ECSKC - Description of Insura

11 January 2016

Safe Harbor Statement

Sea kayaking is an adventure sport and members are primarily responsible for their own safety on the water. The ECSKC Committee issues this description of its insurances as a general informational guide only. It is not a legal interpretation of the insurance cover provided and cannot be relied upon as such. Members are advised to consult original policy documents and/or take legal advice for more reliable and complete information.

Revision History

Filename

Description

14 October 2015

ECSKC Insurances 1542

Endorsement 98 Coaches and Instructors

05 December 2015

ECSKC Insurances 1549

PA Insurance

11 January 2016

ECSKC Insurances 1602

General update

Glossary

- Club Event is the term used here to describe approved trips and other events such as pool sessions, social gatherings etc. undertaken by the Club. ‘Approved’ means that the event is scheduled and carried out in accordance with Club guidelines and procedures, as appropriate.

- Public Liability (PL) Insurance, or 3rd Party Liability Insurance, covers:
- Liability of the Club and its members to a 3rd party at Club events. A 3rd party can be a member of the public or another Club member.
- Liability of Leaders to members or 3rd parties at Club events. Leaders are Club members and are covered by the general PI Insurance. There is specific cover (Endorsement No. 29 below) for the giving of advice at Club events.

- Directors and Officers (DO) Insurance covers liability of the Committee and Officers to 3rd parties and other members. Committee and Officers are also club members and are covered by the general PI Insurance.

- A Club Leader is a club member who is trained to appropriate CI or BCU standards and Club guidelines, and is formally approved by the Club to undertake the task of leading an approved Club event (trip).
- Legal Fees Insurance covers legal costs incurred in defending a claim against the Club or its members.
- Personal Accident (PA) Insurance covers personal injury to members sustained during normal kayaking activities.
- Duty of Care includes negligence, failure to warn and foreseeability of harm. ECSKC has a duty of care to protect its members and the public and to undertake events and activities within good practice guidelines.
- Negligence is a breach of Duty of Care. PL insurance only covers injury/damage sustained through negligence.
- Accidental Injury to any person
- Accidental Loss of or Damage to Property
- Interference with or loss of enjoyment of Property as a result of obstruction trespass or nuisance caused in connection with the Business and occurring during the Period of Insurance

- Republic of Ireland
- United Kingdom, Isle of Man and Channel Islands
- EU (max. 5 events in any year, max. 8 members per event)

- Failure to warn a participant of the inherent risks associated with participation in a given sport.
- Failure to provide safe facilities and equipment for training and competition.
- Failure to provide an adequate injury prevention programme.
- Failure to provide qualified training and instruction, and quality supervision.
- Having an awareness of potentially dangerous situations and neglecting to act on them appropriately.
- Using unsafe equipment.
- Allowing an injured or unfit party to participate in training or competition where further injury or harm results.
- Moving an injured party without prior immobilisation of the injured area.

- Failure to provide suitably qualified first aid personnel. (See note below).
- Treating an injured party without their consent.
- Failure to recognise an injury or illness.
- Failure to refer an injured party to a physician in situations where it is warranted.
- Failure to maintain adequate injury and accident reports.
- Failure to have an Emergency Care Plan.
- It is important that first aid personnel are suitably trained in sports first aid as opposed to

general first aid.

- It is important with respect to the recognition that an injury has occurred, its severity, and the possibility that professional medical help may be warranted.

- If a Peer Paddle meets the Club requirements for an approved event, it may be possible to apply to the Meets Officer in advance of the event and have it formally approved. The Committee is examining this and will advise on a procedure. Other clubs do this.
- It is possible to buy insurance for a nominated trip. The cost is of the order of €200 per trip and must be purchased privately by the Peer Paddlers. Caveat emptor.
- Some Travel Insurance policies can cover adventure activities. Again, look at the specific terms and conditions.
- Website Peer Paddles are advertised on the Club website – is this tacit approval?
- Duty of Care If a risky Peer Paddle is advertised on the Club website, is the Club liable to take any action to prevent it?
- Clear definition of an approved Club event (trip).
- Clear definition of a Peer Paddle
- Clear advice regarding risks and standards required
- Clear separation of Peer Paddles from Club Meets on the Club Forum.
- Clear procedures regarding Club approved events and Peer Paddles in a Club procedures manual.
- Clear disclaimers

The Insurances listed below have been recommended by the Club Insurers, approved by ECSKC Committee, and are now in place. A copy of the original documents is available from the Committee on request.

