



# Guidelines for Hut Managers

No. 9 April 2020\*



## CLUB TRUSTEES & CHARITABLE INCORPORATED ORGANISATIONS CIOs (E &W), SCIOs (SCOT).

### Scope and context

Most mountaineering clubs are unincorporated associations and therefore club property has to be vested in trustees, usually members of the club who are prepared to act in that capacity.

Clubs should bear in mind that a range of more formal structures are available and that these may prove more suitable for their purposes than unincorporated associations. Members may be reluctant to have club property vested in them and to serve as trustees.

Options:

Incorporation as a private company limited by guarantee;

Form a mutual society;

Registration as Community Amateur Sports Club (CASC)

See BMC Guideline 1 – Club Organisations & CASCs.

Charitable Organisations

Charitable incorporated organisation (CIO – England & Wales)

Scottish incorporated organisation (SCIO)

See below

### Trustees - General

Trustees act as the legal owners of the trust assets, and are responsible for handling any of the assets held in trust – tax filing for the trust, and distributing the assets according to the terms of the trust. Both roles involve duties that are legally required. A fiduciary duty (to act in good faith) to act on behalf of the beneficiaries. Trustees are accountable to the beneficiaries for their actions.

In relation to club assets such as huts the trustees are the legal owners of the property and they hold the title to it on behalf of the club members – the beneficiaries of the trust.

The trustees may insure property held in the trust against risks of loss or damage. They may pay the premiums out of trust funds (Trustee Act 2000).

### Appointment and removal of hut trustees

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

### Duties of hut trustees

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

## **Responsibilities of trustees**

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

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

## **Liabilities of trustees**

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

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

Member trustees are insured for up to £15 M against such claims by the BMC's and M.Scot respective combined liability insurance policies (see below). Thus the indemnity would apply only where the award of damages and costs exceeded £15 M.

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

## **Club rules**

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

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

## **Trust deed**

Ideally there should be a legal document which records the duties of trustees. This document

# Hut Trustees

should be quite separate from the conveyance which transferred legal title to the trustees.

## Land registration

Advantages –

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

## Insurance

Trustees who are members of a club which is affiliated to the British Mountaineering Council or Mountaineering Scotland are covered by liability insurance combined policies (see guideline no. 6). The policy is very comprehensive. It includes public liability, which protects them against liability in respect of accidental bodily injury to third parties (guests/visitors) sustained while in or on the property, and owners' liability, which protects them against liability arising out of the use, ownership or possession of any club premises, e.g. mountaineering huts. The limit of indemnity for one event is presently £15 M.

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

## CHECKLIST – CLUB RULES

The club rules should include provisions to deal with following –

### ◆ Club property

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

### ◆ Maintenance and management of club property

Undertakings by the committee –

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

### ◆ Indemnity for the trustees

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

### ◆ Duties

Undertakings by the trustees –

- To safeguard the legal title to the property of the club vested in them;
- To notify the committee of anything that may cause damage or loss of value or amenity

# Hut Trustees

to that property;

- To deliver to the club secretary any official notice relating to the property that they may receive;
- To co-operate with the committee in doing whatever is required from time to time to minimise such risks, including taking professional advice when it is considered necessary.

## ◆ Powers

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

## ◆ Number

Not less than two but not more than four.

## ◆ Appointment and removal

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

## ◆ Resignation >>

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

### ◆ Termination

A trustee's appointment terminates forthwith if they –

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

### ◆ Execution of documents

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

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

## Charitable Organisations

Clubs may wish to become charites so as to take advantage of the benefits available in particular the tax advantages – gift aid and inheritance tax. If so they can incorporate themselves by means of the following legislation:

# Hut Trustees

Charitable Incorporated Organisations (CIO's) England & Wales are governed by the Charities Act 2011. This Act established the CIO's legal framework. The Act has been supplemented by a number of regulations and orders.

Scottish Charitable Incorporated Organisation (SCIO) is governed by the Charities and Trustee Investment (Scotland) Act 2005.

A CIO/SCIO is a corporate structure designed specifically for charities. It gives a charity and its trustees the benefit of liability protection and a separate legal personality. It is not subject to company law.

In the past the most common incorporated legal form for a charity was a company limited by guarantee. This meant that the charity had to comply with dual regulation by the Charity Commission and Companies Houses and with both charity and company law in respect of their governance arrangements.

