisation is incorporated then, in respect of the contracts of membership, the nature of the organiser will have to be carefully considered. Whilst incorporation does not automatically equate to a business operation, it is more likely to be the case than with an unincorporated association. A company limited by shares is much more likely to be considered a business than is a

company limited by guarantee.

If an organiser is incorporated then, in respect of any contracts with third parties (e.g. events open to non-members), it is likely to be acting as a business such as to engage the Consumer Rights Act 2015 and the Consumer Protection from Unfair Trading Regulations 2008.

When considering the issue of whether or not it is acting as a business, an organiser will have to consider the particular activity and be very aware that a one off event involving third parties is likely to be a business transaction even if the organiser itself is an unincorporated association which is not a business.

The fairness test

The Consumer Rights Act 2015 introduced a test of fairness to contract terms used by traders in transactions with consumers.

The Competition & Markets Authority (CMA) has given guidance on its approach to interpreting the elements that make up the fairness test and specifically addresses inherently risky activity. As a possible route to “fairness” the CMA advocates the use of prominent warnings against hazards, which provide information and make it clear that the consumer needs to take sensible precautions but which do not have the effect of excluding or restricting liability. The CMA does not consider it fair to seek to deprive consumers of compensation in any circumstances in which they would normally be entitled to it by law and the CMA does not approve of the use of disclaimers.

Summary

For the reasons outlined above, disclaimers have been ineffective for commercial organisations and of doubtful effectiveness for clubs ever since the enactment of the Unfair Contract Terms Act 1977. The effectiveness of disclaimers was reduced further by the Unfair Terms in Consumer Contracts Regulations 1999 (which have now been absorbed into the Consumer Rights Act 2015) and the Consumer Protection from Unfair Trading Regulations 2008. In any event, disclaimers have never been a substitute for organisers understanding their potential legal liabilities, exercising reasonable care and having proper insurance arrangements in place.

Previously, if an organiser were considered to be a “business” then an unfair disclaimer was simply unenforceable. However, while there is no direct judicial authority on the point, the case of ***OFT v. Purely Creative Limited (2011)*** has

suggested that there may be circumstances in which the Courts might be inclined to view the use of an unenforceable disclaimer as being not just unenforceable but also unlawful under the 2008 Regulations. The Competition & Markets Authority has endorsed this view point in its Unfair Contract Terms Guidance issued in July 2015 and advocates the use of prominent warnings against hazards for inherently risky activities.

Although the risk of a private members' club infringing the 2008 Regulations is slight, it nevertheless remains a possibility. As a consequence, organisers are encouraged to move their emphasis away from the use of disclaimers towards warning participants and asking them to acknowledge the risks associated with taking part in the activity – i.e. by using “risk statements”.

It is recommended that a risk assessment be carried out by an organiser (see Section 2) as part of the event planning and the conclusions of such risk assessment be reflected in the risk statement and/or the Sailing / Race Instructions for the event.

Sample risk statements are set out in Appendices 2 and 3. The various clauses set out in these Appendices are designed to cover a wide variety of different events. Organisers and race officials looking for a suitable form of wording for their own purposes should adapt the appropriate paragraphs to suit their own particular circumstances, for example by making reference in the risk statement to any risks that are specific to the venue for the event or the event itself. Some organisers may be able to refer to standard operating procedures drawn up for their venue. Specific risks and instructions for methods to minimise such risks might also be referred to in the Sailing / Race Instructions for an event.

The most effective means of avoiding liability is to ensure you meet your duty of care i.e. you have taken reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure those to whom you owe a duty of care.

This does not mean that the probability of harm must be reduced to zero – the only sure way to eliminate all risks associated with an activity is to eliminate the activity. Instead, the activity should be organised so as to be as safe as necessary, rather than as safe as possible, with reasonable controls being implemented to reduce the risk to a level that is justifiable and tolerable – in other words, the risk should be reduced to a level that is “as low as reasonably practicable”.

SECTION 8: Booking Forms

The booking form or event entry form for an event or activity represents a contract between the organisers and the participants. In addition to collecting basic information on the participants which will be used by the organisers in running the event (e.g. name of participant, boat numbers and names) the booking form also sets out the responsibilities of each party.

Section 7 of this publication considered how disclaimers can be challenged by the Courts. In some cases disclaimers are simply ineffective, in other cases their use may amount to an unfair commercial practice. Accordingly it is recommended that disclaimers are replaced with an appropriate “risk statement”. The content of the risk statement will depend on the nature of the event. Examples of risk statements for a race, a training event and an open day are included in Appendices 2 and 3.

