

discover

Outdoor activity and adventure travel update

Risk management – managing vehicles and road safety

Following months of arduous planning, preparation and meetings, the equipment is finally stowed, bags are packed and excitement levels are peaking - the first day of the expedition has arrived. Whether you are undertaking an expedition in the UK or overseas, weeks of preparation will have gone into choosing your essential kit.



Hopefully, the same meticulous planning and preparations have also gone into ensuring that vehicles chosen to transport staff, clients and equipment are suitable, and more importantly, safe (whether they're owned by you or not). Under the Package Travel Regulations, you are responsible for the improper performance of the contract, even if its organised by your ground handlers, rather than your employed staff.

Going one step further, does your organisation operate a vehicle and road safety policy? If the answer is yes, then the question is whether the procedures set out in the policy are adequate and sufficient to eliminate risk, and where this is not possible, reduce risk to its lowest form, so far as is reasonably practicable? If the answer is no (or maybe), then you need to address risk management issues within the policy as a matter of urgency.

Figures provided by the Global Road Safety Partnership (GRSP) state that "every 30 seconds a person is killed

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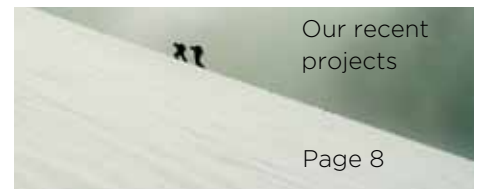
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Welcome

Welcome to our outdoor activity and adventure travel sector newsletter Summer 2009.

In this edition health and safety consultant Paul Robinson highlights a number of issues relating to vehicle and road safety policies including advising on how to minimise road traffic incidents. Paul is currently working with a household name on a wide scale project relating to pre-user vehicle safety checks and systems. Shelley Thomas provides advice on how to deal with sensitive personal data in an emergency situation, and we update you on our range of forthcoming training courses and seminars.

I hope you find this newsletter useful. If you have any queries or require legal assistance in any area, please do get in touch.

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STOP PRESS!

Hill Dickinson raises £13K for WaterAid in Six Peaks challenge

Hill Dickinson presented WaterAid with a cheque for a staggering £13,000 at a celebratory reception for the law firm's participants of this year's 6 Peaks Challenge.

As the only North West headquartered firm to take part in the challenge, which involved visiting the summits of the highest peaks in the UK within four days, Hill Dickinson volunteered an impressive 28 challengers, the highest turnout of any single participating organisation.

Managing partner Peter Jackson and senior partner Tony Wilson presented WaterAid with the cheque which will go towards the £50,000 total Hill Dickinson has pledged to raise for the charity by the end of 2009. This final amount will help provide the people of Nepal with access to clean drinking water.

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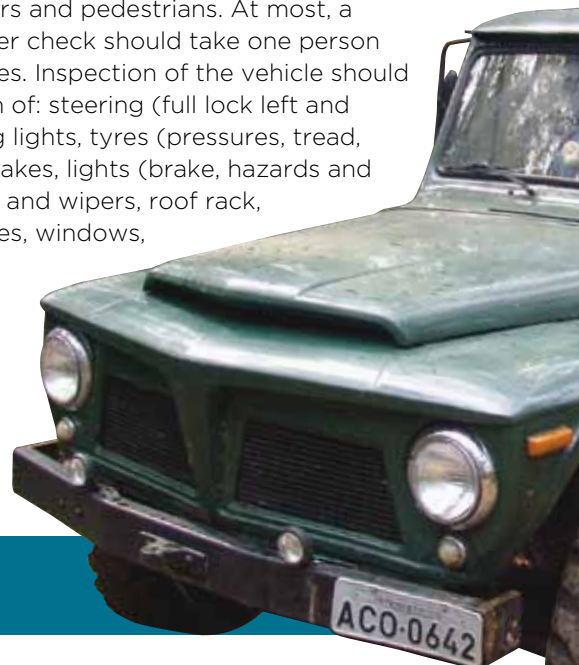
in a road crash - more than 3000 per day - and almost 1.2million people per year dying in road crashes worldwide. As many as 50 million are injured." [www.grsproadsafety.org]

Clearly these figures are alarming - they demonstrate the real risks posed to staff, clients and your organisation during expeditions. Effective risk management is the only way of minimising the risk of a serious or fatal injury occurring. A comprehensive risk assessment undertaken by a trained, experienced and competent person should identify significant hazards and adequate control measures to be implemented.

