

# Law and liability for cycling activities and events

## 1. Introduction

This sheet is for providers of cycling activities to members and the public. This can include CTC local groups, ride leaders, organisers, trainers, holiday operators, offroad or mountain bike activities and event managers, collectively referred to as Activity Providers, or APs.

This guidance was originally produced in 2002 for CTC Member Groups, but has been updated in 2006 in response to specific requests for guidance from the wider cycling community following the incident in which four cyclists were killed on an organised ride in January 2006. The CTC Charitable Trust is publishing it to wider audience in support of our view that group cycling remains an enjoyable and safe activity that should continue to be regulated by the governing bodies of cycling in its current informal manner, but that good practice is widely adhered to.

This guide is an introduction to the main legal issues identified when developing advice for APs. It concludes that introduction of best practice guidance substantially reduces the possibility of claims and liability against volunteer APs.

By adopting such good practice organisations can ensure that individual APs feel that working inside the structures of a supportive national framework which offers them a protection they would not get at a purely local level or acting as an individual.

Leisure cycling is inherently safe and has a safety record that leads insurers and legal advisors to assure CTC that cycling and its volunteers should have very little to fear from threats of negligence or liability.

However there is a perception that the so called "compensation culture" is increasing the risk of claims regardless of cycling's risk profile, and increasing pressure on society to regulate activities. Sometimes bodies such as local authorities or insurers respond to this in ways that restrict APs.

The advice given to CTC is that this perception of risk is largely that, a perception. However it is important in this climate to show that group cycling and the individuals involved are well structured and organised. Some straightforward principles and procedures should allow cycling as it has been known for over a century to continue as a local activity.

Practically this places most of the onus on CTC and similar governing bodies to provide realistic procedures and advice that are shared, but demonstrate confidence in individual AP's. These should demonstrate that activities run in a way that considers safety, so if an incident occurs the AP has not been negligent of those safety issues.

Disclaimer

The advice in this document is generic in nature and is offered as general advice on cycling activities by the CTC Charitable Trust (registered charity 1104324).

Organisations and individuals should seek advice on specific legal cases and insurance policies from their own service providers.

CTC has not assessed the insurance needs of any individual activity provider in conjunction with any cover recommended.

## 2. Contents

The governing legal framework to any area of law is a balance between government statute and legal judgements forming case law, otherwise known as common law.

This sheet covers three main areas.

Statute – specific pieces of statute/legislation that may have an impact on APs.

Statutory Powers – the legal powers given to certain bodies such as the police, by the "authority of parliament"

Case Law - negligence, liability and compensation.

## 3. Statute

The following are the main areas that organisers have to consider for cycling activities.

Cycle Racing on the Highways Regulations 1960

Traffic regulations & rules – Road Traffic Acts, Rights of Way legislation.

Health & Safety at Work 1974.

Child protection laws.

Discrimination legislation.

(Holiday providers, including activities traditionally called "tours" also have to conform to Package Holiday regulations. These notes only concern the conduct of rides within a holiday; a separate briefing paper is available on package holiday regulations)

### 3.1 Cycle Racing on the Highways Regulations

These regulations cover both massed start road racing and time trials. They have been under scrutiny and may be repealed in favour of a broader code (see "Statutory Powers" below). All races must conform to the regulations and full advice is available from British Cycling, Cycling Time Trials or other sporting bodies.

It is strongly recommended that events generally regarded as "non racing" such as challenge rides, randonnees, tours, endures etc do not publish results showing "places" as these can clearly be interpreted as races and may lead to a challenge under the act. Completing a course in a standard time is a much used device to overcome this.

Individual local touring competitions including freewheels, orienteering, trail quest and hill climbs are generally not

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regarded as races, but individual organisers should seek advice if in doubt.

### Best Practice.

Race promoters should conform to governing body standards.

Other promoters should make it clear that their events are not races and limit publication of results.

### 3.2 Traffic regulations & rules, Rights of Way legislation.

Cyclists on the highway or in the countryside should obey the appropriate rules and regulations of the highway.

