

On Target

The Activities Industry Mutual Newsletter - Autumn 2014



Our Chairman, Andrew Gardiner, reflects on another successful year for AIM.

It's been a summer of great activity and advancement for AIM in our seventh year of mutuality.

In the last report and accounts for the financial year to 31 July 2013, I reported another successful year for AIM, with income growth of 6% and growth in the membership to over 380. Since the original scheme converted to a Mutual in July 2007, I am proud to say that AIM has recorded a surplus in each of its financial years.

Looking back at the current year, the major insurance event affecting this sector has been the demise of the IOL supported JLT managed Adventure Activity Insurance Scheme, thought to be due to losses sustained by the scheme's liability insurers. Since the withdrawal of that scheme, we have worked closely with the IOL, and have provided many of their members, previously with JLT, with an alternative renewal option with AIM. So this year has been a very busy one, and the result

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has been growth in the Mutual's income of some 28%, due to growth in the membership to 568 members, as at 31 July 2014.

The loss of a major liability insurer from the sector also serves to highlight the challenge of making available stable and sustainable liability cover in a society where a compensation culture is still a fact of life. It seems that, with slight regard to the benefits that adventurous activities provide to society, some personal injury solicitors compete to encourage anyone who may have suffered an accidental injury or disappointment to blame and claim. In our Claims News section we highlight another victory for AIM and common sense in court, but, as ever, it came at a cost.

The strength of AIM depends upon the best practice standards operated by the members and the efficient documentation of this, so that, should an accident happen, there is evidence of staff competence and evidence that the provider's operating procedures were actually followed. As an insurance specialist for the industry, AIM's philosophy has always been not to tell its members how to provide activities or which activities to provide. Instead, we do our utmost to ensure that members can, should an accident occur, evidence what actually happened; that procedures were followed and that we have what we need to rebut any speculative list of alleged failures made by a claimant's solicitor seeking compensation.

Following the well attended Seminar and AGM at Crewe Hall that we held in February of this year, we will be holding two Seminars in early 2015, the first at The Mill on the Brue Centre in Bruton, Somerset, on 4th February 2015. The second event (which will include AIM's AGM) will be held at Halifax Hall in Sheffield, on 10th March. I very much hope that you will be able to attend one of them. AIM will also be represented and contributing at the IOL, AHOEC and BAPA conferences this autumn, and we look forward to seeing many of you at these events. Please note the IOL member discount is extended to include AIM members attending their conference.

Unlike commercial insurers, AIM's focus is entirely on the adventure activity and outdoor education sector for the long term. We are fortunate to work closely with our members, prospective members

and the representative organisations, with a focus on risk management reflected here in the Newsletter content. Included in this edition is a profile of a longstanding charitable member, Bendrigg Trust, and some thoughts from the Institute for Outdoor Learning and Pharos Safety, both organisations that we are pleased to be working with to further improve management of risk, training and sharing of best practice in the outdoors. There's also a piece by Ben Scholes of Papertrail, a service which we believe provides risk management benefits and about which we have received good feedback from members.

I should end by thanking my fellow directors for all their support and advice, and our managers for contributing to the continuing growth of both membership and influence for your Mutual. Last but not least, a big thank you to you, our members, and I hope that you'll find something of interest in this newsletter. Finally we are grateful to our contributors and to Pinkston Watersports for their image.



Andrew Gardiner

Andrew Gardiner
Chairman Activities Industry Mutual Ltd
Andrew is also Chairman of Acorn Venture Ltd

THE BENDRIGG TRUST

AIM Member Profile



The Bendrigg Trust is a charitable trust offering residential and non-residential activity courses for groups of disabled and disadvantaged people of any age or ability. Originally founded in 1977 as the Northern Association for Community Care, the Trust operates from a 40-bed centre in Kendal, Cumbria and a Bunkhouse in the Yorkshire Dales. Courses provided range from day visits and residential courses to more adventurous expeditions away from the main centre, in the UK and abroad.