In addition to risk assessments, there are also a wide range of proactive measures which any organisation can adopt to adequately manage risk. The information below is not meant to be an exhaustive list, but nevertheless addresses some key issues when seeking to manage road and vehicle safety.

Vehicles

- **Ensure all vehicles are suitable and fit for purpose**
When selecting vehicles, consider the terrain and environment in which they will be operating (i.e. rocky steep gradients, deep mud and water, etc.). Ideally, only vehicles specifically designed and equipped to operate in these challenging conditions should be chosen. Some UK companies operating vehicles overseas use their own vehicles, maintained by UK mechanics.
- **Request copies of vehicle documentation**
For example, equivalents of MOT, insurance, vehicle specification and load capacity, where vehicles are provided through a third-party in the host country and examine this either on the recce or prior to leaving the UK. Ensure you check it relates to the same vehicle on arrival - does your 'Plan B' allow appropriate time to carry out necessary checks if a completely different vehicle turns up on day one?
- **Undertake pre-user checks of vehicles**
These are checks that are undertaken every time the vehicle is used and are one of the most effective ways of ensuring the safety of passengers and pedestrians. At most, a comprehensive pre-user check should take one person no more than 15 minutes. Inspection of the vehicle should include an examination of: steering (full lock left and right), airbags, warning lights, tyres (pressures, tread, damage and spare), brakes, lights (brake, hazards and full beam), windscreen and wipers, roof rack, door hinges and handles, windows, horn, handbrake, seatbelts (strap and tension, lock and seatbelt mounting to the vehicle frame), hazard warning sign, heaters, first aid kit and communication



“Vulnerable road users are particularly at risk, especially children. 500 children die every day in road crashes globally. In many Asian, African, and Middle Eastern countries 40-50% of people killed as a result of a road crash are pedestrians.”
 [www.grsproadsafety.org]



- **Research the route you intend on taking**
 Contact local agencies or other expedition companies to gain as much relevant information as possible before setting out. Above all, place the safety of staff, clients and pedestrians above all else – litigation is a costly business.

The scope of the [Corporate Manslaughter and Corporate Homicide Act 2007](#) extends to include driving at work. The burden of proof rests with the organisation to prove that health and safety has been implemented and compliance achieved across the organisation. Using vehicles based on price (rather than suitability) is likely to cost you significantly more in the long term, when you take into account breakdown costs, loss of enjoyment by clients, increased potential for conflict, increased risk of accidents due to unsuitability of vehicle, litigation costs and damage to reputation.

It is therefore essential companies provide strong leadership and effective risk management to protect the health, safety and welfare of employees and non-employees (clients and public) from the risks posed by vehicles and other road users. We encourage all companies to take a proactive approach towards the effective management of risk.

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equipment. If it is considered essential equipment, then it is essential that it is checked prior to use.

Drivers - as integral to safety as the vehicle itself

- **Check your drivers' licences**
 Whether you choose to employ the services of local drivers or appoint staff members as drivers, it is crucial that all drivers hold a full valid driving licence and that you have checked out the driving capabilities of the driver. It is advisable to check with the DVLA that UK drivers are not disqualified from driving. Finding this out after an accident has occurred is likely to render your insurance policy invalid.

- **A competent trained driver**
 When selecting a driver, choose an individual who has volunteered for the role. This person should be a competent and confident driver, ideally possessing a minimum of two years' driving experience. It is advisable for drivers to undertake a 4x4 off-road course (the RGS Land Rover course is very good and very cost effective), with an approved training provider, prior to the expedition commencing. Drivers should also receive sufficient familiarisation training with the vehicles they will be operating and feel confident they can manoeuvre the vehicles competently and safely. Drivers falling asleep at the wheel is a significant cause of fatal road accidents and for this reason, drivers must receive sufficient rest breaks during the expedition.

Which route – the quickest, cheapest or safest?

- **Travel along main arterial routes between destinations**
 These roads will often be the safest route from A to B. Also, unless absolutely necessary, avoid mountain passes as these are often narrow and commonly used by large agricultural vehicles and buses.
- **Drive during daylight hours**
 If you're driving on unfamiliar roads, this will significantly reduce the risk of collision or driver error, particularly during adverse weather conditions.