The way the law works varies from highways to Rights of Way, the first is mainly criminal law, the second civil and uses the law in a manner similar to trespass rather than a highway offence, but similar guidance applies.

There is a consistent trend of reported and observed incidents of club groups jumping red lights, taking pavement shortcuts or being offensive to walkers in the countryside. These may not all be formal club groups but there is a requirement to recognise the issue in national guidance, such behaviour should be treated as unacceptable.

### The Highway Code.

The Road Traffic Act of 1988 makes reference to the Highway code as being issued "with the authority of parliament" A breach of the code does not or guarantee a complainant a criminal or civil action, but it does hold significant weight in determining issues of liability in civil claims.

### Best practice.

All organisers should make conformance with traffic regulations a condition of participation in activities and have disciplinary powers to deal with members or participants who do not conform.

### 3.3 Health and Safety at Work Act 1974.

This legislation is a broad reaching Act that requires employers to conduct activities in a way that is safe for employer, employees, contractors and customers. Any cycling activity where there is a paid employee or contractor must conform to the Act, so might include "bike to work" schemes as well as events. If an AP is paid a fee to carry out a cycle activity the HASWA would almost certainly apply as the purchaser could be buying the same service from a commercial organisation. Groups can use CTC's model national policies to support their local policies on request.

Where volunteers receive benefits in kind this can also be employment. For example CTC Cycling Holidays and Tours Ltd has to treat its volunteer tour leaders as employees, so the provisions of the Act will apply.

Under the Act many specific codes of conduct and subsidiary regulations apply, but CTC cannot highlight any in particular that apply to cycling. It is important to note that the interpretation of the HSAW Act recognises the practical differences between types of activity, a cycle event is not a steelworks and the safety schemes should recognise that.

Criminal prosecutions under the Act are relatively rare, especially outside industry, but there is an established claims culture in this sector.

### Best practice

Every employer should have a Health and Safety Policy and a person designated to implement appropriate policies. Safe working practices should be derived from risk assessment and good practice.

### 3.4 Children's Act 1989 and Protection of Children Act 1999

There has been a lot of publicity about these acts and their implications, especially since the introduction of compulsory criminal records checking for those working with children or in positions of care.

The true scope of the act and its associated legislation was intended to be limited to those working in a care/parental role including teachers, children's homes and activity providers. It also applies to adults in a care situation. If any cycling activity provider specifically targets activities at children or vulnerable adults they must conform to the standards of the acts, and CTC has been working with British Cycling, cycle sport governing body who have provided an excellent guide which has been adopted as CTC policy and is recommended to all cycling activity providers.

Adults are included in the scope of these acts where they are within the care of other adults, and defined as vulnerable. This would include the disabled and the elderly in residential homes or related institutions.

However during the implementation of the Protection of Children Act 1999 the scope of the Act has in effect been widened, opening up the possibility of an organisation being considered negligent if it does not take a similar wider interpretation of the acts and the impact of its activities.

The most significant change is that it has been taken to include most people working in contact with children and not just those in a position of care of the children, suggesting that best practice is to assume that the act applies to all persons at children's activities, not just the named organisers or leaders.

CTC does not believe the scope of the act falls on adult participants in cycling activities unless they are specifically identified as requiring the support of a carer. Otherwise meeting highest standards in supporting participants in general is best practice and a tool in dealing with potential liability as explained in section 5 below.

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Adopt the guidance and procedures in the CTC/British Cycling national guide for all who work with children, and consider rolling out as far as practicable through organisations.

### 3.5 Discrimination legislation.

The most recent legislation in this area is The Disability Discrimination Act 2005 (DDA 2005) which builds on and extends earlier disability discrimination legislation, principally the Disability Discrimination Act 1995. Other legislation includes discrimination on grounds of race, religion and gender.

Under the DDA, small to medium sized businesses have to make 'reasonable adjustments' so they do not discriminate against disabled customers or employees. This may affect the way they treat your staff, job applicants and customers.

