

# Roam Scotland Bikepacking Society

May 2024

## RSBS Risk Issues

### Legal Risks

Despite RS rides being explicitly self-supported, there is a theoretical risk of the society being sued in relation to its activities. These are the issues involved:

- There must be a duty of care as a starting point. It is only if a duty of care can be established that loss may be claimed as a result of breach of that duty of care.
- Whether or not a duty of care is owed by Roam Scotland Bikepacking Society (RSBS) to riders for personal injury, damage to their property, injury to others or damage to third party property, is a complex issue. The legal 'answer' is fact specific, but broadly depends on what RSBS has done and what it would be reasonable for riders to say they have relied upon, ie. that a particular route is 'safe'. It is not possible to rule out *completely* that a duty of care may be owed by RSBS.
- However, steps can be taken to limit the possibility of a duty of care being created:
  - A strong disclaimer making it clear there is no assumed duty of care, signed as part of the entry process and displayed on each ride guide
  - That all RS routes are labelled as created by RSBS not an individual
- This is the proposed disclaimer (adapted from disclaimers in published bikepacking guide-books):

*I understand that riding the cycle routes and using the information provided by Roam Scotland Bikepacking Society Limited (RSBS) is entirely at my own risk. That I am responsible for my own safety. Whilst every effort has been made to provide rideable safe routes and accurate information, RSBS assumes no responsibility for loss or injury (including fatal); loss or damage to property or equipment; trespass, irresponsible behaviour or any other mishap that may be suffered as a result of following the route or using the information provided by RSBS. That paths and tracks are included in our routes is no guarantee that these are a right of way. All riders are strongly advised to follow the Scottish Outdoor Access Code. I also understand that the information provided on this form will be stored using google mail and will be used solely for the coordination of Roam Scotland business.*

- The '*belt and braces*' approach is to take out third party liability insurance and trustees insurance. This is important to cover legal defence costs if someone was to sue, even if no duty of care was found.
- As a legal entity in the form of a Community Benefit Society, *if* someone successfully argued a duty of care was owed and had been breached, the legal 'corporate body' *not any individuals*, would be liable. This *liability is limited* to the value of the assets of the society ie. funds in the society bank account and the value of our insurance cover. The important point is that no RSBS members would be personally liable. For the trustees, they could only be claimed against as individuals if they were proven to be negligent in carrying out their duties as a trustee.
- To protect against the possibility of being sued we have spoken with insurance brokers, who are experts in the charity sector, about third-party liability insurance



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and trustees indemnity insurance. We discussed what the society will do and shared our disclaimer text.

- Third party liability insurance covers to the value of £1 million per claim, for a premium of £77/year
- Trustees indemnity insurance covers to the value of £100,000 for a premium of £116/year. We perceive a limited risk of claims against trustees, but given the cost is minimal we think it's worthwhile.

## Financial Risks

RSBS does not expect to raise or hold large sums of money. Financial costs are expected to be small, around £1000-£1500 per year. To become a member-shareholder each individual will invest £25-100 pounds, which can be withdrawn at a future date on request.

The timing of withdrawals are at the discretion of the board of trustees. If paying out the value of a shareholding would cause a financial challenge to the society, the board of trustees may choose to delay the release of the shareholding until the financial situation is more secure. Many shareholders in community benefit societies choose to donate their shareholding to the society rather than withdraw it, should they choose to end their membership.

As described above, should the society be successfully sued, the important point is that no RSBS members would be personally liable.

**Note:** *The opinion regards the legal position is written by Calum Munro (Chair of RSBS) and Harriet Munro (Member of RSBS). Harriet's credentials are that she is a partner in a law firm, specialising in litigation in relation to insurance around professional negligence among other things. Harriet will provide legal advice should this ever be needed in the future.*