Data protection in an emergency situation – Q&A



Q: One of my customers recently became seriously ill on an overseas trip; in order to repatriate her quickly we needed to contact a number of different airlines and they all wanted information on the customer's medical condition. I am aware from recent training you gave us that information about a customer's health is 'sensitive personal data' under the Data Protection Act 1998, and as such we have to be careful how we handle it. We gave the information to the airlines as this was the only way to ensure that the customer got home and got the treatment she needed – did we do the right thing?

A: You're right to point out that information about a person's mental or physical health is 'sensitive personal data' and needs to be treated with great care under the Data Protection Act 1998 (DPA).

Schedule 3 of the DPA sets out the criteria you need to satisfy in order to 'process' sensitive personal data. 'Process' has a very wide meaning, and would include giving the information to the airlines you mention.

The most widely used criterion is 'express consent'. You could have obtained this before the trip (for instance at the time of booking) by asking the person to fill in a form allowing you to pass their details to an airline in the event that they are ill and need to be repatriated. If the person was conscious after falling ill, you may also have been able to get their consent from them at that stage.

But what if the person is not conscious or doesn't give consent?

Another criterion in Schedule 3 sets out that information can be shared if:

"the processing is necessary in order to protect the vital interests of [the person] or another person, in a case where:

- (i) consent cannot be given by or on behalf of the [person],
- (ii) the [person/organisation holding the information] cannot reasonably be expected to obtain the consent of the [person], or

(iii) in order to protect the vital interests of another person, in a case where consent by or on behalf of the [person] has been unreasonably withheld".

This provision allows you to share information where the person cannot give consent because they are likely to suffer further harm if you do not do so. If they refuse, it also allows you to share their information if it is in someone else's 'vital interests', and that 'someone else' could be you and your company. Every case turns on its own facts, but it is difficult to imagine a situation where you would be criticised for sharing the information with an airline in order to repatriate a seriously ill person.

One thing worth mentioning is that this is not a licence to share all of the person's information with the airline; you must only share as much information as they need in order to provide the repatriation service. So, for instance, you may need to share their name and the nature of the illness, but you might not need to share credit card details, or details of their next of kin.

For further information on this or any other data protection query you might have, please contact:

Shelley Thomas
shelley.thomas@hilldickinson.com

*“Excellent seminar. More than I was expecting... very useful and offered new knowledge. Gave lots of things to think about and good strategies from planning through to defending claims”**

Seminars and training

Central Law Training seminars

Matthew Davies, the team head will be a speaker at a Central Law Training (CLT) seminar which will cover information and advice on injuries sustained from activities and on school trips in September.

Outdoor activity and adventure travel seminar

Due to huge demand and fantastic client feedback following our debut seminar delivered in February 2009, we will be running the two day seminar once again on 1 and 2 March 2010 at our Liverpool office. The 2009 event was a sell out with companies and organisations attending including leading outdoor and expedition companies, industry bodies, insurers, brokers and academia. Course details and costs will be circulated shortly. For more information contact matthew.davies@hilldickinson.com.

*“It was certainly well worth the investment of time. It posed many questions and scenarios that require careful thought and have real benefit and application back in the working environment.”**

Please note that the Liverpool School of Tropical Medicine ‘Travel and expedition medicine course’ will be held the previous week (22 – 26 February), with an expedition care programme medics course run over the weekend (27 – 28 February) placing Liverpool very firmly on the map for those in the outdoor and expedition sector.

Data protection training

Due to overwhelming demand for further data protection training following the highly successful seminar in February 2009, Shelley Thomas will be running two dedicated one day seminars, tailored to the outdoor activity and adventure travel sector. These will be held in our Liverpool office on 29 October 2009 and in our London office on 21 January 2010, and will cost £110.00 (plus vat at 15%). If you would like more information, or wish to book a place, please contact julie.potts@hilldickinson.com.

Crisis media training – an introduction

We are planning to run a number of introductory crisis media training courses with 3 March confirmed so far (the day after our outdoor and expedition/adventure travel sector seminar).