The Centre operates throughout the year and is open 7 days per week to welcome a wide variety of disabled and disadvantaged user groups including special needs schools, colleges and disability organisations from all over the UK.

Around 80% of the guests have a physical, learning or sensory disability and up to 10% of the guests can be wheelchair users. The Trust aims to promote integration, encourage independence and build self-confidence through the use of residential experience and the safe provision of adventurous activities.

Outstanding Adventure Activities for Disabled People

The Centre offers outstanding adventure activities for disabled visitors both within their 15 acre woodland site and at nearby off-site locations. Activities include Abseiling, Archery, Canoeing, Caving, Climbing, Fell Walking, Gorge Walking, Low Ropes and Zip Wire. Facilities and equipment are specially adapted such as wheelchairs that can be used for abseiling or caving and specially rafted canoes that provide a stable introduction to watersports. The purpose-built indoor climbing facility is very highly regarded and described as one of the finest climbing facilities for disabled people in the UK.

The Trust deliver their programmes with a team of full time Tutors who are selected just as much for their soft people skills as their NGB qualifications. 10 Full time Tutors are led by a Senior Tutor and assisted by dedicated volunteers who provide additional non-technical support. Up to 150 volunteers work at the Centre throughout each year with many using the experience as part of their Duke of Edinburgh or John Muir award





scheme. Staff: pupil ratios are typically double what you would expect to see at an Activity Centre.

Head of Centre, Trevor Clarke has been with Bendrigg since 1983 following earlier roles in Outdoor Education and he is proud of the unique experiences that his team offer their visitors:

"Key outcomes can include improvements in self esteem, confidence and independence as they experience a sense of achievement through adventure."

The Trust is often asked to share the vast experience it has gained from over 35 years of working with disabled people in outdoor education and recreation. Bendrigg provide consultancy services to other independent centres and local authorities on access, equipment and inclusivity.

Funding Challenges

The capital cost of the original centre building was funded by a donation from the Mary Kinross Charitable Trust. As an independent charity, The

Bendrigg Trust has always been completely dependent on course fees and fundraising to cover its operating costs. In recent years they have faced an increasing challenge as some of their regular visiting groups have struggled to fund their annual trip to Bendrigg.

Further building projects and improvements have only been possible through donations and grants provided over the years. Projects have included a dining room extension, the rebuilding of bedrooms to make better accommodation for wheelchair users and, more recently, an indoor activity centre. Head of Centre, Trevor Clarke is currently seeking to raise £1m to build a new purpose-designed accommodation block within the grounds. He says that he has found more and more of his time has to be dedicated to fundraising activities in recent years.



Why AIM?

Bendrigg has been using the services of Activities Industry Mutual since its foundation and Trevor describes the AIM service as a "refreshing change" from his previous experiences with commercial insurers. Bendrigg value the service and the level of support provided as much as the cost-effective advantage that the mutual approach has brought to the industry.

The Bendrigg Trust is inspected on a biennial basis by the Adventure Activities Licencing Service and the Trust was one of the first centres in the UK to be awarded the AHOEC Gold Standard badge (which includes "Learning outside the Classroom" and "Adventuremark" accreditation).

More info: www.Bendrigg.org.uk

How much are you prepared to risk when it comes to Liability Cover?

Based on Elspeth Mason's Horizons article on IOL's perspective on insurance in the outdoors and IOL's partnership with AIM.