The law has been designed so that you only have to make reasonable changes, but if you fail to do what is reasonable, a disabled person could take legal action against you for treating them unfairly.

If an AP is acting commercially, for example taking fees for a public then it is clear that they are acting as a business and the DDA applies.

CTC will be developing guidance for cycle event organisers in this area in due course.

### 4. Statutory Powers

Local authorities, police forces, the Health and Safety Executive and others have powers given to them by parliament.

These powers give them significant scope in interpretation of law, of licensing certain activities and premises but more importantly leave organisers open to risk of claims of negligence if the advice or instruction is ignored.

For cycle organisers this area is rapidly changing and needs to be interpreted carefully.

### Traffic & highway control.

The key players are the local authority and the police.

The police have long been assumed to have powers to "stop" certain activities. This may not be the case formally, however if an officer deems that public safety is at risk or laws will be broken they can step in. For cycling this might be risk of traffic accident or blocking the highway.

However since the Hillsborough Football Stadium disaster the police, stadium operators and local authorities have

worked out a completely new scheme where the police have stepped back and through licensing the local authority imposes quality and safety standards on the activity provider. This has proved so successful that the concept is being rolled out to events on the public highway. This could include everything from marches and carnivals to sports events. Local authorities will be required to set up "Safety Advisory Groups" (SAG) including the police and emergency services who will review all applications for events on the highway. Some SAGs are already in operation.

The key players for activity providers then become the local authority, who as the statutory Highway Authority has a duty to manage traffic movement. Cycle racing has been at the forefront of these developments and developed minimum standards of risk assessment and operations for their events which may replace the Cycle Racing on the Highway Regulations.

Legislation to formalise this process is being developed at the Home Office and will ultimately give statutory powers to the SAG. For cycling APs the early experience of SAGs is that they have no understanding of cycling and cannot distinguish between a charity ride and an international race.

CTC and others are setting out some guidance on the non-competitive activities within cycling which will demonstrate that the majority of activities do not require any additional traffic management or safety feature and should be treated as individual cyclists using the road and fall outside the scope of SAGs. CTC's policy is that this exclusion covers should include the traditional "club run" but also non competitive rides included in CTC local groups event calendar such as freewheel, reliability rides, randonnees etc. It also excludes cycling holidays and training activities. CTC has campaigned on this point and will continue to do so.

This view may not be shared by partners, especially if the partner is a local authority they may feel obliged to refer an event to their SAG as routine matter.

Ignoring or breaking advice given by a statutory body such as the police, local authority or SAG is just like ignoring the Highway Code, i.e. it does not guarantee success for a complainant in a criminal or civil action, but it does hold significant weight in determining issues of liability in civil claims.

### Best practice

Any AP should be able to demonstrate to a SAG the organisation of their event to external best practice should the need arise.

However any event:

- That will require some traffic management by police or highway authority
- That will significantly impede local traffic flows at start or finish

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- That will generate significant subsidiary traffic like car parking or spectators
  - That has support or is part managed by the local authority themselves.
  - Is part of a larger event that has been referred to the SAG.
- should be expect to registered with the local SAG (if/when it exists) and will have to demonstrate to the SAG that it has good management. Materials should be available from cycling governing bodies to help prepare for submission of an event to a SAG.

### 5. Case law

#### 5.1 Negligence, liability and compensation.

##### 5.1.1 Background

This is the area of concern for most APs. Claims histories in cycling are so low they hardly register on a long term basis, but there is a perception (not necessarily borne out in reality) that risks of claims are increasing. It is believed our society has a presumption of legal action for compensation by many people if they feel they have been injured in any way, physically or mentally.

Factors that have influenced this perception include

In the past voluntary, sporting and charitable organisations would not have received legal claims because participants in their activities were probably supporters of their work, now they may feel themselves to be customers.

In the event of serious injury or death claimants may be relatives or dependents, and they may have no benevolence towards cycling despite the victim being a long standing members, supporter or friend and there are legal companies seeking business aggressively in this area.

