

**Insurance for the
Voluntary Sector**

**50 Chapel View
South Croydon
Surrey CR2 7LF**

**T: 0208 651 9638
F: 0208 651 9634**

www.charityinsurance.co.uk

Trustee and Officers Indemnity Insurance

Presentation for Reigate & Banstead CVS

76 Station Road Redhill Surrey RH1 1PL



by



**Simon Hickman FCII
Chartered Insurance Broker**

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- We specialise in the voluntary sector.
- Acting for a range of charities, churches and voluntary groups.
- A wide range of organisations of all sizes from the smallest to clients with premium spends of up to £150,000.
- We operate on both a commission or fee basis.

How can we help you?

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- Unbiased advice.
- Analysis undertaken of your needs .
- Claims assistance.
- Technically qualified staff help get the right cover.

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- We are a charity broker capable of providing a high degree of individual attention in a responsive and professional manner. We are not the largest but can best be described as a professional boutique or practice.
- Customer comments:
 - "Very responsive, friendly and efficient and carried out a full and thorough review. We feel happy that a sector specialist is looking after our insurance requirements."
 - "Friendly, always helpful and find the best prices. Access Insurance concentrate on charities and know the homeless sector."
 - "Very understanding of our requirements and their knowledge proved most beneficial to ensuring we have the cover appropriate to our needs and work. The price and cover have been very competitive and the service excellent, timely, helpful, courteous and professional at all times."
 - "We have found Access Insurance to be helpful, professional and extremely supportive in helping us drive down some of the necessary costs of insurance for our charity."

Trustee Indemnity Insurance?

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What is it?

- The equivalent in running a charity to Directors and Officers insurance in running a company.
- Gives protection to individual trustees for claims for a “wrongful act” which are sometimes also described as claims for breach of trust or breach of duty as trustees or negligence or default as a charity director.

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What it is not

- Protection for claims for property damage or bodily injury to third parties (Public Liability).
- A relief from personal liability if a charity cannot pay its debts.
- Generally a cushion for anything which goes wrong with a charity arising from changes in the external political, social or operating environment.

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What it cannot cover

- fines imposed in criminal proceedings, or penalties arising from regulatory action; (e.g. failure to pay tax or submission of documents to Companies House.)
- costs of defending criminal proceedings in which the trustee is convicted of fraud, dishonesty, or wilful or reckless misconduct; and
- liability arising out of conduct which the trustee knew, or should have known, was not in the interests of the charity.

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- **What is a wrongful act?**
 - Difficult to define but:
 - Trustees duties originate from the deed or governing document, from statute and common law. If a trustee inadvertently or ignorantly neglects these duties this can lead to a “breach of trust” and the potential for a claim which could be unlimited in amount.
 - Best to look at some claims examples.
 - http://www.accessinsurance.co.uk/docs/Charity_Claims_Examples.PDF

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- We do not have a personal liability as we are a corporate charity and our liability is limited to £1.00
 - Ignores the liabilities that directors have under Company Acts.
 - Ignores the need for the organisation to continue to operate.
 - Exposes them to personal liabilities arising from contracts or redundancy payments by not purchasing adequate protection.

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- A trustee is able to purchase insurance for their own benefit. However these policies are not readily available – some household policies have options but have low levels of cover.
- A charity can purchase for the benefit of the trustees under the 2006 Charities Act so long as there is no express prohibition specifically referring to trustee indemnity insurance.
- Even with an express prohibition, the Charity Commission will usually make a short scheme to overturn it.

Purchasing Issues

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- Purchase must be in the best interests of the charity and based on a genuine need – e.g. retention and recruitment of trustees and the ongoing protection in an increasingly litigious society
- Cost must be reasonable and not drain resources
- Must exercise all reasonable care and skill when making and carrying out the decision and take independent professional advice appropriate to select the right policy for the charity

Additional Cover

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- Entity cover to indemnify the charity itself from the same type of claims – very useful where there are limited funds.
- Fidelity Guarantee – Money losses by fraud or dishonesty.
- Professional Indemnity insurance – covers risks associated with giving advice or providing a service.
- Costs for representation at investigations – e.g. by Charity Commission.
- Employment Practice Liability – covers employee disputes.

Indemnity by Charity

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- The constitution of a charity may allow trustees to be indemnified by the charity.
- The 2006 Act allows charity trustees to apply to the Charity Commission, as well as the courts, for relief from personal liability for a breach of trust where the trustee has acted honestly and reasonably.
- However this indemnity does depend on the charity having sufficient assets and the extent of the indemnity provided.

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- There are not a huge number of claims.
- Many of the claims do turn into defence costs only and the cost of obtaining legal advice is increasingly costly.
- It is simple to purchase – basic details of the charity and its income levels are usually sufficient together with a few questions to establish the types of cover and extensions required.
- Trustee numbers do not influence the pricing.
- How much to insure for? What level of indemnity? This is up to the charity – levels between £100,000 to £500,000 are common with small charities and up to £5,000,000 thereafter in £500,000 increments.

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From one of our insurer partners:

“Trustees bear a number of duties under both charity and company legislation, as well as in common law.

Should they fail in these duties, even though innocent of recklessness or ill-intent, all trustees may face joint and several liability for losses incurred by the charity, or others as a result of their actions.

Any inadvertent breach of trust or authority, neglect, omission, misstatement, misleading statement, libel, slander or any other wrongful act can result in an unlimited personal liability. The risk to the trustees is further increased by vicarious liability also imposing responsibility upon them for the actions of their employees or volunteers.

Whilst a claim against the charity may be spurious or insubstantial, or even if the defendants are found innocent, there will still be costs for a legal defence against the allegations.

Trustees Indemnity provides protection to the trustees, directors, officers, committees of management or any other employee who is acting in the role of trustee or in any other position of management. The policy also covers the charity itself where they may be targeted specifically, or where they have offered an indemnity to the trustees.”