Summary of ECSKC Insurances
ECSKC Remit

ECSKC is a free and independent Club which provides the opportunity for members to undertake sea-kayaking safely. The Club organises itself into 3 constituent groups – members, leaders and committee - that work together to achieve this. The members pay fees which enable the Club to provide the necessary training, equipment and insurance to support club activities. Members depend on Leaders to lead trips. The leaders are interested in developing leadership skills, undertake the required training and certification, and lead the trips which enable members to paddle. The Committee coordinates the above.

Insurance enables the Club to fully meet its remit as described above under its own control i.e.

members are insured for paddling, leaders for leading and the Committee for coordinating, on Club trips.

Conversely, the activities of non-members, on peer paddles etc., are outside the remit of the Club and the Club is not obliged to address these needs.

Canoeing Ireland

ECSKC affiliates itself freely with Canoeing Ireland because it sees benefit in this i.e. ECSKC can represent and promote the interests of its members at national level, and it can avail of useful services provided by CI including training, equipment and, to-date, insurance.

To-date ECSKC has relied on CI insurances, with an attendant requirement to ensure its members are also subscribed members of CI. However, CI itself strongly advises affiliated Clubs to take out their own insurances. ECSKC is now compliant with this advice, and also now independently insured should it wish at any time to review its affiliation with CI.

Insurances and Costs

Insurance	**Cost p.a €**
Public Liability Insurance	
Extension to EU	
	780

210

Directors and Officers Insurance

182

Legal Fees Insurance

10

CI Personal Accident Insurance

428

Total Cost p.a.

1610

Directors and Officers Insurance (DO)

Insures Committee members against claims for actual or alleged breach of duty, breach of trust, neglect, error, misstatement, omission, breach of warranty of authority, libel, slander or any other act committed by a committee member or club officer in the course of their activity within

the Club.

Legal Fees Insurance (LF)

Insures the Club for the cost of legal fees in defence of a claim.

Public Liability Insurance (PL)

ECSKC Public Liability Insurance is provided by R&Q Commercial Combined Policy May 2015 and includes:

Section 12: Public Liability

Limit of Indemnity: €6.5m

Excess: €500 for each and every claim

Geographical Limits

Extension to Section 12 – Member to Member

Insurers shall indemnify any member of the Insured whilst acting in such capacity regardless of whether the third party claimant is also a member of the Insured.

Exclusions

No. 4. Electronic cyber liabilities

No. 5. Misuse of the Internet and Extra-net

Endorsements

There is a long list of general endorsements in the policy documents. Highlighted endorsements are included below:

Endorsement No. 6: Protective clothing

It is a condition precedent to the liability of the Insurers that the Insured shall ensure that suitable protective clothing is provided to or worn by all participants during the activities.

Endorsement No 11: Player to player liability exclusion

It is hereby noted and agreed that the Insurers will not provide an indemnity to the Insured in respect of any claim arising out of any personal injury caused by, or contributed to, any participant to any other participant whilst participating in a match or a practice

Endorsement No. 12: Lifejackets

It is a condition precedent to the liability of the Insurers that the Insured shall ensure that all participants are wearing a life-jacket or other suitable buoyancy aid prior to participating in any water-sports.

Endorsement No. 29: Advice extension

It is hereby noted and agreed that the Insurers will provide an indemnity to the Insured in respect of injury or damage caused by or arising from any tuition, instruction or advice given by or on behalf of the Insured.

Endorsement No. 91: Theft Exclusion

It is hereby noted and agreed that the Insurers will not provide an indemnity to the Insured in respect of loss or damage caused by theft.

Endorsement No. 98: Certification of Coaches and Instructors

It is a condition precedent to the liability of insurers that the insured shall ensure that all coaches & instructors have documented training and qualifications in respect of the instructions they are responsible for. There is no requirement to produce documentation of proof.

Personal Accident Insurance (PA)

The following PA insurance is provided by ECSKC:

Benefits

Death	EUR 50,000
Loss of sight of one or both eyes	EUR 50,000
Loss of one or more limbs	EUR 50,000
Permanent total loss of speech	EUR 50,000
Permanent total loss of hearing	

a)	in one ear	EUR 20,000
b)	in both ears	EUR 50,000
Permanent total disablement		EUR 50,000
Medical expenses		EUR 2,500
Physiotherapy		EUR 250

(Sublimit of medical expenses)

Note: Anyone over the age of 65 is required to be named on the policy for PA cover and should notify ECSKC accordingly.

Summary of Canoeing Ireland Insurances

See the CI website http://canoe.ie/insurance/

Canoeing Ireland - Comments on Duty of Care

The following paragraphs are extracted and edited from the CI website for convenience only, and are subject to the disclaimers on that website.