The original reaction of the insurance industries to launch liability protection products also means that claimants feel they are suing the insurer, not an individual or organisation so the claim is de-personalised.

Insurers are now withdrawing from the public liability market and either driving up premiums for the remaining cover or withdrawing it from organisations considered high risk.

The reality is that there is no recognised trend in successful legal claims that is demonstrably affecting either the sports or voluntary sectors. It is however undoubtedly true that many cycling bodies are finding insurance harder and more expensive to get, and in this climate our professionalism and claims histories will dictate the long term availability of liability

insurance. This is as much to do with a restructuring of the insurance sector as it is to do with risk.

##### 5.1.2 How it works

Case law concerns itself with questions of negligence, whether parties to a legal action have taken "reasonable care" and it is linked to compensation for injury or damage rather than criminal proceedings. Negligence can be proven against the claimant as well as the AP, and will effect compensation.

The law of negligence defines certain obligations on members of society to fellow members and to provide compensation for breaches of those obligations. It has developed incrementally over many years and is mainly founded on principles of case law as interpreted by judges. The judge is not looking for absolute proof of negligence by a party, only the balance of probability With regard to negligence being proved against a claimant, this is known as contributory negligence, in other words the person bringing the claim is deemed to be the author of their own misfortune to some percentage and any damages obtained is reduced accordingly. It is important to note that a person can not be 100% contributory negligent.

It is very important when considering these issues to consider the words used. If a claim is received then it is clear that there is someone who feels injured in some way by the actions of the person or organisation being sued. As a result of the AP's possible negligence, the person suing believes the AP has a liability for some or all of the victim's costs and to pay damages.

So the three things are separate.  
Did the injury/damage occur?  
To what extent was the AP negligent?  
What is the extent of the AP's financial liability?

It is also very important to point out that each case is treated on its merits. While advice and precedent may form part of the evidence presented there is nothing in this guidance that can restrict the ability of a court to reach a judgement specific to the circumstances pertaining to that case.

The advice from CTC to APs is to act as if claims are inevitable, not avoidable. This does not mean that either negligence, or liability are unavoidable, and these recommendations are made to reduce the risk and the impact of a claim.

Just because an incident occurred does not mean that it was in any way predictable, or that there was anything the AP could reasonably have done to prevent it. We would expect that the AP, their organisation and insurers would be able to demonstrate this to a judge.

Many cases do not reach court, so the key stage is often before court when insurers and legal advisors make

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decisions on which claims to pursue and for how much. This will be based on the likelihood of a court finding for a claimant, and legal advisors are uncomfortable going to court with claims that are hard to fight. The more an AP can show its ability to defend negligence, the less likely a court case is.

### 5.2 Expectations of APs.

Courts have shown that they will consistently make judgements based on the skill, knowledge, experience of claimant and organisation. Paid professionals and large organisations have the highest expectations. They cannot claim ignorance or lack of resources to provide good policies and practice.

At the other end of the spectrum children and inexperienced adults are not expected to be able to make good judgements on safety issues and the "professionals" are expected to bear the greater brunt of responsibility.

For cycling there is an important middle ground. Where do experienced but unpaid volunteers fall? Are they expected to be at the professional end of the spectrum, or will a court decide they cannot be negligent if they are not being paid. What if everyone in a group is equally experienced?

This has been discussed extensively within cycling but as and as there is little case law in our sector we have to look at parallel activities and take advice from legal advisors and insurers.

The feedback we have suggests:

The general common sense approach the Courts take is that an experienced but unpaid volunteer would be expected to act the same way as any paid person of his/her particular experience and expertise.

Where the activity was part of a structured programme provided by a national or local body such as a sports club or scout group the expectation is on the governing body to provide structures and codes of conduct which the AP should adhere to.

Governing bodies could be negligent if codes or advice are inadequate or inappropriate. Or an individuals can be negligent if they do not adhere to rules and guidance provided, however in reality a claimant will usually sue both and cover will be provided by the same insurer.

