

Charity and Association Liability



Evolving Risks

Through our considerable experience of insuring charities and associations, we have developed expertise in recognising and dealing with the legal liabilities faced by **all** interested parties.

Today, an ever increasing number of charities and associations are using their particular area of expertise commercially, to generate much needed extra income.

Research and development, property management, social and welfare services, care in the community, design consultants and training are just a few examples of the types of commercial work undertaken by charities and associations today. Indeed, many undertake work for each other when they do not have the necessary expertise 'in-house'.

We have developed our policies to provide financial indemnity and peace of mind in the face of all these liabilities including protection for their professional and fee earning work. The cover can be tailored to suit the individual needs of the smallest local interest charity to the largest multinational aid agency.

Potential Liabilities for Trustees

Individuals responsible for the management and administration of a charity or association are often unpaid but this does not absolve them from their duties as trustees and managers or protect them from numerous potential liabilities.

Innocent or inadvertent breach of trust

The duties and responsibilities of trustees are summarised in publication CC3 produced by the Charity Commission of England and Wales. They include, inter alia, the application, protection and investment of the charity's property, supervision of the charity's employees and agents together with the maintenance and preparation of the charity's accounts.

Trustees duties are derived from the deed or document governing the trust, from statute and from common law. Inadvertent neglect or ignorance of these duties can lead to breach of trust or duty and the potential of unlimited personal liability for the trustees involved.

... in a niche of our own

The Charity Commissioners will not allow any indemnity to be provided at the expense of the charity where trustees knew or recklessly disregarded the fact that they were committing a breach of trust or duty. Trustees may find themselves in the position of having to prove that they made an 'honest' mistake.

Even trustees who acted honestly and reasonably will often require expensive legal advice and representation before ultimately being relieved of personal liability and/or indemnified for such liability out of charity funds.

Although trustees who have acted honestly and reasonably may be entitled to indemnify for personal liability out of charity funds there is no guarantee of such indemnity, especially if the charity is insolvent (or may become so if such a liability was to be met).

Liabilities to third parties

Trustees personal liabilities do not begin and end with breach of trust. There are many aspects of a trustee's duties that may involve exposure to liability from third parties in tort or contract. For example, trustees who provide advice or services in the course of their work for the charity may incur personal liability for negligent errors or omissions. There is nothing to insulate charity trustees from these commercial liabilities which are becoming more evident in the modern world.

Liability as a director

Where a charity or association is incorporated, the specific responsibilities and potential liabilities of directors must be considered.

A whole raft of legislation and case law imposes duties upon directors independently of their duties as trustees. For example, in the Companies Acts alone there are more than 200 provisions for imposing fines and penalties upon directors.



Other Liabilities and Exposures

Those people involved in supporting and managing a charity expect the majority of its funds to be applied in pursuit of its charitable purpose and for an association they expect such funds to be utilised in accordance with the stated aims of its constitution. However, there are many other potential drains, legitimate or otherwise, upon charity and association resources.

When the charity or association indemnifies an innocent trustee or director

A trustee or director who has incurred personal liability in the service of the charity or association but who has acted honestly and reasonably may be entitled to an indemnity from the charity's or association's finances. As both the charity/association and its trustees/directors are afforded an indemnity under our policy, legal wrangles over who pays what and when can be avoided.

Professional liability for advice and services

Where any form of advice, information or service is provided by or through the charity or association (gratuitously or otherwise) the charity or association, its governors, directors, council members, officers, trustees, employees and/or volunteers may be faced with liability for errors or omissions.

Charities and associations have provided numerous specialist services, primarily on a 'not for profit' basis, for many years but nowadays individuals, businesses, local authorities and government departments are appointing charities and associations, on a commercial basis, to undertake 'professional' work on their behalf.

Such appointments are diverse in nature and these out-sourced contracts are generating important commercial income for the charities and associations involved.

Whilst the recognition of their expertise and the ability to add a further income stream is welcomed by the charities and associations, it is important for them to appreciate that they owe a duty of care to those with whom they have contracted to do such work.

In the event of something going wrong, legal redress is more likely to be sought by parties who have entered into such a commercial relationship.

Loss of Documents

If charity or association documents, or documents for which they are responsible are lost or destroyed, for example, deeds (trust or title), accounts, correspondence etc. then charity or association money may have to be used to fund their replacement or restoration.

Responsibilities as an Employer

Notwithstanding their status, charities and associations are no different to commercial organisations with regard to their responsibilities to employees.

They too, are affected by the increasingly complex minefield of rules and regulations emanating from employment legislation.

Employment disputes are becoming more frequent, are more costly and are one of the fastest growing areas of legal liability.