Duty of Care

To who is a Duty of Care owed and who owes it? This is normally quite straightforward to ascertain. The existence of supervisory relationship between an instructor and coach with a student, athlete, and participant imposes on an instructor and coach a duty to take reasonable care not to injure the individual in their charge – this duty covers both action and inaction.

Negligence

Negligence is a breach of an individual's Duty of Care. Instructors and Coaches are expected to coach, teach, supervise, provide quality equipment and inspect it prior to use, ensure a safe environment, and provide a Duty of Care to participants. Failure to provide this care may result in liability or negligence.

There are four separate burdens of proof that an injured party must overcome before finding another party negligent. The first is to prove that there was a duty of care. Secondly, that there was a breach of this duty of care. Thirdly, that there was harm or injury sustained. And finally, that there was a causal relationship between the breach of duty and the harm or injury caused. Failure to prove ANY of these four aspects is a failure to prove the party negligent.

Failure to Warn

Coaches and instructors must inform those for whom they are responsible of the risks inherent in participating in a given canoeing activity.

A failure to warn of the inherent risks associated with participation in canoeing activities may be alleged to be a breach of one's Duty of Care.

Foreseeability of Harm

This is a condition whereby danger is apparent, or should have been apparent, resulting in an unreasonably unsafe condition. It is a fundamental Duty of Care of an instructor or coach to recognise the potential for injury, then to remove that danger before an injury occurs. Failure to remove or even lessen the danger is a breach of one's Duty of Care.

Actions which have the potential to lead to litigation proceedings:

ECSKC Insurances – FAQ

The FAQs below were submitted by the ECSKC Leaders Group and Club members (E O'Shea, A Horner, L Conway, M Carroll, J Haines, C Clissmann, T Ronayne) and were pulled together by M O'Farrell.

To the extent that FAQs bear on insurance they are addressed directly here. Some FAQs received apply more generally to operating procedures and are better addressed in a procedures manual.

1 Why Insurance?

The background is that the Club is evolving from being a relatively informal organization with a cohort of members who know each other and their abilities well, to being a larger organization whose members/abilities are not so well known. Insurance is always required, but the risks to the Club and its members are greater as the membership and span of activities grows.

The Club, Committee, Officers and Leaders have a Duty of Care to members and the public during Club events and activities.

All members are vulnerable to a claim by another member due to an incident during a Club event.

The Club has a responsibility to implement good practice to protect members and the public while engaging in an adventure sport. Insurance provides a defence against claims for failure in Duty of Care.

The Club is dependent for its raison d'etre on the commitment of its Leaders to provide trips. There has been longstanding disquiet in the Leader Group and Committee over their exposure to failure in Duty of Care. The primary purpose of the Club Insurances is to provide a measure of protection to Leaders so as to encourage them in their service to the Club, and to encourage more members to undertake Leader training and to qualify as approved Leaders.

2 Will the requirement to carry insurance change the culture of adventure in the Club, or limit our activities?

No. ECSKC is committed to promoting and implementing good practice within sea-kayaking. Insurance doesn't limit what can be done within good practice guidelines but protects Leaders and members when there is damage or failure in Duty of Care.

Kayakers are citizens and can go wherever whenever they please on Peer Paddles, which by definition are neither sanctioned nor insured by the Club. Club Insurance has no bearing on this activity and risk assessment falls back on the participants.

3 DO ECSKC members need CI insurance?

No. ECSKC has its own insurance for DO, LF, PL and PA liabilities. ECSKC members are fully covered by ECSKC insurances for ECSKC events and do not require CI insurance for ECSKC events.

CI strongly advises affiliated clubs to provide their own insurances. There is some doubling up of insurance cover here. A claimant will attack Club insurances first, being more specific to the immediate incident, before rolling a claim through to CI insurance.

4 Are ECSKC Members required to join CI?

No. While ECSKC is an affiliated club of CI, this does not automatically confer membership of CI on ECSKC members. Membership of CI is an independent choice by ECSKC members.

Individual membership of CI is required to participate in CI events such as meets (e.g. Liffey Descent), skills training, level awards, use of equipment etc.

5 Are ECSKC approved events automatically approved as CI events?

Yes, when they conform to CI guidelines.

6 The statement 'Over 65s on a named basis' - this needs to be defined further as sea kayaking is a sport that often suits people falling outside that age bracket?

The age limitation applies to PA insurance only. Anyone over age 65 should notify the Club to have their age notified to insurers.

7 The Exclusion 'Allowing an injured or unfit party to take part in training'. Could this force our hand into insisting that someone returning from illness or injury would need a doctor's cert before joining club trips. Leaders are not qualified to make that call?