Before using these clauses organisers are recommended to: conduct a risk assessment for the event; to consider whether appropriate safety measures have been taken; and to consider whether the suggested clauses are right for the event or need to be modified.

The risk statements for sailing and powerboat racing in Appendix 3 make reference to risks specific to the venue or event being drawn to the participants’ attention in the Sailing / Race Instructions or safety briefing. Where appropriate, risks identified in the risk assessment and any mitigating measures should be included in the Sailing / Race Instructions or safety briefing.

Organisers should also check that their insurance covers the event and that any third party engaged to provide goods or services in connection with the event also carries appropriate insurance.

Liability for an event not taking place or a participant being excluded from an event also needs to be addressed. Accordingly, it is also recommended that cancellation terms are included for all events and misconduct terms are included for events that would not be covered by the misconduct provisions of the Racing Rules of Sailing or the Powerboat Racing Rules. Example cancellation and misconduct terms are also included in the model booking form in Appendix 2. Again, before using these clauses organisers are recommended to consider whether the suggested clauses are right for the event.

Other clauses that might be needed for event booking terms such as data protection consent notices and a medical fitness declaration can also be found in Appendices 2 and 3. Eligibility clauses for races and rights of appeal are outside the scope of this booklet. Useful models for such clauses may be found in the RYA publications covering the Racing Rules of Sailing and the Powerboat Racing Rules.

If an organiser is holding a particular event/activity to which the contract of admission is gained upon entrance, it should state that it forms the contract between the parties and highlight the fact that admission is on the basis of the terms printed on the document. In addition the organiser should have copies of the relevant terms prominently displayed at the point at which the parties are to form their contract as well as having copies available to hand out to participants.

APPENDIX 1: Extracts from Case Law

Miller v Jackson (1977)

The claimants moved into a new housing estate built on a field adjacent to the Lintz Cricket Club's pitch. Although the cricket club had erected a 6 foot wall between the pitch and the housing estate, on a number of occasions cricket balls had been struck against the houses overlooking the pitch or into their gardens. Some balls had chipped the brick-work of the claimants' house and some had damaged the roof.

The claimants complained and at the beginning of the 1975 season, as a result, the club erected a galvanised chain-link fence above the wall. In 1975, 9 balls hit the fence and 6 went over it. In the 1976 season 4 hit the fence and 8 or 9 went over it.

In his Judgment, the Judge stated that "I have no hesitation in reaching the conclusion that when cricket is played on this ground any reasonable person must anticipate that injury is likely to be caused to the property ... or its occupants" and that, as a consequence, the cricket club should be found negligent.

The Court of Appeal reaffirmed the Judge's decision and stated that "in the present case, so far from being one incident of an unprecedented nature about which complaint is being made, this is a series of incidents, or perhaps a continuing failure to prevent incidents from happening, coupled with the certainty that they are going to happen again. The risk of injury to person and property is so great that on each occasion when a ball comes over the fence and causes damage to the [claimant], the defendants are guilty of negligence."

Woodbridge School v Chittock (2002).

This case involved a skiing accident during a school trip. The Court of Appeal summarised the principles relevant to personal injury claims brought by pupils against their schools as follows: The teachers owed a duty to the claimant to show the same care in relation to him as would have been exercised by a reasonably careful parent in all the surrounding circumstances including the teachers' responsibilities for the school group as a whole. It was not a duty to ensure his safety against injury from skiing mishaps such as those that might result from his own misjudgement or inadvertence when skiing unsupervised on-piste. A range of reasonable responses applies to teachers' decisions in relation to their pupils' safety'. Applying those principles, the school was held not liable.

Tomlinson v Congleton BC (2004)

The claimant suffered severe spinal injuries when he dived into a disused quarry lake which was owned and occupied by the local council. There were notices by the lake stating: 'Dangerous water: no swimming', but the Court accepted that people did swim there and that there had been previous accidents. In view of the signs the Court held that the claimant was a trespasser and at first instance dismissed the claim for want of a duty of care.

The Court of Appeal held that the seriousness of the risk of injury, the frequency of exposure to the risk, and the failure of warning signs to curtail the extent to which the risk was being run, led to the conclusion that the defendant owed the claimant a duty of care.

The House of Lords then considered the claim and held that the relevant characteristics of the lake (i.e. its shallowness) were matters which were obvious to the claimant and he did not need to be warned against the risk of diving in. The warning signs gave the claimant no information beyond what was already obvious. The risk of striking a shallow lake bottom from diving was not one against which the defendant might reasonably have been expected to have offered the claimant some protection'. The Court held 'it would be unreasonable to impose on public authorities a duty to protect persons from self-inflicted harm sustained when taking voluntary risks in the face of obvious dangers. Even if swimming had not been prohibited and even if the defendant had owed a duty of care, that duty would not have required the defendant to prevent the claimant from diving or warn him against dangers which were perfectly obvious'.

