



A GUIDE TO CHARITIES

This guide helps describe the different types of insurance available to the trustees of the charity, some of which is mandatory.

1. Why is insurance required

- Trustees have a duty to safeguard the property of a charity, not only from direct loss but also from third party liabilities.

These losses would otherwise have to be satisfied by the charity. If trustees unreasonably fail to discharge this duty they may be personally liable to make good the charity's losses. Due to this, it may be appropriate to take out insurance as a means of discharging this duty.

2. What are the trustees' powers and duties with regard to insurance

The Trustee Act 2000 gives trustees' a clear power to :

- Insure any property which is owned by the charity against loss or damage.
- Pay the premiums out of charity funds.

The power in the Trustee Act does not apply to charitable companies, except where they are trustees, but the powers expressed in the company's memorandum of association will normally be wide enough to authorise the purchase of this type of insurance.

There may also be a requirement by law to take out certain types of insurance. For example if the charity owns a mini-bus which is used on the public highway, there is a duty to obtain motor insurance. Furthermore, if the charity has employees, then there is a statutory requirement to obtain employers liability insurance.

Therefore where trustees have a power to take out insurance against loss or liability and fail to exercise it or discharge their duty, then they may become personally liable for any loss or liability which may result.

3. The different types of insurance

Buildings

Whether the charity is the freehold owner, the lessee or a landlord, important consideration must be given as to who is responsible for the insurance of the buildings.

If it is the charity, it is recommended that the trustees should insure the building for its full re-instatement value, even if there is no actual duty to do so. This means that the sum insured should be sufficient to meet the cost of :

- Any demolition work which might be necessary
- Clearing the site
- Professional fees (architects, surveyors etc)
- Replacing the building
- Complying with any relevant planning requirements &/or regulations



It is very important that the sum insured is adequate as if in the event of a claim the amount is found to be inadequate; the trustees may be liable to meet the shortfall, as they ought to have purchased more extensive cover.

To ensure that the sum insured is adequate you should also take into consideration the cost of fixtures and fittings (such as lighting, heating, sanitary ware and ancillary items). It is recommended that the trustees obtain advice from a qualified building surveyor.

Some policies will provide index linking to the sum insured each year or a built in automatic inflation provision clause, to protect the sum insured due to inflation changes during the period of insurance. This will only avoid the possibility of under insurance if the original sum insured was correct.

Subsidence cover is not usually included as standard under a commercial building's insurance. Consideration should be given as to whether this cover is required. Should building damage occur due to subsidence and cover is not in force trustees may be liable to meet the costs or repairs/rebuilding if charitable funds are not sufficient.

Where the charity is the lessee or landlord and the responsibility of the insurance falls on the building owner or tenant, then it is very important that the trustees obtain a copy of the buildings schedule, to ensure adequate insurance is in place.

Contents

Trustees have a duty to protect all charity property such as furniture, equipment and money. They need to consider if the insurance should be:

- On a "new for old" basis
- Covers losses for accidental damage &/or theft
- Provides insurance for specified items used outside of the premises
- Covers money whether on the premises, in transit etc.

It is very important that security measures are reviewed in order to minimise the risk of loss and could well lead to the insurance cover being easier to obtain. Furthermore, it is imperative that any security warranties advised by the insurer's are complied with to ensure full cover is in place.

Some policies will provide index linking to the sum insured each year or a built in automatic inflation provision clause, to protect the sum insured due to inflation changes during the period of insurance.

Public Liability Insurance

This cover will provide the charity with protection against any legal liability to pay compensation for accidental death, injury or disease to any person and for accidental loss or damage to property occurring as a direct result of the activities of the charity.

The cover offers protection against:

- Visitors and trespassers on the charity's property
- Business activities carried on away from the premises such as the arrangement of events attended by the public
- Products supplied or sold to the public
- Treatment Risks (where administration of drugs is provided)



In this way, the charity, its trustees' employees and volunteers would be indemnified against claims from members of the public for injury, loss or damage, caused during the course of the activity, event or product.