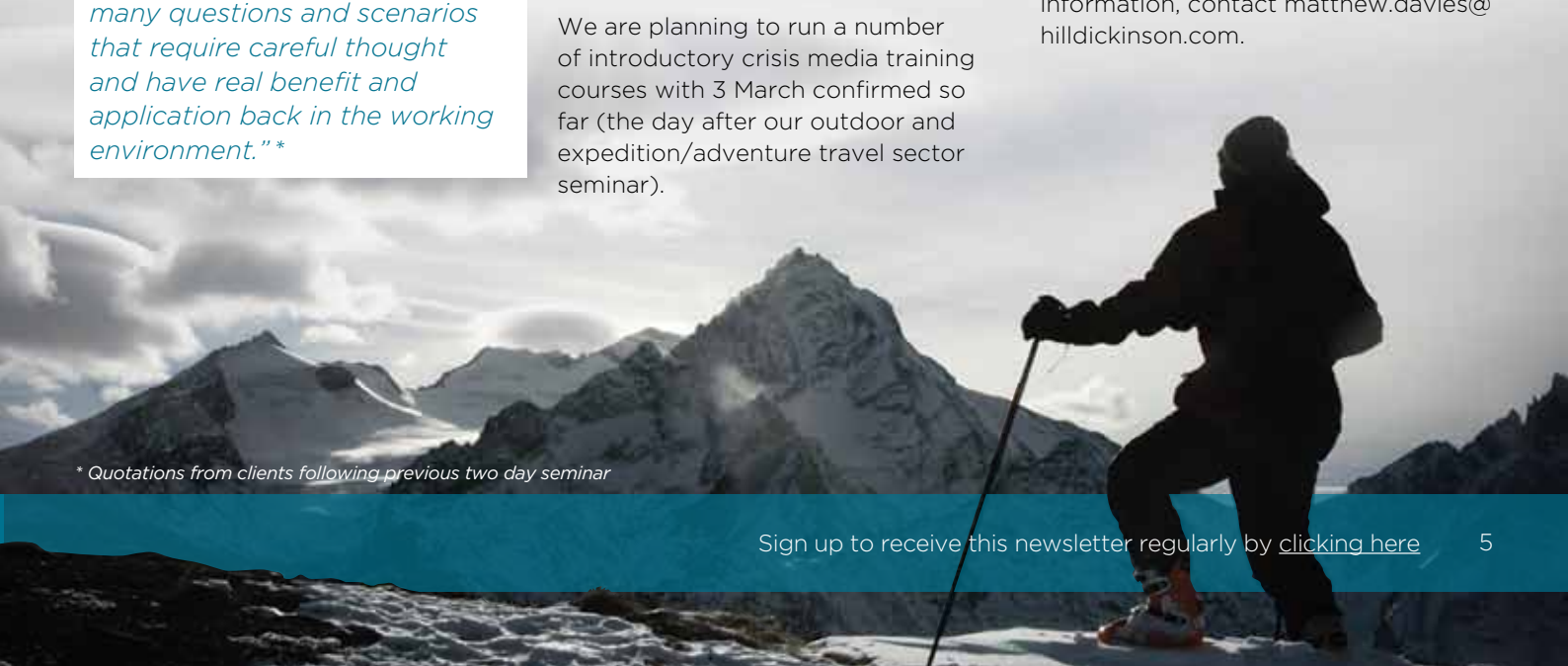
The course will be delivered by our staff (with crisis media and incident training and practical experience) along with BBC broadcaster, journalist and newsreader (with print, media and radio journalist background), Jane Cheater. Jane has wide experience in all aspects of delivering breaking news stories via the media - from radio to television and documentaries. She has also covered several high profile media investigations (including the Rhys Jones, Anthony Walker and Michael Shields cases) and provides media training to public and private sector businesses.

The course will address a number of core issues including:

- media behaviour following an incident;
- press releases;
- written media (newspapers etc);
- radio and television; and
- crisis plans – an introduction.

Course invitations will be circulated shortly. If you would like to receive all course invitations, or for more information, contact matthew.davies@hilldickinson.com.

* Quotations from clients following previous two day seminar



Off site safety management course

The off site safety management course will be familiar to most of you. The two day course is an excellent foundation level introduction to off site safety issues and is relevant to a wide variety of people, from those taking children to the local park to managers organising more complex and adventurous activities overseas.

Following numerous client requests, Hill Dickinson is offering an off site safety management training course on 26 and 27 November 2009.

What will the course cover?