Lord Hobhouse stated:-

"It is not and should never be the policy of the law to require the protection of the foolhardy or reckless few to deprive or interfere with the enjoyment by the remainder of society, of the liberties and amenities to which they are rightly entitled. In truth, the arguments for Mr Tomlinson have involved an attack upon the liberties of the citizen which should not be countenanced. They attack the liberty of an individual to engage in dangerous, but otherwise harmless, pastimes at his own risk and the liberty of citizens as a whole fully to enjoy the variety and quality of the landscape of this country. The pursuit of an unrestrained culture of blame and compensation has many evil consequences, and one is certainly the interference with the liberty of the citizen".

Collins v Snowdrome (2006)

The claimant descended part of the defendant's artificial ski slope on an inflatable inner tube. The defendant provided her with a safety helmet. At the foot of the slope was a counter slope and foam filled buffers designed to stop tubes and their riders. The claimant suffered a neck injury when her tube hit the buffers. She alleged that the defendant should have done more in order to reduce the speed of the tubes and should have warned participants specifically of the dangers of neck injuries and how best to avoid them. The Judge found for the defendant. The claimant had been given clear warnings about the dangers inherent in the activity and had been provided with protective equipment and safety instructions. Furthermore, the defendant had undertaken a risk assessment which had identified the specific risk of injury at the moment of stopping the tubes and in the light of this had tested three different stopping methods and selected the one that offered the best protection. In addition the risk that materialised was obvious and inherent in the activity.

MacClancy v Carenza (2007)

The claimant suffered serious head injuries after falling off a horse whilst attempting a 'drop down' from level ground to another level as part of a cross country exercise. The Court was satisfied that the defendant was an experienced and competent instructor who had been carefully monitoring the claimant's progress and assessing her ability and any risk had been reduced to what was reasonable. It would not have been possible to remove all risks facing the claimant otherwise she might not have been permitted to ride her horse on a cross country route – or indeed by logical extension – to ride a horse at all.

Poppelton v Trustees of Portsmouth Youth Activities Committee (2008)

The claimant was a relatively inexperienced climber and he had not been given any instruction or explanation as to the risks of using the bouldering wall. He was not shown any rules nor asked to sign a disclaimer. Rules were situated on the board outside the climbing room but the claimant had not read them. He did not appreciate that he was not supposed to jump from or off the walls. He sustained serious injuries as a result of jumping from the wall. The Judge at first instance held that the claimant should have been warned of the particular danger involved in jumping from or off the walls and therefore the defendant carried some liability. The Court of Appeal concluded that adults who chose to engage in physical activities which obviously gave rise to a degree of unavoidable risk may find that they have no means of recompense if that risk materialises so that they are injured. The Court stated 'there being inherent and obvious risks in the activity to which the claimant was voluntarily undertaking, the law did not require

the defendants to prevent him from undertaking it, nor to train him or supervise him while he did it, or see that others did so. If the law required training or supervision in this case, it would equally be required for a multitude of other common place leisure activities which nevertheless carry with them a degree of obvious inherent risk – as for instance bathing in the sea. It makes no difference to this analysis that the defendants charged the claimant to use the climbing wall, nor that the rules which they displayed could have been more prominent.

Samuel Harris v Timothy & Catherine Perry (2008)

The defendants hired a bouncy castle and a bungee run for their triplets' birthday party. The claimant, who was not a member of the birthday party, asked the defendants if he and his friend could play on the inflatables and it was not disputed that they were given permission to. In the course of supervising both sets of equipment Mrs Perry turned her back on the castle at which time the claimant and his friend began carrying out somersaults and another boy on the castle also began somersaulting. One of the other boys' heels accidentally struck the claimant's forehead as a result of which the claimant suffered serious and permanent injury.

At first instance the Judge concluded that the defendants had owed a duty of care to the claimant having given express permission to use the bouncy castle. Furthermore the defendant had breached its duty in respect of three matters; 1) failure to maintain continuous supervision of those using the bouncy castle; 2) failure to forbid children from doing flips and somersaults; 3) failure to ensure that only children of a similar size and weight played on the bouncy castle at one time. The defendant was held liable for the accident. However, on appeal the Court held that the duty of care was that which a reasonably careful parent would show for his/her own children. The risks inherent in the activity were those a reasonable parent ought to foresee would be involved in the use of bouncy castles. It was not reasonably foreseeable that such an injury would be likely to be serious, let alone as severe as that sustained by the claimant.