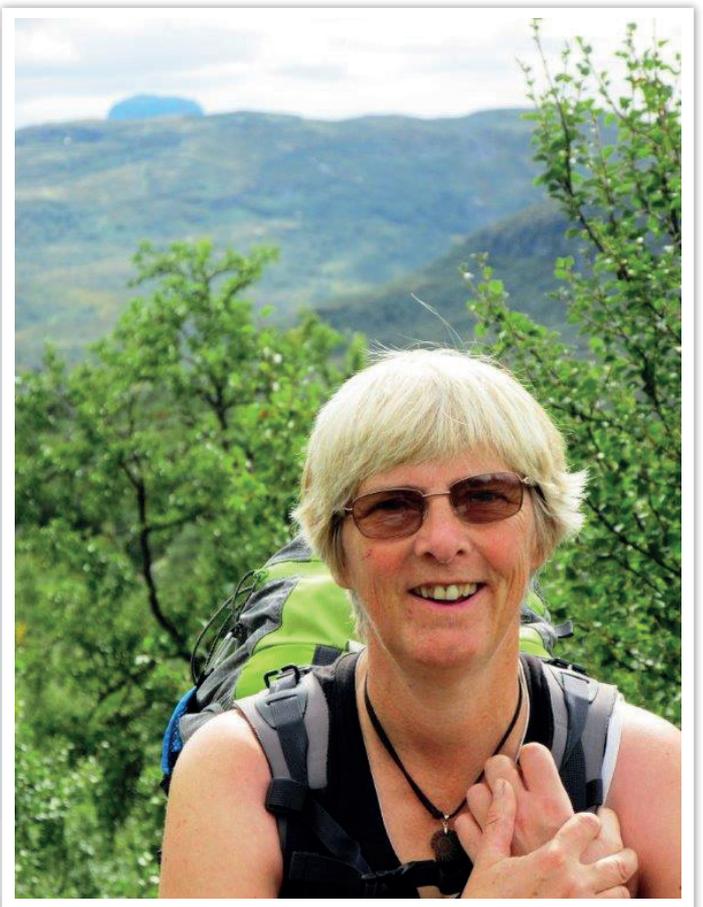
In the big world of commercial insurance and finance the Outdoor and Adventure sector often seems completely insignificant. Why is this? Perhaps because we are too small a market to interest underwriters, they do not understand the risks (or lack of them) and we do not have the commercial clout to negotiate appropriately calculated risk related fees. We are just seen as 'high risk' and have received a poor deal in terms of both price and policy conditions as a result. For quite a number of years IOL has worked with insurers to provide liability cover for members who in tricky times obviously needed to keep costs as low as possible. However, cheap deals have proved to be unsustainable in the current insurance market as proven by the closure of the JLT scheme, as they were not able to find an underwriter for activities insurance when their insurers withdrew from this market.

The Activities Industry Mutual (AIM) was formed in 2005, with James Willis providing the bridge between insurance know-how and an understanding of the sector's needs. AIM soon welcomed many members from BAPA and a steady trickle of other AALA Licensed providers, with some IOL members choosing to use AIM rather than JLT for their Liability Cover. After the research that went into the setting up of the Mutual and with all the members having been carefully selected, the Mutual could be reasonably confident that it was managing its risks well, and explain this to its supporting insurers. Time has shown this to be a sustainable proposition.

What affects the price of Liability cover?

There are a number of factors affecting this: a) how much of a financial risk the activity or organisation being covered is judged to be by the

insurers/underwriters (how many accidents have happened and how much has been paid out for these), b) the type of cover offered c) the state of the financial markets d) the level of back-up and support services provided.



AIM understands our sector and offers appropriate cover and good support. Significantly, there is a commitment to not just settle claims out of court to avoid legal costs. Too many insurers do this when faced with a claim, in order to avoid expensive lawyers' fees, regardless of whether the claim is a realistic one or not. This gives AIM a strong incentive to work with members and to support them in developing good incident management procedures and paperwork.

How can a Mutual offer us a better deal on Liability Cover than a standard insurer?

Because it is a mutual and its philosophy is set by the elected board of directors, who come from the outdoor sector so a) they are not 'shareholders' wanting dividends b) they understand the needs of the sector c) they know that if our sector looks like an easy target then we will all get spurious claims as well as real ones, and this will just undermine both what we try to do as a sector and hike up our insurance costs significantly. Consider the effect of the whiplash claims circus on car insurance for a parallel situation.

