



BEING A LEADER

In the last issue, Training Officer **Alun Richardson** posed a series of questions on the correct course of action for a leader on a hillwalk. Here are his answers.

People who organise or lead club walks should be applauded for their hard work and dedication to helping others enjoy the hills, but for some it can sometimes feel a bit stressful. I hope this will give confidence to and encourage more people to organise walks and hopefully to create a more relaxing time for those that do organise or lead club walks.

It all starts with our legal responsibility to care for others – our ‘duty of care.’ This means that everyone has a responsibility to protect those who may be harmed by their actions. When we partake in a risk activity such as hillwalking or climbing our duty of care is no different to those that arise in any other aspect of our lives. We are expected not to act in a manner which a reasonable person would conclude puts other people needlessly at risk. If you fail to fulfil your duty of care and injure someone, then it is not surprising that you may be liable for the injury and you may be sued for negligence.

Individuals and clubs can reduce the likelihood of being accused of a negligent act by following a few simple guidelines. This guidance is particularly pertinent where under-18s are concerned.

Does membership of a walking club increase Jane’s duty of care to others on the walk?

Membership of a club does not, on its own, increase Jane’s duty of care to those around her on the walk, beyond the duty of care that any person walking the route in the presence of others would have. Most Mountaineering Ireland clubs have a formal constitution and rules that help to protect members and minimise any disagreements as to how the club should be managed. Any rules which extend to the walks should be carefully considered to support leaders and not made too limiting.

Does Jane have a greater duty of care because she has organised the walk?

If Jane has merely gathered together a group of like-minded people to enjoy hillwalking, then she is unlikely to have any greater liability arising from organising the walk and has no greater duty of care than in normal everyday life. This does depend, however, on each



When walking on the hills with a group of peers, everyone has equal responsibility



participant taking clear responsibility for themselves as an individual in every aspect of the activity. Ensuring that new and existing members are aware of and accept the risks of mountain walking and climbing will encourage a culture of individual responsibility for making decisions in the hills.

Does Jane have to be the leader?

This depends on what level of responsibility Jane is happy to accept. If Jane holds herself forth as the leader and decision-maker for the group, then she may find herself acquiring additional legal responsibility for the other participants, but that is of course why clubs have Mountaineering Ireland insurance. However, if it is not necessary for the group to have a formal leader, then Jane can simply enjoy her walk as a joint member. Even when the group is not formally led by Jane and she or someone else does take control of some aspect of the walk, such as navigation, the remainder of the group still has a responsibility to check they are happy with what Jane or the other person is doing.

Does Jane and/or the group have a responsibility for the less experienced members?

People join clubs for a variety of reasons such as meeting new friends and sharing experiences, but for some it is also to learn new skills. This means that club members may find themselves providing informal advice, or even more formal mentoring to less experienced or new club members. Mountaineering Ireland and Mountaineering Ireland insurance support the principle that clubs can provide a framework for people to share their skills and learn from each other.

In Jane’s situation, where there is not a formal leader, the more experienced members of the group take a collective responsibility to help the less experienced members. If there are newcomers or novices present, select objectives that are within your capabilities and that could be reasonably expected to be within the capabilities of the newcomers/novices.

Adult novices should be encouraged to accept reasonable responsibility for the situation they are in, within the limits of their knowledge. Ensure that everyone is



Photograph: HELEN LAWLESS

aware of the hazards and risks that may arise and involve the novices in the decision-making processes so they have made an informed choice to participate. This means that any difficulties that occur later are as much their responsibility for failing to ask questions or contribute. It may also be a good idea to explain to new members and any guests that the group, walk organiser or leader are volunteers, amateur climbers, walkers or mountaineers with some experience. They are merely offering their opinion, and any advice accepted is the responsibility of the recipient.

Was she right to let the two newcomers come along?

As long as newcomers are aware of what they are letting themselves in for and are aware that it is a voluntary group, then why not?

Are the non-members insured is a common question. Through Mountaineering Ireland insurance, the potential new club members are not insured for personal injuries, but they are covered for third party liability. A guest can participate in up to three taster walks/climbs but on the fourth occasion the guest must be a member of the club. A record must be kept recording guest details and the date of the taster.

Any non-member has at least a moral duty to abide by the club rules and should consider joining the club. However, should a guest join a fourth outing then explain that he or she is responsible for his or her actions during the walk.

Should she have allowed the guy with the plastic bag or the one with trail shoes to go on the walk?

As long as the person with the plastic bag understands the problems and issues, then the group could offer to carry his gear for him. The same goes for the walker with trail shoes on – the group can ensure he understands the risks he takes and that he may make life difficult for them if he can't cope. Some trail shoes are better in the hills than some walking boots. So club rules stating that participants must have walking boots will not necessarily stop slips and trips.