The Court of Appeal stated 'children play by themselves or with other children in a wide variety of circumstances. There is a dearth of case law that deals with the duty of care owed by parents to their own or other children when they are playing together. It is impossible to preclude all risks that, when playing together, children may injure themselves or each other, and minor injuries must be common place. It is quite impractical for parents to keep children under constant surveillance or even supervision and it would not be in the public interest for the law to impose a duty upon them to do so. Some circumstances or activities may,

however, involve an unacceptable risk to children unless they are subject to supervision, or even constant surveillance. Adults who expose children to such circumstances or activities are likely to be held responsible for ensuring that they are subject to such supervision or surveillance as they know, or ought to know, is necessary to restrict the risk to an acceptable level.'

The Court of Appeal found 1) there was no need for continuous supervision 2) there was no requirement for the defendant to give a somersaults warning and 3) the equipment was designed for both children and adults and the Judge at first instance had applied too high a standard of care in determining the defendant should ensure that only children/adults of a similar size should use the castle at any one time.

Uren v Corporate Leisure (UK) Ltd & Ano (2010)

The claimant suffered serious injury as a result of taking part in a pool relay race whilst attending a health and fun day organised by the Royal Air Force. The claim for damages was dismissed as the Court felt that the risk of serious injury posed by the pool game was very small. The contestants had been warned about possible hazards and were expected to control their impact with the bottom of the pool. Enjoyable competitive activities were an important and beneficial part of the life of the very many people who were fit enough to participate in them. A balance had to be struck between the level of risk involved and the benefit the activity conferred on the participants and on society generally.

Scout Association v Mark Adam Barnes (2010)

In this case a 13 year old scout was injured whilst playing a game called 'Objects in the Dark' at a scout meeting which, as the name suggests, was a game that was played in the dark. In the course of playing the game the scout collided with a bench injuring his head and shoulder from which he eventually made a full recovery. Both the trial and Appeal Judges held that the risks associated with the game were increased when the lights were switched off. It could not be said that the scout would have suffered the same accident if there had been full illumination. They accepted that scouting activities were valuable to society (thus considering the desirability of the activity under the Compensation Act 2006) but that did not render every scouting activity, however risky, acceptable. Playing in the dark significantly increased the risks and the only justification was the additional excitement. Darkness added no other social or educative value. Whether the social benefit of an activity was such that the degree of risk it entailed was acceptable was a question of fact, degree and judgment which had to be decided upon on an individual basis. The Scout Association was held liable.

Reynolds v Strutt & Parker LLP (2011)

In this case the employer organised an activity away day for its employees which included a bicycle race. There was a high degree of rivalry between two of the employee competitors which resulted in one sustaining severe head injuries. For various reasons the Judge held that the event was not 'in the course of employment', however, the relationship of organiser and attendee meant that a duty of care was owed by the employer to the employee. The duty on the defendant was to take such reasonable care as any reasonable employer would take (a) to ensure that employees were reasonably safe in engaging in the activities that the employer had arranged and (b) in the making and management of the arrangements that were being organised and that duty of care included the conducting of adequate and suitable risk assessments. In this case there was effectively no risk assessment at all; the main fault was the failure to involve the park manager in any assessment process. Had this been done it would have revealed the recommendation of the Health and Safety Executive that helmets should be worn.

The Judge went on to add that:-

“whilst the reward of employees by employers in ways such as that chosen in this case is a desirable activity I am quite satisfied that requiring employers to take reasonable precautions for their employees’ safety will not discourage employers from doing it, or discourage employees from taking part. On the contrary fun activities are likely to be more attractive if employees are assured that their safety has been properly considered”.

Ruth Geary v JD Wetherspoon Plc (2011)

During a visit to a public house with some colleagues, the claimant fell to a marble floor whilst sliding down the bannisters in a 'Mary Poppins' style and sustained serious injuries. The House of Lords dismissed the claim. Lord Hoffmann stated 'in a situation in which the injuries were caused by an inherently risky act on the part of the claimant, it is only the existence of particular facts or specific reliance that will lead to a finding that the defendant assumed a responsibility to the claimant. Generally the cases show that a defendant does not owe a duty to regulate the claimant's own activities for the claimant's own benefit'.

Kylie Grimes v David Hawkins & Ano (2011)

The claimant was seriously injured when diving into a swimming pool at a private home owned by the defendant. The Judge held that 'the defendant was not required to adopt a paternalistic approach to his visitors, all of whom were adults who were making choices about their behaviour, exercising their freewill. I do not accept that it is incumbent on a householder with a private swimming pool to prohibit adults from diving into an ordinary pool whose dimensions and contours can be clearly seen. It may well be different if there were hidden or unexpected hazards but there were none here'.

