



A.9 LEGAL ASPECTS OF EXPEDITION PANNING

David Williams (Revised 2007)

1. PRACTICAL ASPECTS OF EXPEDITION SAFETY

Why do we take young people on expeditions?

- taste of adventure within restrictive limits
- enhance their physical and spiritual development

Expeditions must have aims:

- safety must be in the mind when deciding its aims
- ensure that the physical abilities of the young people are borne in mind when planning the expedition
- think about all aspects of the journey and work to be done on it when considering whether the proposals will be safe
- consider the area to which you intend to travel – consider Foreign & Commonwealth Office advice
- not boring, but challenging within safe parameters.
- bring all your team members home in one piece.

Other safety issues:

- discuss with other leaders any 'hidden' safety issues
- consider your team's ability to carry food / water – need for pack animals?

1.1 RAMS (Risk Assessments and Management Systems)

Many authorities require teams to carry out a formal risk assessment and management system which is defined as:

"the systematic evaluation of an activity to determine what could go wrong, who could be hurt, and what can be done to eliminate, reduce, or manage the problems".

Risk - *'a chance, great or small, that something could go wrong in the course of an activity endangering life or property'*

RAMS aim to improve standards of activity provision, to focus the mind of the expedition leader.

- assessment is required by law in industry
- the assessment is useful if an accident does happen, to show that the expedition was correctly planned and the risks were considered prior to departing from home
- risk assessments won't prevent an accident, *'an event that is without apparent cause or is unexpected; an unfortunate event brought about unintentionally; occurrence of things by chance; the working of fortune'* or *'an unexpected or unusual event or happening'*

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that is external to the [victim] but an efficient risk assessment will reduce the potential for accidents and will learn lessons from close shaves and actual incidents.

How do you assess the risks?

- record the risk assessment on paper or other 'hard' form
- record the findings of the assessment, together with steps taken in the light of the findings
- assessment must be easily accessible if the Venture Leader goes on holiday, becomes incapacitated, or dies
- consider use of a pre-prepared form or template

Step 1 - What are the hazards?

- take step back from the activity and look at it with a fresh set of eyes - concentrate on aspects of the activity which could result in serious harm to an individual or group of people
- all risks should be recorded, but the trivial should not distract attention from the more significant
- ask other leaders of their view
- consider manufacturers' instruction and data sheets for equipment

Step 2 – Who may be harmed? How?

- participants
- instructors
- leaders
- passers-by or spectators

Step 3 – Evaluate the level of risk.

- assign to each element a 'high', 'moderate' or 'low' risk level
- forms used in assessing risk can assist in calculating the risk level
- take into account the past history of the activity
- consider whether a change in the operating technique, equipment, or training will reduce the level of risk.

Remember, the aim is to reduce the risk, not to eliminate the element of challenge from the activity.

Once you have assessed the risks, you must ensure that the risk assessment is kept up to date – review the risk assessment if you are repeating a similar trip.

1.2 Child Protection

Who is to lead the expedition?

The leader team, if your own choice, is your responsibility - you must ensure that the adult leaders will not put the young members of the expedition at risk.



Many authorities require all leaders to complete a confidential form, advising on whether they have previous convictions (whether or not spent), for offences involving children.

A number of societies also require all leaders to undergo a Criminal Records Bureau check - if they have nothing to hide, potential leaders should not be worried about undergoing these checks.

Sexual Offences (Amendment) Act 2000 - criminal offence for anyone in a caring / teaching role (including volunteers) to form a sexual relationship with anyone in their charge under the age of 18 - offence for a person over 18 to engage in intercourse / sexual activity with a person under 18 if the elder is in position of trust in relation to the younger - fine or up to 5yrs imprisonment

Duty as Venture Leader to the parents of the children or young people on your expedition - acting in *loco parentis* – would you let your co-leaders be people who would form inappropriate relationships with *your* children?

1.3 The Home Agent

This is the Venture Provider's point of contact in the UK

Consider the people back home while you're in the field - wanting to know how things are going.