When the charity/association is the victim of fraud

Charity and association governors, directors, council members, officers, trustees, employees and volunteers are often entrusted with cash, including donations, or given the means to authorise financial transactions in the name of the charity or to access its accounts.

Unfortunately, the temptation sometimes proves too much and the charity or association can become the victim of fraud or other dishonest and malicious acts.

Insurance

Cover is available for a charity or association, whether incorporated or not. It extends protection to include all employees, where appropriate, and makes provision to cater for external 'not for profit' and shadow directorship appointments.

Cover is provided under separate insuring clauses as appropriate.

Executive Liability

Provides indemnity (on a pay on behalf of basis) to the managers of the charity or association for personal liabilities incurred whilst acting in that capacity arising from a 'Wrongful Act'. Includes cover for damages, own and third party costs and expenses.

Broad definition of Assured includes governors, directors, council members, officers, trustees, extended to incorporate shadow directors and employees, as appropriate and their spouses, estates, heirs, legal representatives or assigns.

Where the charity or association is under an obligation to indemnify such persons, the policy will reimburse the charity or association.

Cover also extends to include the costs and expenses incurred by the assured attending official investigations.



Professional Indemnity

Indemnifies the charity, association, its managers, employees and appointees against damages, own and third party costs and expenses which arise from a 'Wrongful Act' committed in the conduct of the charity's or association's 'professional services'.

Broad definition of 'Wrongful Act' includes any actual or alleged wrongful act or omission resulting in a **civil liability**.

Documents

Indemnifies the costs and expenses of replacing or restoring documents destroyed damaged lost or mislaid in or about the conduct of charity's/association's 'professional services'.

Employment Practices Liability

Provides protection for employment disputes (including the possible consequences of 'whistle blowing'), together with costs incurred at official investigations, inquiries and other proceedings instigated against the charity or association, by proper authorities in respect of employment discrimination and health and safety.

Cover attaches in respect of disputes with all types of employee, other than volunteers.

Fidelity

Indemnifies the charity or association against losses caused by dishonest, fraudulent, criminal or malicious acts of managers or employees committed for personal gain.

Charity Guidelines

The Charity Commission for England and Wales has established guidelines for charities and their trustees purchasing insurance. These guidelines are summarised in publication CC49 available from the Commission.

If the charity's governing document does not include a power to obtain trustee indemnity insurance, it will be necessary to seek authority from the Commissioners to amend the governing document so as to include such a power.

Broadly speaking, the Charity Commissioners do not object to, and will if necessary, authorise payments from charity funds to purchase appropriate trustee indemnity insurance.

Until recently, applying for Trustee Indemnity Insurance was often considered to be a complex procedure, with charity trustees having to put forward a detailed case to the Charity Commission for England and Wales in order for them to authorise the purchase of indemnity insurance from the charity funds.

As insurance is technically a benefit to trustees and not the charity, using the charity funds requires authorisation from the Commission.

The Charity Commission recognised that the issues surrounding the purchase of insurance may deter some charities from recruiting new trustees as unnecessary obstacles were placed in their way.

After a detailed review of this procedure, the Charity Commission has sought to move towards a 'self-certification' approach making authorising the purchase of insurance simpler, details of which are summarised in their Operational Guidance Notes – Ref. OG100C4.

Once the charity has certified that all the risks which they are exposed to have been identified and that it is in the best interests of the charity to purchase insurance, the Commission will generally authorise the purchase.

Scottish Charities

At the present time there is no 'Charity Law' for the operation of charities in Scotland.

The highly respected Scottish Council for Voluntary Organisations has long campaigned for legislation in this regard and the Scottish Parliament is likely to introduce a Charity Bill in the not too distant future.

Any legislation and consequent trustee liabilities are likely to reflect those faced by their English and Welsh counterparts.

Why Choose Markel?

Our wordings have been designed to respond to the traditional trustee and management liability exposures (including employment) **AND** the professional liability risks which those Charities and Associations trading in a commercial environment now encounter in an increasingly litigious society.

Cover can be purchased to provide indemnity for governors, directors, council members, officers and trustees **AND** the charity or association for both financial loss and legal costs and expenses.

We are not an Insurer who utilise the services of 'outsourced' telephone helplines.

It is our belief that in the event of a claim OR a circumstance developing which may result in a claim, then our own claims department should become involved.

Our readily accessible and experienced team of professionals can quickly evaluate a situation and then, as necessary, call upon the services of appropriately qualified specialists, to help manage the situation effectively.

This brochure is not a policy document and contains only general descriptions and illustrations. Policy holders must refer to the actual policy issued for the binding terms, conditions and exclusions of cover.

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