Sutton v Syston Rugby Football Club Ltd (2011)

This case involved a rugby player who injured his knee when he fell on a broken cricket boundary marker during the course of a rugby training session organised by the club. The Court held that the club owed its players a duty of care to conduct an inspection of the pitch, at a reasonable walking pace, before a game or training session. However, the club was not liable for the injury sustained where such inspection would not have revealed the object that had caused the injury. The Court went on to say that it was important that standards were not laid down that were too difficult for ordinary coaches and match organisers to meet.

APPENDIX 2: Model Booking Form

This template has been produced as a Model Booking Form for a boating event organised by a club or class association (e.g. a taster day, training/coaching etc.).

This form will need to be modified for use in relation to specific events.

GN	Indicates that Guidance Notes for Organisers using this template are included at Appendix 4
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GN1

EVENT DETAILS

Event name	
Venue	
Date	
Event Co-ordinator	
Event details	

GN2

PARTICIPANT CONTACT DETAILS

Name	
Address	
Contact no.	
Email address:	
If you are under 18, your parent or guardian must complete and sign the Parental/Guardian Agreement Form at page []	

ABOUT YOU

GN3	Do you have any previous boating experience or qualifications? If yes, please give brief details.	
GN4	Can you swim 25 metres?	
GN5	In the interests of your safety do you have any medical conditions or physical or mental impairments that the organiser needs to be aware of that may affect your ability to take part in the Event?	Yes/ No If you answer yes please provide further details in the Medical Information and Impairments section of this form at page [].
	Telephone number of emergency contact.	

BOOKING TERMS

GN6

1. RISK STATEMENT

It must be recognised that sailing is by its nature an unpredictable sport and therefore inherently involves an element of risk. By taking part in the Event, you agree and acknowledge that:

- (i) You are aware of the inherent element of risk involved in the sport and you accept responsibility exposing yourself to such inherent risk whilst taking part in the Event;
- (ii) You will comply at all times with the instructions of the Event Co-ordinator particularly with regard to handling of boats, wearing of buoyancy aids and the wearing of suitable clothing for the conditions;
- (iii) You accept responsibility for any injury, damage or loss to the extent caused by your own negligence;
- (iv) You will not participate in the Event if your ability to participate is impaired by alcohol, drugs or if you are otherwise unfit to participate;
- (v) You will inform the Event Co-ordinator if there have been any changes to the information provided on this form at the time of the Event.
- (vi) The provision of patrol boat cover is limited to such assistance as can be practically provided in the circumstances;
- (vii) You are aware of any specific risks drawn to your attention by the Event Co-ordinator.

2. CANCELLATION

You understand that the Event Co-ordinator may cancel or postpone the Event at any stage in the event of bad weather, equipment failure or otherwise.

GN7

3. MISCONDUCT

You understand that the Event Co-ordinator may exclude anyone from a particular session and evict anyone from the premises who refuses to comply with these Booking Terms or who misconducts themselves in any way or who causes damage or annoyance to other persons.

4. DATA PROTECTION

GN8

The Organiser has a Data Privacy Policy which can be found at []
Your data will be stored and used in accordance with that policy.

The information you provide in this form will be used to facilitate your participation in the Event and to contact you. The Organiser would also like to include your contact details on a mailing list in order to make you aware of membership opportunities and future events.

GN9

If you would like to be included on this mailing list please tick here

If you wish to withdraw your agreement at any time, please contact []

5. USE OF YOUR IMAGE

GN10

The Organiser may arrange for images or videos to be taken at the Event and published on the Event or Organiser’s website or social media channels to promote the Event or Organiser.

If you agree to the use of images of you being used for this purpose, please tick here.

If you are taking part in the Event as a family, your family members, aged 18 and over, should indicate their agreement to the use of their image separately below.

Parental agreement for images of participants aged under 18 is included in the Parental/Guardian Agreement Form at page [].

Family member

Family member

Family member

If you later wish to withdraw your agreement, please contact []. Please be aware that if you later decide to withdraw your agreement it will not be possible to remove your image from any printed material in circulation, or until the next edition or print of the item containing your image is released.

By agreeing to your images being used, you agree to assign any right of ownership of these images to the Organiser.

AGREEMENT

I confirm that I have read and fully understand the above Booking Terms and agree to comply with them.

Signed..... (The Participant)

Date.....