The Home Agent

- is the person available throughout the expedition as a point of contact
- is diligent, mature, and unrelated to any of the expedition's members / leaders
- is fully briefed on all aspects of the expedition
- has a full and detailed programme
- has telephone numbers or another method to enable them to contact the Venture Leader in the field
- has application forms of all members and leaders / next of kin details
- is aware of expedition's insurance company / all policies
- receives reports from the Venture Leader during the expedition
- carries out any requests of the Venture Leader
- passes messages from relatives and the Venture Provider to the Venture Leader
- records all messages
- may be required to update the Venture provider as to the expedition's progress
- has provided parents / next of kin in writing of the Home Agent's contact details
- has a team of assistants, and a plan, in the event of an emergency in the field

Consider the importance of PR / publicity management, in the event of an accident in the field. In the event of an accident, it is important to ensure that the information reaching the public domain is accurate, limited to that which should become public, and, if appropriate, subject to spin. Good information management, appropriate responses to accidents, and good family liaison may result in an accident becoming a positive driver to trust funds, memorials, and positive publicity for youth exploration; poor information management and liaison may lead to families pushing for criminal prosecutions, expensive civil claims, and significant adverse publicity.



2. LEGAL ASPECTS OF EXPEDITION SAFETY

2.1 CRIMINAL LIABILITIES

Child Protection - Sexual Offences (Amendment) Act 2000

Manslaughter – involuntary - death results from an unlawful act which any reasonable person would recognise as likely to expose another person to the risk of injury, the death being caused by a recklessly or grossly negligent act or omission

- individuals can be convicted, as can Directors of companies
- penalties for manslaughter range from minimal to life imprisonment
- company Directors have been imprisoned for this offence
- failure to comply with safety standards, resulting in death, can potentially lead to manslaughter charges against the individual leaders, or the directors / trustees of the organisation sponsoring the expedition.

Corporate Manslaughter – Corporate Manslaughter and Corporate Homicide Bill 2007 - into force 6 April 2008

- promises to herald profound change in respect of managers' and directors' accountability for issues of health and safety - includes deaths in custody (although these provisions will come into force 3 years later)
- allows organisations to be prosecuted for gross negligence leading to deaths of employees or members of the public
- adds little to existing health and safety law but organisations are likely to be concerned about the reputational impact that a prosecution could have.
- duty of care and causation elements of the offence are essentially based on existing law
- additional hurdle for the prosecution will be to prove that a substantial element of the breach of duty arises from the way in which the organisation's activities had been managed by its Senior Management
- gives the court power to impose an unlimited fine on an organisation convicted and further empowers the court to make remedial orders (that steps must be taken to remedy a breach before conviction) and/or publicity orders (that details about the offence and conviction be publicised)
- indication to date from the government is that there are unlikely to be more than a handful of prosecutions a year and that this offence will be reserved for only the most serious offences.
- Punishment should only be a fine.

Anti-terrorism, Crime and Security Act 2001

- came into force February 2002
- any corrupt payment which would be unlawful if made in the UK illegal if it is paid abroad, even if it is perfectly legal in the country concerned
- sentences can be heavy fines and up to seven years in prison



2.2 CIVIL LIABILITIES

2.1.1 Tort

- civil wrong outside contract – on expeditions most likely to be negligence
- *in loco parentis*, or, acting as a '*parent*' to the youngsters in your charge
- owe a duty to the children (and their parents) to act as a careful and prudent parent, and, to act in accordance with the standards rightfully expected of a responsible and properly qualified expedition leader, your '*duty of care*'
 - obtain written consent from parents of minors
 - obtain medical treatment consent
- if your actions / omissions are not those of a reasonable expedition leader, and foreseeable harm, injury or damage results, you may find that your '*negligent*' act or omission to act has been '*causative*' of loss
- award damages in negligence as compensation for death, bodily injury or property damage
 - individuals and organisations can incur liability in negligence
 - try to comply with relevant codes of practice and guidelines: BS8848, *YET Code of Practice*, the *Activity Centres (Young Persons Safety) Act 1995*, *MLTUK* guidelines, *BCU* guidelines
 - ensure that you don't delegate tasks to leaders who don't have the expertise to complete them
 - train the expedition members to ensure that you know the limits of their abilities

Paid employees? Consider proposed actions in the light of Health and Safety legislation.

Before expedition, consider insurance - obtain the appropriate levels of cover

- Tour Operators' Liability Cover
 - Public Liability Cover
 - Employers' Liability Cover
 - Personal Liability Cover
 - Travel Insurance Cover
 - Details of insurance cover should be sent to parents of young people on your expedition, and to its adult members; they may wish to obtain additional cover if they feel it appropriate
 - does the policy provide cover for training / selection weekends
 - does the policy provide cover for fundraising events organised by the expedition members
 - most insurance cover will not apply if the leaders are grossly negligent
- check the rules set out by your insurer

2.1.2 Contract

- legally binding contract between the expedition leader and the expeditioner
- expeditioners offer to pay, in return from which they will receive services in the form of the expedition
- careful consideration should be given to the aims and objectives of the expedition prior to advertising the expedition