IOL and AIM's relationship until now

AIMs motto is 'Stronger Together', and that is a very similar value to what draws so many people to join IOL. We share a lot of common values and aspirations for the sector.

IOL has been steadily increasing links with AIM for some years - especially on the common ground of Lessons Learned and information sharing to prevent accidents wherever possible. The other area of joint concern with respect to the sector is the difficulty most small and medium sized organisations face when it comes to planning for a crisis situation. AIM was an obvious choice to talk to about offering cover to IOL's members who had been with JLT.

There are not many insurers at present keen to work with our sector and some that already do will only cover specific NGB activities. AIM offers cover to organisations in our sector that can show competence through licensing, accreditations, qualifications and/or experience. To replace the JLT individual policy, IOL have asked AIM to develop a new cover appropriate for freelancers.

What we Want and what we Need

What we really need from our Liability Cover is value for money rather than 'cheap', inappropriate and unsustainable cover. That is why IOL is keen to work with AIM to help them provide an effective option for many of our members, and most importantly to share expertise on accident prevention, and development of effective and

robust recording systems. There are still challenges in working out how the smallest organisations can get cost effective cover and in how to ensure that organisations of all sizes are keeping the kind of records that will help AIM explain to claimants' lawyers why accidents sometimes happen.

IOL and AIM's relationship in future

Helping members to negotiate suitable Liability Cover is one of the key drivers. However IOL's charitable aims are also about improving quality in order to enable practitioners to work with people in a sustainable and developmental way, this sometimes involves enabling them to undertake adventurous activities in challenging environments. Supporting the sector in maintaining a good safety record and empowering members to help participants take the necessary risks in order to achieve valuable learning outcomes is at the core of what we do.

Building a longer term relationship with an organisation like AIM whose values match IOL's, and which understands both the needs of the sector and the wider Liability Cover market is a great step forward and we look forward to working more closely with AIM in future to give members the help and advice they need to support their work.

Elsbeth is an IOL Chair, editor of Horizons magazine and director of Mere Mountains, a long standing AIM member.



Institute for Outdoor Learning

www.outdoor-learning.org

AIM & PHAROS

Be prepared

Seven habits for highly effective incident management

By Julian Penney and Chris Gallant of Pharos Response

You may have come across the management book, *Seven Habits of Highly Effective People*; we believe 'seven' rules can also apply to incident management. Like anything, the more planning you do, the more you'll be prepared for an incident. More importantly, as a result of being prepared, the incident is likely to have a lesser impact on your organisation and the people involved.

How prepared are you?

How would you respond to the letter from a solicitor threatening legal action following an injury sustained by a customer in your care; a visit from the Police to break the news that a member of your staff has been arrested for suspected child abuse; or many other comparable situations?

Here's our seven 'habits for highly effective' incident management:

1. Planning

In the outdoor and adventure sector, we tend to be very good at handling incidents 'in the field'. Typically, we are less prepared for how to prevent these incidents from getting worse or how to handle a more serious incident. Being prepared means identifying potential crises and writing a short plan of considerations. This isn't a lengthy prose but a punchy list of actions, guides and checklists: what to do, who to do what and who to notify. Of the AIM Members subscribed to Pharos' service to date, 53% either didn't have a plan or 'weren't sure' if they did when they signed up.



2. Speed

There is limited time after incidents when you can take control, showing people involved you're acting responsibly and working towards a solution. Your plan should outline who will be doing what and the faster they make a start, the better for organisational recovery, rather like administering first aid. Conversely, if you have to think through all the details at the time, you're in danger of sinking. The press will already be calling before you've had chance. A plan helps improve your ability to respond, and your speed of response.

3. People

You'll be making fast decisions as there is usually a lot to do. These decisions are vital in doing the right thing by those involved and also portraying your organisation as being reputable and responsible. Place 'people' at the heart of your incident response, which means making management decisions based on wanting the best possible care for the injured, the support of other group members and consideration of relatives.