PARENTAL/GUARDIAN AGREEMENT (to be completed if the participant is aged under 18)

Name of participant	
Name of parent/ guardian completing this form	
Relationship to participant	
Contact number during event	

Optional clause to be used where Event organisers require a responsible adult to remain on site during the Event

Supervision

I will be responsible for my child throughout the Event. I will be available at the Event venue

OR

I appoint the person named below, who has agreed to act in loco parentis. He/she will be responsible for my dependant throughout the event. He/she will be available at the Event venue

Name of person appointed in loco parentis.....

Mobile number.....

Optional Medical consent if parent/guardian is not on site

I give permission to the organisers to administer any relevant treatment or medication to the above-named participant when or if necessary.

In an emergency situation I authorise the organisers to take my child to hospital and give my full permission for any treatment required to be carried out in accordance with the hospital's diagnosis. I understand that I shall be notified, as soon as possible, of the hospital visit and any treatment given by the hospital.

GN11

Use of your child's image

The Organiser may arrange for images or videos to be taken at the Event and published on the Event or Organiser's website or social media channels to promote the Event or Organiser.

If you agree to the use of images of your child being used for this purpose, please tick here.

If you later wish to withdraw your agreement, please contact []. Please be aware that if you later decide to withdraw your agreement it will not be possible to remove your image from any printed material in circulation, or until the next edition or print of the item containing your image is released.

By agreeing to images being used, you agree to assign any right of ownership of these images to the Organiser

PARENTAL/GUARDIAN AGREEMENT (if under 18)

I agree that _____ may take part in the Event. I confirm that I have read through the above conditions with him/her and that she/he understands and agrees with them. I also confirm that he/she takes part in the Event with my full agreement that that the particulars given above are correct and complete in all respects.

Signed.....Parent/Guardian.....

....

Date.....

MEDICAL INFORMATION AND IMPAIRMENTS

If you declared that you have a medical condition or physical or mental impairment that the organiser needs to be aware of because it may affect your ability to take part in the Event please provide details below.

SPECIAL CATEGORY DATA

I confirm that I have given the Organiser the medical information listed on this page (if any) for the purposes of my participation in the Event. I understand that this information will only be used for that purpose and will be retained for as long as necessary to comply with the Organisers legal obligations.

I agree/ I do not agree (Please circle)

APPENDIX 3: Alternative Clauses for Booking Forms

These clauses are provided by way of alternatives for the equivalent clauses used in the Model Booking Form in Appendix 2 above

1. Risk Statement for inclusion in Registration form and Notices of Race for sailing races

Sailing is by its nature an unpredictable sport and therefore inherently involves an element of risk. By taking part in the Event, each competitor agrees and acknowledges that:

- (i) they are aware of the inherent element of risk involved in the sport and accept responsibility for the exposure of themselves, their crew and their boat to such inherent risk whilst taking part in the Event;
- (ii) they are responsible for the safety of themselves, their crew, their boat and their other property whether afloat or ashore;
- (iii) they accept responsibility for any injury, damage or loss to the extent caused by their own actions or omissions;
- (iv) their boat is in good order, equipped to sail in the Event and they are fit to participate;
- (v) the provision of a race management team, patrol boats and other officials and volunteers by the Organiser does not relieve them of their own responsibilities;
- (vi) the provision of patrol boat cover is limited to such assistance, particularly in extreme weather conditions, as can be practically provided in the circumstances;
- (vii) it is their responsibility to familiarise themselves with any risks specific to this venue or this event referred to in the Sailing Instructions and to attend any safety briefing held at the venue;
- (viii) they will not participate in the Event if under the undue influence of alcohol, drugs or if otherwise unfit to participate;
- (ix) *[[For offshore races]* they are responsible for ensuring that their boat 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 is familiar to the crew];

- (x) *[[If not covered elsewhere in the Notice of Race]* their boat is adequately insured, with cover of at least [£#] against third party claims];
- (xi) they will inform the Organiser if there have been any changes to the information provided on this form at the time of the Event.

2a. Risk Statement for inclusion in Race Instructions and Signing On forms for powerboat races

Powerboat racing is by its nature a dangerous sport and therefore inherently involves an element of risk. By taking part in the Event, each competitor agrees and acknowledges that:

- (i) they are aware of the inherent risk involved in the sport and accept responsibility for exposing themselves to such inherent risk , including risks to their person, their property, drowning, hypothermia, collision injuries, burns and other physical injuries as well as possible death;
- (ii) they have satisfied themselves that they have the necessary skill and knowledge to take part in the Event and deal with the conditions that may arise in the course of a race;
- (iii) they will not participate in the Event if under the undue influence of alcohol, drugs or if otherwise unfit to participate;
- (iv) they are responsible for the safety of themselves their crew their boat and their property whether afloat or ashore;
- (v) it is their responsibility to ensure that the boat is in good order, equipped and insured to take part in the Event;
- (vi) scrutineering does not constitute a condition survey of the boat and it is solely their responsibility to decide whether or not to start or to continue in any powerboat race;
- (vii) ensuring the efficiency and suitability of the helmets and racing vests worn is solely their responsibility;
- (viii) the provision of a race management team, patrol boats and other volunteers by the Organisers does not relieve them of their responsibilities;
- (ix) the provision of patrol boat cover is limited to such assistance particularly in extreme weather conditions as can be practically provided in the circumstances;
- (x) it is their responsibility to familiarise themselves with any risks specific to this venue or this Event referred to in the Race Instructions and to attend any safety briefing held at the venue;