Common sense should prevail. See CI Comments on Duty of Care above, where this is listed as a potential breach. It is not listed as an exclusion or endorsement in ECSKC Insurances and therefore Leaders will be covered under breaches in Duty of Care.

8 Are Peer Paddles Covered by Insurance?

There is a clear exclusion of Peer Paddles from Club insurances. A Peer Paddle is an event (trip) that is organised informally by Club members on a peer to peer basis. In general, a Peer Paddle will not meet the requirements of a Club approved event e.g. it will not be included in the Club Calendar nor have a Club approved Leader in charge. Peer Paddles by their nature fall outside the control of the Club, Committee and Leaders and are excluded from the Club insurances.

Our insurers advise:

Underwriters have returned and advised they cannot offer any terms on the peer paddles based on the current structure. The only two options for insuring them are if the Peer Paddles are attached in some way to the club and run by its guidelines and procedures and we can include it under the club's policy for an additional premium, or else each paddle will have to be insured individually which would be subject to minimum premiums of approx. €200 each.

Possibilities to insure a Peer Paddle include:

9 Is the Club liable in any way for Peer Paddles organised by members?

This question arises in a couple of ways:

Common sense would recommend the following:

Further advice is required here.

10 What locations are covered by ECSKC Insurance

The basic PL policy covers Ireland, UK, Isle of Man and Channel Islands.

The Committee has approved an extension to cover events within the EU. The cost is ca. €214 p.a. The insurance currently includes 5 events max per annum, with max. 8 club members per event.

11 What is Duty of Care?

See Appendix 1 for a description of Duty of Care from the CI website.

Leaders have a Duty of Care when leading a Club event (trip).

PL insurance protects the Club, its Leaders and Members in the event of failure in Duty of Care.

The Club has a positive responsibility in Duty of Care to implement good practice to protect members and the public while engaging in an adventure sport. Good practice includes the implementation of standard operating procedures, training in skills and safety, and monitoring of club practice.

It would appear that Leaders may also have a Duty of Care on a Club event, even when they are paddling as ordinary members i.e. they are not the designated Leader on the day. There are cases reported where the most qualified qualified/experienced person on a trip on the day was joined in a claim.

It is a condition of our Insurances that members sign a declaration of understanding of the risks involved in sea-kayaking and commitment to implementing good practice.

The Committee propose a Club Standard Operating Procedures Manual to describe good practice and safety.

12 Are Leaders insured to give coaching and training to Club members?

Leaders commonly give informal advice and coaching during Club events. This activity is specifically covered under:

Endorsement No. 29: Advice extension

It is hereby noted and agreed that the Insurers will provide an indemnity to the Insured in respect of injury or damage caused by or arising from any tuition, instruction or advice given by or on behalf of the Insured.

Formal training by the Club is normally carried out by qualified and/or professional trainers who are certified as such and charge a fee. The certification of a Club Leader does not normally include certification to train.

Our insurers advise:

Endorsement No. 98: Certification of Coaches and Instructors

It is a condition precedent to the liability of insurers that the insured shall ensure that all coaches & instructors have documented training and qualifications in respect of the instructions they are responsible for to the policy.

However, this will not affect your policy as all instructors & coaches are qualified in the club. There is no requirement to produce documentation of proof.

13 How should the Club define approved events, activities and roles such as Club Leader

It is incumbent on the Club to clearly define what constitute approved events, activities and roles.

The Committee has approved the creation of a procedures manual.

14 Is Club Property insured?

The Club has no premises, and its assets are minimal – a few boats and books. There is no property insurance included in Club insurances.

15 Is the Club liable for failure of its equipment used at a Club event and should equipment cease to be provided

Insurers advise "…generally the failure of equipment will fall on the manufacturer unless there has been negligence on the part of the quartermaster where he/she could reasonably have foreseen a defect etc."

A protocol whereby the Quartermaster has to inspect club equipment regularly and certify it fit for use is advisable.

16 Does the requirement for protective clothing extend to the compulsory wearing of helmets?

No. Common sense and good practice prevails.

We should be confident of our ability to research and define good practice. This question, and all similar questions, can be addressed freely within procedures manual.

17 Foreseeability of Harm - Is it enough to inform of apparent danger on the slipway or must it be done in each and every situation we approach?

“It is a fundamental Duty of Care of an instructor or coach to recognise the potential for injury, then to remove that danger before an injury occurs. Failure to remove or even lessen the danger is a breach of one’s duty of care.” CI Comments on duty of Care

This is a demanding requirement, to be conservatively applied i.e. if in doubt warn/act. If a threat is perceived on the pier, warn/act on the pier; if perceived on the water, warn/act on the water.

ECSKC Committee

11 January 2016