If there is the smallest sign that you're putting profit before people, things swiftly turn sour. Relatives turn to the press, social media or lawyers in frustration, escalating your incident. Sometimes this could have been avoided by following the first three steps alone.



4. Take responsibility

Even if you believe the cause of an incident to be the fault of a sub-contractor or freelancer, it's important to take organisational responsibility for getting to the bottom of what happened and providing the necessary support to those affected. Appearing to be passing the buck or seeking blame breeds negative feelings. Much of effective incident management is about 'just doing the right thing'. After any incident, your organisation falls under the spotlight, perhaps by one family or by the world's media depending on the scale. How you're seen to perform under the spotlight affects how people will judge and treat you.

5. Remain visible

In the aftermath of an incident, you'll be busier than you'd like but it is crucially important that you remain visible and available to those affected. It isn't just the initial speed of response that is important but ongoing speed. If you suddenly disappear people will ask what's happened, what's to hide? Disappearing may be due to phone, email or web systems failing under the pressure, or of course you simply need a break. Either way, this can cost you dearly: a journalist printing "unavailable for comment" or an unanswered question can breed suspicion, concern and eventually claims.

6. Ethical and honest

You don't need to release all information as soon as you have it but you do need to be responsible with the information you do hold. Stalling or worse, lying, will only bite you later. Make ethical and honest management decisions.

7. Remember the bigger picture

Business continuity should be a part of your plan with people nominated to care for the day-to-day running aside from the incident. Once the eye of the storm has passed, you'll need to turn some attention to your organisation's ongoing operations and performance. Review the previous six steps when considering your own organisation, and the impact the incident may have had on it and your staff.

Assistance for AIM Members

Whether you're a large or small organisation, you will have your own challenges and your own reasons for not being as prepared as you'd like to be; usually a combination of time, money and expertise. Pharos can provide the expertise to help you plan, prepare and train for effective incident management while also being available to you 24/7 to help handle any incident. AIM members benefit from a discounted annual subscription of £125, when usually the fee would be from £995.

Often people assume Pharos is only there to help through the major incidents, but this is not true. We have recently assisted two AIM Members following climbing-related falls where, fortunately, the injuries were minor. However, both cases had the potential to become more serious than the injuries alone would suggest, but through careful stakeholder communications we were able to advise how to defuse the situation, helping to prevent these situations escalating into claims.

For more information visit:

**www.pharos-response.co.uk
info@pharos-response.co.uk**

Defending a personal injury claim

What evidence would you need to provide?

By Ben Scholes

If you were to face a personal injury or civil litigation claim following an incident at your centre, how easily would you be able to provide all the evidence required to successfully defend the claim? We all know that defending a claim can have severe financial and personal consequences for anyone working in adventure activities. Your organisation may well operate to impeccable safety standards and employ qualified, experienced staff. But in many cases, your ability to successfully defend a claim will depend on your ability to provide evidence to prove that:

- **Your staff are competent and have had the necessary training and guidance to be able to carry out their job safely**
- **Inspections of equipment, installations and facilities have been carried out on a regular, systematic basis - with appropriate action taken as a result**
- **Activities have been carried out in accordance with industry standards**

Together with your completed accident report, witness statements, signed customer risk acknowledgment and photographs from the day – your equipment inspection records, staff training documents and risk assessments will form a vital part of evidence you need to provide to your insurance company.