- (xi) to be bound by the conditions of the Race Entry Form, Racing Instructions and the General Competition Rules of the UIM and the RYA;
- (xii) they will accept the decisions of the Organising Committee and officials nominated by the Organising Committee.
- (xiii) they will inform the Organiser if there have been any changes to the information provided on this form at the time of the Event.

2b. Indemnity for inclusion in Race Instructions and Signing On forms for powerboat races

Participants in the Event will be required on signing on to the Event to save harmless and keep indemnified:

- (a) The owners of the premises at which the Event is held;
- (b) The Organiser, the sponsors and the RYA and their respective officials, servants and agents; and
- (c) The other boat owners, drivers, passengers or mechanics engaged in the meeting

(together the “Indemnified Parties”)

AGAINST all actions, claims, costs, expenses and demands in respect of loss of or damage to the property of or personal injury sustained to the Indemnified Parties to the extent caused by the participants, their crew, their boat, their mechanics, support team, representatives or agents.

IMPORTANT NOTE: Persons under the age of 18 must have written authority signed by either Parent or Guardian.

THE RESPONSIBILITY FOR A TEAM'S DECISION TO PARTICIPATE IN A RACE OR TO CONTINUE RACING IS THEIRS ALONE

3. Clause additional to 1 or 2 above suitable only for a race organiser that inspects competing boats, whether regularly or by spot-checks

The fact that the race Organiser conducts inspections of a boat does not reduce the responsibilities of the boat set out in the Notice of Race.

4. Declaration to be included in race entry forms

I agree to be bound by the [Powerboat] Racing Rules [of Sailing] and all other rules that govern this race. In particular, I confirm that I have read the Notice of Race and accept its provisions and agree that my boat will conform to the requirements set out in the Notice of Race throughout the race.

5. Risk Statement for a training course

It must be recognised that boating is by its nature an unpredictable sport and therefore inherently involves an element of risk. By taking part in the Event, you agree and acknowledge that:

- (i) You are aware of the inherent element of risk involved in the sport and you accept responsibility exposing yourself to such inherent risk whilst taking part in the Event;
- (ii) You will comply at all times with the instructions of the Organiser particularly with regard to handling of boats, wearing of buoyancy aids and the wearing of suitable clothing for the conditions;
- (iii) You accept responsibility for any injury, damage or loss to the extent caused by your own negligence;
- (iv) You will not participate in the Event if [under the influence of]/OR [your ability to skipper a vessel is impaired by] alcohol, drugs or if otherwise unfit to participate OR;
- (v) The provision of patrol boat cover is limited to such assistance, as can be practically provided in the circumstances;
- (vi) [For advanced training courses] You have satisfied yourself as to your [suitability]/[eligibility] for the course you are attending
 - (vii) You will inform the
 - (viii) Organiser if there have been any changes to the information provided on this form at the time of the Event.

6. *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.

7. Model wording for crew register schemes

The Organiser 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.

8. Model disclaimer of liability for non-business activity

See Section 7: Disclaimers – Do They Work?

You hereby agree and acknowledge that you take part in the Event of your own free will and at your own risk and that the Organiser shall not be nor be deemed to be responsible or liable whether in contract or in tort or under any statute for any personal injury (including illness) which may be suffered by you or any damage sustained to your personal property during the Event or any other loss or damage suffered by you as a result of your participation in the Event.

Appendix 4: Guidance notes for template Booking Form

GN1

It is suggested that the organiser should add an opening paragraph about the Event, including venue, dates, what is on offer, and name of the Event Co-ordinator.

GN2

Data Protection legislation provides that data should only be collected if it is adequate, relevant and necessary in relation to the purpose for which it is collected. Organisers should therefore only collect information which is essential for the Event. Different events may require different questions to be asked in this section. Further advice on data protection legislation can be found in the Club Zone section of the RYA website.

GN3

Data should be kept up to date. If there is a period between booking and the Event, organisers may want to consider collecting certain data at or shortly before the Event in order that it is up to date, and may consider a two stage form to achieve this.

