



The ***MOUNTAINEERING COUNCIL*** of ***SCOTLAND***

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INFORMATION SHEET

*** * “Natural Justice” within Clubs * *** **- Dealing with Unacceptable Behaviour**

INTRODUCTION

When a club is formed or when a club takes on new members, there is a general presumption that as the members all have a common interest in mountaineering or climbing, they will all be able to get along without serious argument and that any disagreements can be resolved by talking them out on the hill or crag, or more usually over a dram in the local hostelry. It is never envisaged that relations between members will ever get so strained that legal action becomes necessary.

Most clubs are usually non-profit making and usually with only limited assets. They have made provision in their constitutions to cover such items as membership, general meetings, the regulation of the management committee, election of officers, dealing with accounts and the expulsion of members. However, the latter clause is usually inadequate and leaves the club unable to remove troublesome members.

Additionally, it is borne out of the experience of many clubs (including those of other sports) that a member whose behaviour has become unacceptable to the majority of the club rarely sees things in the same light, nor does the club usually handle any complaint in a manner that allows the situation to be resolved amicably or fairly.

THE PROBLEM

The usual scenario involves a complaint going to the committee, which then votes to expel the member. It is usual that a constitution asks for the troublesome member to receive a written request to resign. It is usually expected that (s)he will either apologise and give an undertaking not to repeat the offending incident or resign. Research by the Law Society shows that the errant member does neither of these. Indeed it is usual for him/her to refuse to resign. This then places the management committee in a position of either backing down or continuing in what is now a difficult and heated situation to expel the member.

It is at this point that the club usually calls a general meeting to explain the complaint and allow the membership as a whole to make the decision. The club then starts to become polarised with two opposing sides being taken by members.

Without an un-confrontational opportunity to defend him/her self and answer critics the errant member usually feels forced to take legal action. This initially involves an interim

order obtained from the court which suspends any management committee's (or general meeting's) order to expel, coupled with an interim interdict against the club for denying any rights and facilities enjoyed by the that member.

The Inevitable Outcome

Having proceeded to litigation means that matters are ultimately decided by the court. The court will examine the machinery the club has in place for complaints and the procedural errors in that machinery, particularly how they breach 'Natural Justice'. It is likely that the alleged behaviour of the member which gave rise to the problem in the first instance will not be examined at all if it can be shown that the procedures adopted thereafter were incorrect. It is also likely that the errant member will win.

The probable outcome is that the club will be unable to expel the member and will have a large legal bill. There may be bad publicity if the case catches the imagination of the press. Other members of the club may decide to resign if the errant member remains and further discord within the club follows. There is also the threat that a claim for damages against the club for impugning the members good name may be brought, and if (s) he can successfully demonstrate bias then there is an opportunity to pursue the members of the management committee or the original complainer for defamation of character. This latter course is less likely as it would make public the original bad behaviour.

This scenario may seem far fetched but is an accurate account of the course of events in many cases concerning clubs. The outcome was a result of an inadvertent breach of the principles of Natural Justice which the management committee were unaware of and the clubs constitution provided no adequate machinery to operate safely.

NATURAL JUSTICE

Aspects of Law concerning Natural Justice are rarely fully known to the individual when operating in a more social situation such as a club. The principle is:

Procedures must be absolutely fair to both sides

This overriding principle particularly concerns the following areas:

- * Any accusation must be explored before any further procedure is taken. This means fully checking the details of the event of the complaint, particularly with any witnesses.
- * The 'accused' must be fully informed of all the details of the complaint and no further details should be submitted at a later stage.
- * The accused must be given the opportunity to present his/her version and a defence. This entails allowing evidence from witnesses and documents etc. and cross-examination of those giving evidence against.
- * All proceedings must be entirely even handed. It is at this point that many organisations fail. In general a club must ensure that any members involved in part of the decision making process at an early stage should not be involved later on (i.e. the principle is that someone who has sat in judgement at one stage should not sit in judgement at a further stage, including appeals, for that individual will be automatically tainted with a suspicion of bias).
- * No complainer can sit in judgement at any stage.