The problem with paper records

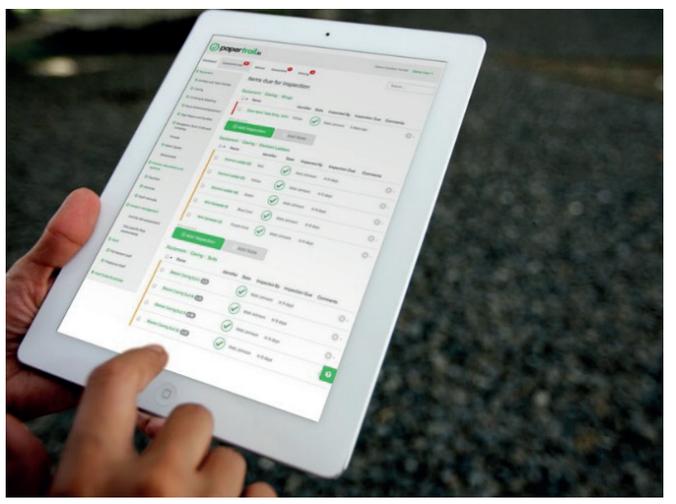
As outdoor professionals ourselves, Rob Walker and I knew only too well the problems associated with using paper records for Health and Safety record keeping – paper gets wet, can be destroyed by fire, and consumes a lot of space.

We looked around for a suitable alternative but

found nothing. Some organisations were dabbling with spreadsheets, but these were prone to user error and lacked accountability.

Frustrated but determined that there had to be a better way, we set out to create a new robust online safety management system designed to help protect outdoor operators, their staff and customers from avoidable risk.

The result, we believe, is an affordable, easy-to-use system which is already home to 95,000 records and trusted by clients including AIM members the Castle Climbing Centre, the Venture Trust and Low Mill Outdoor Centre among many others. Here are just three key areas of the Papertrail.io system which make it easy to provide the necessary evidence required in the event of a claim:



Equipment Inspection Records

The system makes it easy to prove that inspections of PPE, installations and other equipment have been undertaken systematically, by a competent person and that any necessary actions (such as repairing, retiring or quarantining items) have been carried out.

By recording all your equipment in your Papertrail account and setting inspection frequencies, your team will be reminded when inspections are due.

All inspections are logged and because each user has their own unique log-in, there's complete transparency and accountability throughout. Detailed notes and photographs can be added to equipment inspections, allowing anyone to see the history of an item from first use.



Risk Assessments

Defending a claim will invariably mean demonstrating that you have adequate risk control measures in place. It's not enough to have risk assessments and leave them in the back of a filing cabinet. You will need to be able to provide evidence that they have been reviewed, updated and action taken as necessary.

By uploading your risk assessment documents to your account and setting inspection frequencies, you can ensure that regular reviews are carried out, documented and version controlled with a permanent time stamp.

Staff Documents

With instructor error one of the most common factors cited in claims in the outdoors, being able to demonstrate staff competence is of vital importance. Staff training records, certificates and handbooks can all be added to your account, ensuring you have a permanent record. Again, reminders can be set-up to ensure notifications are received when renewals or updates are due, and periodic observations, training sessions and other updates can all be recorded in your account.

All data is backed up four times daily and partnership with the best technology providers in the industry ensures ultimate safety, reliability and security.

We know that working in adventure activities has its own set of challenges as well as immense rewards. Our goal at Papertrail is to remove some of the stress and anxiety involved in working in a high risk industry, by making it easy for your organisation to comply with legislation and maintain high standards of safety.

Ben Scholes is the CEO and co-founder of Papertrail.io, the online safety management system for professionals in adventure activities and working at height. Papertrail is planned to be affordable for organisations of all sizes. To find out more, please visit www.papertrail.io or alternatively telephone on **0800 368 8663**.



LESSONS LEARNED

Claims news

Another liability claim successfully defended - but not without legal costs

This claim for damages arose from an accident which occurred during a coasteering activity on the Aberiddy Beach on the Pembrokeshire coast on 13th September 2008. The group members were invited to slide down a smooth two metre slab of rock, and it appeared that claimant landed awkwardly and caught her foot on a projecting piece of rock at the foot of the slide, fracturing her right ankle in a shallow rock pool. Following a complaint by the injured party to the Licensing Authority on the appropriateness of the slide where she broke her ankle, the handling of the accident by the instructor and the after incident care, an AALA complaint investigation inspection took place on 14th November. The report concluded that, whilst acknowledging that the 1 to 10 ratio had been exceeded (it was 1 to 12) the slab looked innocuous enough and the others in the group had completed the slide without incident, and that the immediate first aid and summoning of help was carried out adequately.