Who is liable or to blame should somebody slip or Jane's navigation result in the group becoming lost?

Where individuals of comparable experience climb or walk together there is not necessarily a formal 'leader' and each individual is capable of making their own, informed decisions. In this instance each will owe the other an equal 'duty of care,' but nothing more. Even when it is a 'led'

walk with a formal leader and with less experienced participants, accidents do happen and it is not always another person's fault. That is why it is important to ensure that everyone is aware of their personal responsibilities in the hills when they join the club.

Is twenty too many to have in a group?

Mountaineering Ireland does not set ratios for walks because it depends on terrain, weather, venue, abilities, experience, kit, etc. Large groups have a significant impact on vulnerable terrain such as blanket bog and they pose the additional problem of keeping an eye on everyone.

Should Jane have done a written risk assessment?

As walkers and climbers we are constantly assessing risk, from the moment we get into our car to looking at the weather on the walk. Written risk assessments are intended for the workplace and there is no obligation for a club to have them. However, a generic written risk assessment may help you identify the hazards and assess the risk.

Should Jane have allowed the under 17-year-old to come on the walk?

Young walkers should be encouraged to



Photograph: ALUN RICHARDSON

learn from experienced hillwalkers. The 17-year-old is a member of the club and therefore his parent had already signed a consent form to say he/she understood the risks and hazards of hillwalking. However, everyone on the walk must understand that adult members of the club have to exercise the same duty of care that a reasonably prudent parent would. The duty of care we owe to under-18s is higher in all walks of our life, including a hillwalk or climb.

Those clubs that do allow under-18s to come along should have a Children's Officer. For more information on walking with children, read and apply the information contained in Mountaineering Ireland's *Children's Policy* and the Irish Sports Council's *Code of Ethics and Good Practice for Children's Sport*. Both are available on the youth section of www.mountaineering.ie.

Was Jane right to let the two faster guys go off on their own?

Adults can decide for themselves what they can or cannot do in the hills. Of course we would check they are happy with their decision and then let them go.

Should Jane or the group have sent someone down with the guy who was rushing off to see his sick mum?

As caring human beings I am sure the group would be concerned for the walker returning down, but whether it would be better for someone to accompany him would depend on many factors such as terrain, weather, experience of the person, etc. I would be just as concerned about him driving his car too fast to get to his sick mum as rushing down the hillside.

Was Jane's course of action with the guy who had forgotten his waterproofs the correct one?

If the guy is adamant he wants to go on, then I am sure the group would help and Jane and the group have done what they can to satisfy their 'duty of care' to him.

Should Jane have called the mountain rescue team out to the guy who hurt his ankle?

Mountain rescue teams can be very busy and we should think carefully about whether to call them out for a relatively minor incident. However, should you need assistance then don't hesitate to call them. Walkers should aim to be self-sufficient and shouldn't go into the hills thinking that if something goes wrong we can and will be rescued. If the injured person is adamant he does not want to call mountain rescue and the group is happy to help him, then there are a number of ways of helping someone with an injured ankle get down a hill that will not necessarily result in further damage. All the methods rely on having some fit and capable people in the group and a person trained in first-aid, if possible.

Could Jane or the club be sued by the guy who slipped?

Anyone can try to sue you, but they would have to show that Jane or the club owed them a duty of care, that she or the club was negligent in that duty of care and that the negligence resulted in the slip and injury. This is a tall order when one considers that they are aware of and accept the risks of mountain walking and are equally responsible for making decisions in the hills.

Was Jane duty bound to wait for the two guys who came down late after getting the keys?

No, but Jane is a nice person and was willing to sacrifice her evening to ensure her two friends got back down safely.

Conclusion

All of the events have happened and it does highlight some of the issues that I am questioned about. As long as you do not act in a manner which a reasonable person could conclude puts other people recklessly at risk, you can walk happily in the hills without any fear of being sued.

A leader can accept as much responsibility as they are happy to, with the confidence that they are supported by Mountaineering Ireland insurance.

When walking with under-18s, make sure their parents or guardians are aware of the walk they are doing and understand the hazards and risks. As a group, design the walk to accommodate all the wishes of the group and make sure everyone understands what is involved.

Holding an ML, WGL or SPA award does not automatically increase your duty of care on a club trip any more than the experienced members are automatically more liable should they join a walk. For safety and information reasons Mountaineering Ireland encourages more club members to undertake their ML, WGL or SPA secure in the knowledge that they do not automatically become more responsible.

➤ *Every situation is unique and this article is simply the opinion of the Training Officer and should not be construed as being the definitive legal judgement* ■