At the heart of all this is someone's definition of best practice. It would not be credible to a participant, a court, a SAG or any other regulator that leaders or organisers working within a long standing group or national body did not receive advice on basic good conduct of activities, whether paid or not. This has been proven from rugby referees to expedition leaders.

5.3. Are we at any more risk of a claim if we operate as a group of individuals not a club, group or business?

If an organisation or an experienced person is involved the formal status of the group is irrelevant. If it could be proven that group members knew good practice, had access to advice but ignored it then negligence could be proven.

And claims follow money. In the event of a claim the claimant's legal advisors will be seeking a source able to pay damages and cover legal costs. An organisations public or employer's liability cover is the usual source, but if there is no cover individuals' home insurance policies may be used.

Not being a formally organised activity does not mean there is no-one to sue, but it does mean the stress and likely outcomes fall on individuals alone rather than groups or their governing bodies and insurers. There may be extra bureaucracy involved in being an organised group, but in our opinion it is well worth it compared to the risk.

**Best Practice**  
Organisations and APs can take the following steps which have been proven to reduce both claims levels and the impact of claims.

**Reduce risk**

1. Reduce the likelihood of an injury through demonstrable good practice.

**Reduce likelihood of claims if an incident occurs**

2. Have good incident response procedures that record and act appropriately towards victims
3. Have a good transparent & responsive complaints procedure.
4. Support individual activity leaders, organisers, volunteers with organisational standards.
5. Be well organised, supportive and structured. Present yourself in a way that shows that the organisation is not negligent in its approach to safety and quality issues and so a claim would be inappropriate or unlikely to succeed.
6. Build a positive profile of the organisation so that participants are likely to be supporters and not be comfortable claiming.
7. Have national procedures to respond to the media and other interested parties in the event of a serious incident.

**If a claim is received**

8. Be able to demonstrate good incident response procedures that recorded and acted appropriately to this and previous incidents.
9. Be able to demonstrate that APs whether individual or local groups have organisational procedures that they have taken seriously, and that these were appropriate for the risk of the activity.

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10. Present yourself in a way that shows that individuals and organisations are not negligent in their approach to safety and quality issues
11. If there are external standards (Child protection, risk assessment etc) show that they have been considered and your procedures are appropriate. Do not ignore them; the court will expect you to be aware, not to do so is in itself negligent.
12. Reduce the personal impact of a claim on an individual within an organisation by having procedures for the organisation to deal with the claim and support the individual involved.
13. Provide appropriate insurance for APs.

CTC CycleCover COMMERCIAL LIABILITY provides the insurance your instructors or leaders need. CTC can quote individual small businesses for the Public, Product and Employers liability you need along with premises and any other cover. We understand your business and can promise you an individual policy to suit your needs.

Also CTC Cycle Hire Insurance, the complete offer for the small cycle hire outlet and backed by the CTC Cycle Hire Code of Conduct, setting standards for the industry.

### Appendix

Public liability insurance for cycle activity providers.

CTC CycleCover Cycle Activity insurance for the individual leader, trainer or organiser.

Become a registered activity provider with CTC and get public liability insurance up to £5,000,000 for all cycling activities including the provision of expert advice whether voluntary or paid. Activity providers are expected to conform to the best practice guidance provided in CTC Advice sheet "Law and liability for cycle activity providers" which is available from CTC. (Applicable in the UK and Republic of Ireland only)

Product liability is also given for a limited number of bikes loaned, or hired, to participants on an occasional basis, however if your programme routinely requires the loan or hire of bikes an additional premium is needed, contact CTC for quote.

CTC Club membership scheme for community amateur clubs, local cycling groups and charities.

CTC provides an affiliated group membership for voluntary amateur membership

Organisations providing cycling activities for their members. Excludes organisations providing cycling for employees or on a commercial basis and those using paid employees to deliver activities. Covers cycling activities and social events associated with a ride, etc. Over 200 participants per event additional permission is required.

Guest Insurance: Third Party Insurance cover for up to five un-named non-members per ride to protect members of your Club is included free of charge with Affiliation.

CTC Cycle Activity Providers Small Business Insurance package.