However the claimant's solicitors, MWR Solicitors of Preston, couldn't wait for the AALA report and issued a letter of claim on 2nd December 2008 alleging that, inter alia, the provider exposed their client to a foreseeable risk of injury and failed to provide an experienced instructor. And they continued to press their case subsequent to the AALA report.

The wheels of justice turn slowly and in this case very slowly. Proceedings were issued in September 2011, four days before the three year limitation (or deadline date) and served in January 2012, seven days inside the further four month extension deadline and the case finally made it to the Southend County Court for the hearing on the 6th and 7th February 2014, before being adjourned to 23rd May for the judge to consider further written submissions.



Eventually, five years and two hundred and sixty nine days after the accident, the Circuit Judge ruled that the claimant's injury was "a true and unavoidable accident for which the defendant should not be found liable", a judgment pretty much consistent with the conclusions of the original AALA Complaint Report of some five and a half years earlier.

Although, subsequent to the ruling, AIM was entitled to recover its full legal costs from the losing claimant, as ever recovery didn't turn out to be straightforward. So, following the "bird in the hand" principle, we accepted their offer of part payment to close the account, unfortunately leaving AIM some £22,500 out of pocket.

As a post script, following the Jackson reforms (see AIM Newsletter 2013), introduced last year to curb legal costs, we, as defendants, have forfeited our ability to recover any of our costs from the losing claimant's side. In exchange for that, the claimant's solicitors are no longer able to double their charges as "success" fees and bill us, and are no longer able to recover the cost of their ATE (after the event) insurance which covers their costs in the event that they lose.

FAQ's - When do freelance instructors need their own public liability insurance?

A member asks:-

"I had a request for information on instructor insurance yesterday, which had me scratching my head. It seems that a few local authorities are now requiring any freelancers who work for them to carry their own insurance, specifically covering all activities they may be employed to deliver. I don't know what is driving this policy, but it strikes me that this could be placing a significant financial burden on freelancers, many of whom are paid minimum wage for their work.

Are you aware of any related legalities? For example, could it be related to the fact that the freelancers are self employed?"

AIM'S Response:-

"We'd say that from our standpoint, what it comes down to is: whose programme is the freelance instructor delivering in terms of its content and delivery?"

If, for example, it's the centre's or provider's programme, the freelance instructor would be acting as a "labour only" subcontractor and the centre would be liable for the standard of delivery and the content of the activity. The centre is vicariously liable for the actions of its self employed instructors delivering its programmes, whether or not the freelance instructors have their own personal public liability insurance.

If, however, the instructor is delivering his or her own programme outside the control of the centre or provider, it may be an activity that they don't deliver - let's say pony trekking - it's the freelance instructor's programme and he or she would be regarded as a "bona fide" subcontractor (BFSC). If, for example, the booking had been made through the centre, it would be recognised that the self employed or freelance instructor is responsible and liable for the content and delivery of the activity and the centre's responsibility would be to ensure that the BFSC is competent and has his own public liability insurance.

Responsibility and liability aspects are entirely separate from any tax standpoint. Further information is available on line from HSE guides and "insurance expert's" blogs".

EVENTS CALENDAR

This year AIM are offering two member events with an exciting and informative schedule. All members are welcome to attend. Further details of these events will follow by email and will appear on the website shortly. **Look out for this and don't miss out, book your place!**

IOL – Loughborough - **17th & 18th October 2014**

AHOEC – Stafford - **20th & 21st November 2014**

CCI – Derbyshire - **6th - 8th January 2015**

AIM Member Events

Mill on the Brue, Somerset - **4th February 2015**

Halifax Hall, Sheffield - **10th March 2015**



Halifax Hall Sheffield

FOR MORE INFORMATION OR QUOTATIONS PLEASE CONTACT US

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