GN4

Data Protection legislation defines medical information as “special category data”. Special category data is subject to additional protection and safeguards.

GN5

It is suggested that organisers may want to collect special category data on a separate page. In this way such information can be detached from the main form to facilitate its use (e.g. taken afloat during the activity) and subsequent disposal, as it may be deemed appropriate to retain participant’s special category data for different time periods to other information.

GN6

The Risk Statement must be amended to reflect the Event. Alternative Risk Statements can be found at Appendix 3.

GN7

Consideration should be given to the rights of the Event Organiser regarding disciplinary matters. For a public event, the Event Organiser may be able to ask participants to leave the premises. This may not be possible in the case of club members who may be subject to detailed contractual provisions regarding misconduct. Events run under the Racing Rules of Sailing should refer to the misconduct procedures in those rules.

GN8

Please specify where your data privacy policy can be found. Further guidance on data privacy policies is available from the Club Zone section of the RYA website.

GN9

If at any point an individual is asked to give their consent to a particular use of information about them, (for instance to be added to a mailing list) there must be a mechanism in place for them to withdraw that consent.

GN10

More information on the use of images can be found in the Club Zone section of the RYA website. If you are relying on consent as the basis for processing the image, amend this provision to expressly state what images will be used for, including if they will be shared with the RYA as part of any national initiative. If relying on consent, you will only be able to use the image in accordance with the permission given.

GN11

Special consideration should be given to using images of children. Organisers should consider if there is a need for a policy on the use of images of Children, and if there is any reason an image of a child should not be used, for instance because the child is subject to a court order. Further information regarding the use of images of children can be obtained from the RYA safeguarding team.

APPENDIX 5: Inspection of Insurance Certificates

It is common for event entry forms to require participants to hold a policy of insurance to cover any liability to third parties that may arise during the event. If an organiser imposes such a requirement then it is a logical extension for the organiser to consider whether it ought to implement a regime in which it asks participants to produce the relevant insurance certificates for inspection by the organiser.

This issue was considered in the case of ***Gwilliam v. West Hertfordshire Hospital NHS Trust (2002)***, in which the claimant was injured on a 'splat wall' children's amusement at a fundraising fair organised in the grounds of a hospital. The claimant sued the contractor who was operating the amusement but it transpired that the operator's public liability insurance policy had expired. The claimant settled her claim against the contractor in a sum that reflected his uninsured financial position and she sought to recover the shortfall in compensation from the hospital Trust, on the basis that the Trust had asked the contractor to ensure that insurance was in place but the Trust had not itself sought to verify the policy.

It was held that the Trust owed the claimant a duty of care as the occupier of the premises so the issue turned on whether the Trust had discharged this duty by engaging a reasonably competent contractor. It was contended by the claimant that the contractor was not reasonably competent because he did not have valid public liability insurance and that the Trust was liable because it should have ensured that such insurance was in place. In giving his Judgment Lord Woolf LCJ said that in order to discharge its duty of care the Trust was under an obligation to enquire into the insurance position of the contractor but it was not obliged to confirm whether or not the policy was in force. Lord Woolf stated that to require the Trust to confirm whether or not the policy was valid would be unreasonable. It was accordingly held that the Trust had not been negligent by failing to check that the contractor's public liability insurance policy was valid.

However, if notwithstanding the *Gwilliam* case an organiser chooses to undertake to inspect participants' insurance certificates then it may leave itself exposed to liability should it negligently fail to inspect the certificates properly.

For example, a participant who was injured (or whose boat was damaged) by an

uninsured participant may seek to claim that the organiser, having made it known that participants' insurance certificates would be checked, was under a duty to ensure that all participants were duly insured. If as consequence of the organiser's negligent failure to ensure that all participants were insured the injured participant suffered loss (in so far as they were unable to recover compensation from the uninsured participant) then the injured participant might seek to recover the shortfall from the organiser. The RYA is not aware of such an argument having succeeded in legal proceedings to date but there nevertheless remains a risk that it might.

It is also questionable as to what inspecting insurance certificates actually achieves. As Lord Woolf expressly acknowledged in the *Gwilliam* case there is no guarantee, for example, that a policy has not been cancelled after the certificate was issued or that the insured has not invalidated the policy in some other way.

The risk of potential liability associated with an organiser undertaking to inspect insurance certificates may therefore outweigh the negligible benefit that such inspection offers.

If an organiser wishes to inspect participants' insurance certificates then it should check with its own insurers that it is covered for any claims which might be made against the organiser should the organiser negligently fail to check that a particular participant's insurance is valid.

Royal Yachting Association

RYA House

Ensign Way

Hamble

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