The course covers core elements including:

- planning;
- managing;
- evaluating off site visits;
- risk management; and
- minor and major incident planning and response.

It is also relevant to those seeking compliance with BS 8848 – the specification for the provision of visits, fieldwork, expeditions and adventurous activities outside the UK. As you would expect, the course will also address legal issues with plenty of case studies.

Who is it aimed at?

The course is aimed at our outdoor and expedition sector clients as well as our education sector clients. The event also forms an element of the training for our own in house crisis response teams.

Who will deliver the course?

The course will be delivered by Matthew Davies (head of our activity and adventure travel team) who has dealt with the aftermath of numerous outdoor and adventure travel related incidents - he is also an expeditioner, and an outdoor safety and expedition medical instructor.

Matthew will be assisted by Paul Robinson, a law graduate and an experienced and highly qualified health and safety consultant. Paul has worked both in the UK and overseas designing and implementing safety systems from clients as varied as BNFL (Sellafield) to Europe's largest rail project and has also worked for the Health and Safety Executive investigating accidents. Paul has received training in relation to BS:8848 and works with a number of our outdoor and expedition sector clients on safety systems and safety standard compliance for both their UK and overseas activities.

Matthew delivered the course as an OCR approved instructor, and is also an approved and registered trainer for the course with the Royal Geographical Society (with the IBG) now that OCR has ceased running the course (instead being run by the RGS). Matthew has previously provided off site safety management training to teachers, outdoor instructors, expedition leaders and other outdoor professionals with excellent feedback.

Dates and costs

The two day course will be held on 26 and 27 November 2009 at our Liverpool office, and will cost £207 (£180 plus VAT at 15%). Those attending the course will receive a certificate of attendance from the RGS (with the IBG).

For further information or to book a place on any seminars or training courses, please contact matthew.davies@hilldickinson.com.



Crisis response services

"Matt Davies is a leading legal 'name' in this field and it's clear why - we can trust him and respect his advice - he is an excellent lawyer who understands the industry because he has been on and planned and attended expeditions... He has experience of dealing with the problems that affect our business and is there 24 hours a day if we need him in an emergency...with a down to earth approach he provides sound, decisive, practical and effective advice rather than legal jargon. You want him on your side in an emergency."

Alistair Cole, Managing Director, Adventure Lifesigns Ltd.

Fielding a significant travel team, this firm is praised for its "exceptional experience of crisis and disaster response."... "you'd definitely want it on your side if you were facing a crisis.

Chambers and Partners
UK 2009

The team has supervised several highly publicised catastrophic injury claims on behalf of the supplier. These cases have demonstrated its proficiency in crisis management; it has the facility to second specially trained lawyers to the client to tackle media fallout and produce public statements...

Chambers and Partners
UK 2008

Well it's that busy time of year again and we hope everyone has had a safe and enjoyable summer season. However if the worst should happen to your company, and an 'incident' occurs, we have services to assist you in the immediate aftermath.

We provide a spectrum of crisis response training and services to a wide client base including:

- immediate emergency legal advice and support;
- investigators ready for dispatch;
- media training/response;
- 24 hour emergency helpline response facility (available by prior arrangement); and
- response by trauma counsellors on your behalf (provided by third party).

We also assist with proceedings arising after the incident, including representation at coroners' inquests and subsequent civil and criminal proceedings.

If you would like to receive further information about this invaluable service, please contact matthew.davies@hilldickinson.com.



Our recent projects

Members of the team have been busier than ever these last few months, delivering services for a wide variety of clients including:

- New company set-ups
- Crisis response
- Incident response training for a company operating in varied remote environments in Asia (training delivered in Asia)
- Lectures and training including at the launch of BS8848 at the RGS and MLTE at their conference at Plas Y Brenin, The National Mountain centre
- Terms and conditions (brochures and websites)
- Indemnity contracts with service providers
- Health and safety consultancy and audit
- Advising in relation to possible health and safety prosecution of an outdoor company
- Outdoor event/race contracts
- Data protection advice
- Safety standard compliance and implementation including BS:8848 and EPA Safety Badge
- Child protection issues
- Intellectual property

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About Hill Dickinson

The Hill Dickinson Group offers a comprehensive range of legal services from offices in Liverpool, Manchester, London, Chester, Piraeus and Singapore. Collectively the firms have more than 1,100 people, including 160 partners.

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