THE PROCEDURE

It is best to limit the number of stages of the machinery to deal with errant members to a bare minimum. It is also dangerous to make the first stage a request for resignation. The number of members involved in each stage should also be minimised, as they have to disbar themselves from further stages. It is recommended that the following matters are included in the club constitution:

1. Appoint a Complaints Officer. This person need not be on the management committee and could probably be co-opted annually at the time of election of other officers.
2. Any complaint should remain directed to the committee who would simply remit the details to the Complaints Officer to investigate.
3. The Complaints Officer should then interview the complainer and witnesses as well as the person complained of and their witnesses. Accurate notes should be kept. The Officer should then prepare a report for submission to the management committee indicating whether the complaint is valid or not. The Officer should not be involved at any stage in the complaints or expulsion procedure.
4. The Management Committee should be empowered to form a sub-committee to deal with the complaint. This need only consist of a small number of people (3) and should be selected to ensure no bias for or against either the complainer or the member complained of.
5. The Sub-committee should review the Complaints Officer's report and interview that officer for clarification if need be. They should then either i) dismiss the complaint or, ii) undertake further procedures if they feel the complaint valid.
6. If option ii) is taken the Sub-committee should call the member complained of before it, with reasonable notice given in writing along with FULL details of the events and circumstances alleged against him/her. That member should also be given the opportunity of representation by a friend (i.e. a person to speak for him/her). This person can be from outwith the club if the club normally has open meetings but cannot be a solicitor (although the member is allowed to consult a solicitor). By appointing a representative, then legally the member is no longer his/her own advocate and can be regarded as the accused and as a witness.
7. In the meeting called by the Sub-committee a full and thorough exploration of the circumstances should be made in an even-handed fashion using the witnesses accounts as well as those of the errant member and complainant.
8. The Sub-committee should then let its findings be known to errant member and complainant and will report to the management committee. That committee can decide whether to publish the proceedings for the club as a whole. The options for action could be the following:
 - i) dismiss the complaint
 - ii) admonish the member & require him/her not to transgress in the future
 - iii) suspend the member for a period of time
 - iv) expulsion.The Sub-committees' work has been completed.
9. There should be a right to appeal. A 14 day period is reasonable in which the member notifies the management committee (in writing) whether (s)he wishes to appeal. The Management committee is then required to call an extraordinary or special meeting of the club within a further 28 days in which to hear the appeal. It is best to continue to allow the member complained of to be a member of the club and to use all the facilities that were previously enjoyed. (s)he should not be suspended straight away if that was the ruling from the Sub-committee.
10. At the Appeal General Meeting the members of the Sub-committee and the Complaints Officer are disbarred from voting although their presence may be required for information. No new 'charges' should be brought forward. Lawfully, previous 'convictions' cannot be taken into account, although complaints closely linked in time may be regarded as being relevant.
11. The chair of the Sub-committee should give a report and the errant member should then be able to air his/her position. A debate and questions should then follow and a vote taken to finally close the matter.
12. Finally, the member should be able to scrutinise any ballot (particularly if written).

SUMMARY

If a club wishes to allow for the expulsion of disruptive members, or those members that act against the general ethos of the club, or act in a way that brings the club into disrepute or undertakes activities with much less experienced members that places them in unreasonable risk, then the clubs' constitution should be amended to take account of the principles of natural justice outlined above. In this way the club can proceed with the complaints procedure in confidence that it has afforded those under complaint a fair hearing and cannot accuse the club of bias thereafter leading to litigation.

Operating procedures, referred to in the constitution could outline the machinery (how the complaints Sub-committee is appointed, the reporting duties, the management committees' role and the series of steps that should be taken) and all the membership should be aware of how the system operates.

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This information has been taken from a paper by C. R. M. Franks, LLB, SSC, NP of Franks Macadam Brown, Solicitors, Edinburgh. First published in the Scottish Law Gazette, December 1996, Vol. 64, No 4.



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