## Advantages

The main advantage of a CIO/SCIO over a company limited by guarantee is that CIO/SCIO only need to register with Charity Commission or Office the Scottish Charity Regulator and file annual returns with them and not with Companies House in England & Wales or Scotland. A CIO/SCIO is cheaper to set up and administer than a company limited by guarantee.

There are tax benefits – gift aid, no corporation tax liability provided the income is used for charitable purposes. Legacies to the CIO/SCIO are treated as exempt transfers for inheritance tax purposes. Simpler receipts and payments basis for the preparation of accounts where the turnover does not exceed £250,000 per annum.

## Disadvantages

The CIO/SCIO is a relatively new structure and it is not as well understood as a charitable company. The registration process is slow and it may take up to 40 working days. Secured borrowing is difficult because there is no provision for the registration of charges. Trustees will have a management responsibility and will be liable for breaches of trust. Once an CIO/SCIO always an CIO/SCIO.

## Formation – CIO

- Register as a charity with the Charity Commission (CC) for England & Wales.  
Two types:  
Foundation CIO – Trustees only  
Association CIO - Trustees and members
- Register details of the trustees with the CC
- Draft and submit a governing document, the constitution (Refer to the model constitution) There must be a public benefit.
- Choose a name – check the CC's register to ensure that it does not clash with that of an existing charity.
- Register details with HMRC.

## Legal requirements

- Principal Office must be in England and Wales
- CIO must submit annual reports and accounts to the Charity Commission
- Maintain a register of trustees and members.

## Formation – SCIO

- Register as a charity with the Office of Scottish Charitable Trusts (OSCR)
- Structure maybe:  
Single tier governed only by the trustees  
Two tier governed by the charity trustees with a membership body which has certain powers and duties. See Duties of Charity Trustees below.

# Hut Trustees

- Complete signed trustee declaration forms for each of the proposed charity trustees (Minimum 3)
- Draft a governing document, the constitution. (Refer to model SCIO constitution)
- State its charitable purposes for example to encourage public participation in sport, provide recreational facilities. There must be a public benefit.
- Choose a name – check the Scottish Charity Register to ensure that it does not clash with that of an existing charity.
- Register details with HMRC.

## Legal requirements

- Principal Office must be in Scotland
- SCIO must submit annual reports and accounts to the Office of the Scottish Charity Regulator (OSCR)
- Maintain a register of trustees and members.

## Duties of Charity Trustees

The trustees are responsible for everything their charity does.

They must:

- Always act in the charity's best interests
- Manage the charity's resources responsibly – safeguard and protect its assets
- Act reasonably and prudently in all matters – with reasonable care and skill
- Comply with statutory accounting and reporting requirements
- Act collectively – take decisions together
- Avoid any conflicts between their personal interests and those of the charity.

## Charities and Trustees Investment (Scotland) Act 2005

The Act sets out fundamental duties which apply to charity trustees who are defined as “the persons having general control and management of the administration of a charity.” This includes trustees of charitable trusts, directors of charitable companies, the charity trustees of SCIOs and those in charge of charities which are unincorporated organisations. The duties and liabilities set out in the 2005 Act are in addition to any other legal duties which are imposed on charity trustees: for example, the common law also applies duties to trustees, and the Companies Act set out additional powers for directors of charitable companies.

Note: The purchase of trustee indemnity insurance to protect all of the charity trustees, paid for from charity funds is specifically permitted and therefore does not fall foul of the remuneration rules (Public Services Reform (Scotland) Act 2010)

## References

<http://www.gov.uk/setting-up-charity/structures>

<https://www.gov.uk/guidance/charity-types-how-to-choose-a-structure>

<https://www.gov.uk/government/publications/charity-reporting-and-accounting-the-essentials-cc15b/charity-reporting-and-accounting>

<https://getlegal.bwbllp.com/file/bateswell-26636-proof-pdf>

Charitable Incorporated Organisations 2<sup>nd</sup> Ed. By Gareth G. Morgan ISBN 978178482 0268

<https://www.turcanconnell.com-media-turcan-connell-guide-to-charities-trustees-investment.pdf>

Guide to the Charities and Trustees Investment (Scotland) Act 2005 5<sup>th</sup> Ed. Gavin McEwan  
Turcan Connell

# Hut Trustees

## Hut Guidelines

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

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

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