



## BMC & Mountaineering Scotland Liability Insurance - Instructor Advice

Information about Combined Liability insurance cover for BMC & Mountaineering Scotland affiliated members can be found on their respective insurance centre website. Click for [BMC Insurance Centre](#) or [Mountaineering Scotland Insurance Centre](#). These FAQs have been put together to clarify how full and trainee members can benefit from the BMC & Mountaineering Scotland Club and Member Combined Liability Insurance Cover.

### **Does the BMC and Mountaineering Scotland Combined Liability cover extend to trainee and qualified instructors when providing instruction on a volunteer basis, recognising higher levels of duty care?**

Where instructors are operating on a volunteer basis, BMC & Mountaineering Scotland Liability cover will operate.

### **When is an instructor a volunteer?**

The answer is where the instructor is not operating for profit financially. This means that basic expenses do not constitute a fee, nor do other forms of reasonable consideration that might be raised, e.g. where the (qualified or trainee) instructor is receiving benefit by a participant allowing the instructor to gain experience, and the participant gaining benefit by experiencing being led up a mountain. In insurance terms, this does not constitute a "fee" or "profit". Just to be clear here, insurers will investigate individual incidents and will check for fees evidentially.

### **Does the volunteer status affect the duty of care expected?**

Not in itself. However, a person in the party can expect to receive "expert" instruction and advice for those activities for which the instructor is qualified (regardless of any fee). Equally, in situations where the instructor is seeking experience for their log, and is therefore not qualified, the participant can expect a lower duty of care. It is important that the instructor declares they are not qualified in these relevant activities otherwise a participant could claim in court that they expected a higher duty of care.

### **Can any person regardless of qualification or training status provide voluntary instruction at any level and be covered if they are a current BMC or Mountaineering Scotland member?**

Yes, subject to the above.

### **Do the BMC and Mountaineering Scotland Liability covers extend to trainees taking out participants unknown to them? Participants who may have been sourced by the trainee in advertising their services?**

Yes, subject to the above.

However, it is preferable that the participants receiving this experience are also BMC or Mountaineering Scotland members. This is not related to whether the trainee is covered for potential errors or omissions, as he /she is. Rather, it is important that a participant is also covered for incidents which they may have caused. The BMC & Mountaineering Scotland cover only their members. A participant may of course have liability cover through membership of another mountaineering council.

### **When should an incident be reported?**

You should always report incidents as soon as reasonably possible after they occur. Insurers may wish to defend you in a Civil Court, and therefore interview of witnesses, and authority accident reports are crucial. This is a policy condition.

### **I have heard the BMC & Mountaineering Scotland Combined Liability Policy is a Claims Made policy, what does this mean?**

This means that policy cover and therefore membership, needs to be in force when a claim incident is reported, not just at the time an incident occurs. The alternative 'Claims Occurring' policies as they are known are restrictive in that the limit of indemnity applied by insurers is fixed at the time an incident occurs. This means that an incident that occurred say 5 years ago would attract an indemnity limit of £2m. Presently court damages awards are 4 and 5 times that figure and therefore there is a danger individuals could be exposed.

The BMC & Mountaineering Scotland Combined Liability Policies are a 'Claims Made' policy, allowing us to ensure the limits of indemnity can be moved on year by year. The current limit is set at £10m, which means that an incident that occurred say 2 years ago, but was not reported or thought to be the subject of a claim would attract the current limit - £10m.

A word of warning here however, revised legal rules put strict timetables on Civil Liability cases, and in some cases this means that cases need to be decided upon within 40 days of initial action by a third party solicitor. Failure to follow the process of reporting / investigating etc will mean automatic loss of a legal case. Incidents which may mean you are legally liable should be reported immediately. Reporting an incident just in case will not count against you, but failing to report may mean loss of the otherwise defendable legal action.