The trustees must ensure that the indemnity limit is adequate and complies with any requirements put to the charity. Again trustees could find themselves liable for any shortfall if the sum insured is inadequate.

Employers Liability Insurance

Charities which have employees have a statutory duty to take out employer's liability insurance as a result of the Employers Liability (Compulsory Insurance) Regulations 1998, in which all employers are required to have a minimum insurance cover of no less than £ 5 Million, for injury or disease suffered or contracted by employees whilst carrying out their duties.

A Certificate of Employers Liability must be displayed at a prominent place at each & every premises occupied by the charity. This may also be in the form of electronic version.

What about volunteers ?

Is employer's liability insurance required for volunteers ? What if the charity was sued by a volunteer, following an injury whilst carrying out a charitable activity as directed ? It is advisable that trustees regard volunteers as employees and that they are appropriately covered by the usual insurance's such as employers liability or public liability. Therefore, it is very important that volunteers receive adequate training and supervision, in accordance for example, with the Health and Safety at Work Act 1974. The trustee should check the policy to see how the term volunteer is defined and also keep accurate records of the volunteers working for the charity.

Motor Insurance

If a charity owns or has use of a motor vehicle, the trustees must ensure that they comply with the provisions of the Road Traffic Acts which make it compulsory to obtain motor insurance. In the event that any of the trustees, employees or volunteers are using their own vehicles during the course of carrying out charitable activities, the trustees are advised to check that the owner of the vehicle in question has adequate insurance to cover that use. You should also at least yearly obtain copy driving licences for all drivers, copy M.O.T certificates and insurance certificates. Care should be taken when allowing persons to drive vehicles to ensure they hold the relevant licence entitlement. Furthermore, the trustees must also check that the relevant liabilities are in place with regard to vehicles including minibuses that are transporting others.

Fidelity Insurance

Cover can be obtained to make good the loss to the charity arising from fraud or dishonesty by any of its employees, where they are handling the charity's cash or other valuables. This cover can be extended to include fraud or dishonesty on the part of volunteer's or trustees.

Fund Raising Events

Organisers of fund-raising events such as fetes, shows and galas often take out cover against losses arising from cancellation of the event due to bad weather. This is commonly referred to as "pluvius insurance". There are usually strict time limits and arrangements for measuring rainfall levels with this type of insurance. Insurance can be obtained in respect of appeals to cover the costs of establishing and administering the appeal, where the response to the appeal does not match up to expectations. It could also be extended to cover loss of



cash raised at an event when being carried or kept overnight or over a weekend at the private dwelling of a nominated or senior individual of the charity. When proposing a large fund-raising appeal, trustees should consider whether this type of policy is appropriate.

Activities – Consideration should be given to the nature of activities provided at the event (such as bouncy castles etc) and to ensure the relevant liability cover is in place. Where a third party supplier is being used you should ensure they hold appropriate liability cover, with an indemnity limit not less than that of the charities own liability limit of indemnity.

Legal Expenses Insurance

This provides cover to indemnify the cost of certain legal expenses which may arise if the charity has to bring or defend legal proceedings and would otherwise be payable by the charity out of its own assets (unless recoverable from the opponent). Where this form of insurance covers the costs of an employment dispute, it usually also covers the charity's liability (as employer) for any specified compensation awarded to the employee. The cover can normally extend to include actions brought against the trustees, employees and volunteers.

Cover may also be provided for Tax Investigations, Contract Disputes and Statutory Licence Protection

Legal Expenses Cover can either be purchased either on a 'stand alone' basis or as part of a package of covers.

It is also possible to buy legal expenses insurance *after* a particular need for legal action has been identified, when the cover will protect the charity's uncertain exposure to costs in dealing with the existing claim or dispute.

Legal advice helplines

Some legal expenses and other insurance policies available to charities include free access to legal advice, tax advice and counselling usually through a telephone helpline. Such a service can be useful when there is a problem upon which advice is needed urgently before it develops into a possible loss or claim, whether or not covered by any of the charity's insurances.

Loss of revenue/increased cost of working

Insurance can be arranged to cover reductions in a charity's business income and/or increases in its overheads if the business is disrupted as a result of a fire or other event causing damage to its premises and/or equipment.

Where loss of income is to be covered consideration should be given to the indemnity period required, it may take longer than 12 months for a charity to be in a similar position it was prior to the loss occurring.

Increased cost of working, cover should at least meet the cost of hiring new premises and/or equipment for the duration of any building work or whilst awaiting the replacement of equipment.

Cover for loss of rent payable/receivable where applicable should also be considered.



Professional indemnity insurance

Where a charity is providing, whether contractually for a fee or otherwise, a professional service (such as counselling) or any form of advice or information, the charity may be liable if this is provided negligently. It is therefore prudent to consider insurance against claims that the charity is legally liable for loss, injury or damage sustained when that service was provided or as a result of following that advice or using that information.

The terms of such policies require careful consideration. If (as is common) the policy only covers claims which are instituted during the period of cover, regardless of when the allegedly negligent advice was actually given, then the trustees may need to consider setting aside sufficient funds to meet the premiums for a period of several years (in accordance with professional advice) after the advice was given. This period may extend beyond the dissolution of a charity.

Staff sickness/Personal Accident

Insurance can be obtained to cover the costs of paying sick pay to employees &/or benefits following an accident whilst undertaking charitable activities (Personal Accident benefits may also be available to volunteers)

Trustee indemnity insurance

Trustee indemnity insurance indemnifies trustees against the risk of personal liability, whether to the charity or to a third party, arising from a 'Wrongful Act' such as a breach of duty or breach of trust. Where the charity is incorporated or where it carries out a part of its business through a separate company, the trustees' personal liability for their wrongful acts as a company's directors or officers is similarly covered. What distinguishes trustee indemnity insurance from the other types of liability insurance is that it provides cover against liabilities which are those of the trustees, rather than those of the charity.

Trustee indemnity insurance provides a personal benefit to the trustees it insures. The benefit is negative rather than positive because the cover only removes the trustee's obligation to meet a liability out of his or her own pocket. This is regarded as a personal benefit and the relevant legal authority is required. Since the introduction of the Charities Act 2006, the charity's purchase of trustee indemnity insurance no longer needs to be explicitly authorised in the governing document of the charity, however if it is expressly excluded in the governing documents this must be referred to the charity commission. It is of course open to the trustees to arrange and pay for their own insurance privately, if they wish.

The governing documents of some charities contain provisions which limit the liability of trustees to the charity itself for breach of trust. Alternatively the court may agree to relieve a trustee of part or all of a liability. If such a provision or relief applies in relation to a particular loss, trustee indemnity insurance will not cover it, but will only cover the trustees for those losses of the charity for which they are actually liable. The charity will have to bear any further loss.

Trustee indemnity insurance cannot as a matter of public policy provide an indemnity to a trustee for his or her personal liability for:

- Fines and Penalties
- The costs of criminal prosecutions for offences arising out of the fraud or dishonesty or willful or reckless misconduct of a trustee;
- Liabilities to the charity which result from conduct which the trustee knew, or must be assumed to have known, was not in the interests of the charity or which the trustee did not care whether it was in the best interests of the charity or not.



Trustee indemnity insurance is often provided under a single policy or in combination with other cover, for example professional liability or for losses caused to the charity through the trustees' dishonesty or through a loss of documents.

Insurance Brokers

When seeking proper independent professional advice, it is advisable to use an insurance broker who has an appropriate understanding of charities insurance needs and who can place the relevant cover required with a range of insurance companies including specialist charity insurers.

Why use M Wood Insurance

We are well established as an Independent insurance broker founded on Christian and Ethical principles, specialising in the Charity and Christian insurance sectors. By using our specialist knowledge and insurance connections, we would endeavour to take over these responsibilities for you. As we do not normally charge fees for our service, there would be no additional costs involved to you in using our resource and we would be pleased to offer our professional guidance and expertise where invited to do so.

For a free and without obligation review of your insurance needs please feel free to contact us on 0845 130 30 34 or either of the following contacts:

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