



CHARITY COMMISSION
FOR ENGLAND AND WALES

GUIDANCE

Charities and insurance (CC49)



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1. Introduction

1.1 What is this guidance about?

The decision to buy a certain type of insurance (apart from any that the law requires) is one way that charity trustees can carry out their duty to protect their charity's assets and resources. This guidance clarifies what legal obligations there are in connection with insurance and looks at what options trustees have when identifying and managing any risks that their charity might face.

One of the Charity Commission's roles as the regulator for charities is to promote the effective use of charitable resources and, as part of this role, it intends this guidance to help trustees decide when and what insurance will be appropriate for their charity. A key factor in deciding on the most effective way of furthering its aims will be a charity's assessment of the risks it faces through any of its activities, and whether insurance cover will be necessary to manage those risks.

Section 5 gives a brief description of the different types of insurance that are available and what risks they cover against.

1.2 'Must' and 'should': what the Commission means

The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

The Commission also offers less formal advice and recommendations that trustees may find helpful in the management of their charity.

1.3 Previous guidance

This version of Charities and Insurance (CC49) has been updated and rewritten in a new format but contains no change in policy.

1.4 The meaning of some terms used in this guidance

'The **'Charities Act'** means the Charities Act 2011.

The 'Trustee Act' means the Trustee Act 2000.

'Breach of trust' means a breach of any duty imposed on a trustee. For charity trustees these duties may be imposed by the provisions of a charity's governing document, the requirements of the law or an order of the Court or the Charity Commission. A duty is something which trustees have to do. It is distinguished from a 'power', which trustees may or may not choose to use.

The 'excess' is the first portion of a loss or claim which is borne by the insured. An excess can either be voluntary in order to obtain a reduced premium or imposed for underwriting reasons.

'Governing document' means any document which sets out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, articles of association, scheme of the Commission, Royal Charter, Statute, or a conveyance or will.

'Indemnity' is the principle whereby the insurer seeks as far as possible to place the insured in the same position after a loss as he or she occupied immediately before the loss. In this guidance this term is also used to cover a charity reimbursing a trustee for his or her proper expenses incurred while carrying out the charity's business.

An 'insurance broker' is an insurance intermediary who advises clients and arranges their insurance cover. Although they act as the agent of their client, they are normally paid by a Commission from the insurer. An insurance broker is a full-time specialist with professional skills in handling insurance business. They must be registered with and regulated by the Financial Services Authority.

The 'insured' is the person whose property is insured or in whose favour the policy is issued.

The 'insurer' is an insurance company or Lloyd's underwriter who, in return for a premium, agrees to make good in a manner laid down in the policy any loss or damage suffered by the person paying the premium as a result of some accident or occurrence.

A 'limit' means the insurer's maximum liability under insurance.

A 'policy' is a document which sets out the terms and conditions that apply to an insurance contract and is legal evidence of the agreement to insure. It is issued by the insurer or his or her representative for the first period of risk.

The 'premium' is the price paid for a contract of insurance.

'Reinstatement' means making good. Where insured property is damaged, it is usual for settlement to be made through the payment of a sum of money, but a policy may give either the insured or the insurer the option to restore or rebuild instead.

A 'third party' is a person claiming against an insured. In insurance terminology, the first party is the insurer and the second party is the insured.

'Third party liabilities' are the liabilities of the insured to the third party who is claiming against them.

'Trustees' means charity trustees. Charity trustees are the people who, under the charity's governing document, are responsible for the general control and management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors, or directors, or they may be referred to by some other title. Under some insurance policies, employees who have been delegated some or any of the functions of a trustee might also be considered to be a trustee for the purpose of the insurance.

2. Why a charity might need insurance - the basic considerations

2.1 Why buy insurance cover?

The short answer – legal requirement

Charity trustees have a duty to protect their charity's assets and resources. All charities face risks, and insurance can be an appropriate way of protecting them against any loss, damage or liability arising from these risks. Insurance is not the only solution to the management of a risk but there are certain types of activity where insurance is required by law.

In more detail

Examples of types of insurance that might be needed to cover a charity's property against loss or damage are:

- buildings insurance
- contents insurance
- event insurance

Examples of types of insurance that might be needed to cover against a charity's third party liabilities are:

- professional indemnity insurance
- public liability insurance

These and other types of insurance are described in detail in Sections 4 and 5.

Trustees may also be required by general law to take out certain types of insurance (see section **2.3**).

2.2 Can a charity use its money to buy insurance?

The short answer – legal requirement

Yes. The law allows trustees to insure any property owned by a charity against the risk of loss or damage due to any event and to pay the premiums out of its funds.

In more detail

The Trustee Act gives a specific power to unincorporated charities to insure their property. This power does not apply to charitable companies (except where they are corporate trustees), however a charitable company's articles of association will normally allow the purchase of any insurance cover necessary.

Trustees' general duty to protect their charity's assets and resources means that they should give proper consideration to the use of the Trustee Act power. This means making sure that, where appropriate, the charity's assets and resources are adequately insured against loss or damage. Although the power under the Trustee Act is confined to insuring against loss or damage, trustees may have an express power in their charity's governing document allowing them to take out insurance against potential third party liabilities. Even if they do not, it is normally the case that trustees are able to buy this type of insurance if it is in the charity's interests to do so.

Sometimes a charity's governing document specifies that its trustees must buy insurance (or a particular type of insurance) using the charity's funds.

If trustees have a power or a duty to take out insurance against loss or liability and unreasonably refuse to use it, they may become personally responsible for any resulting loss or liability.

The Charities Act gives trustees an express power to purchase trustee indemnity insurance and pay the premiums out of their charity's funds. The Commission look at trustee indemnity insurance in Section 5.

2.3 What types of insurance are compulsory?

The short answer – legal requirement

Charities that employ staff are required by law to buy employers' liability insurance. Charities that own or operate motor vehicles are required by law to buy motor insurance.

In more detail

Employers' liability insurance: Charities which employ staff are required to take out employers' liability insurance. Under the law¹, all employers are required to have a minimum insurance cover of £5 million for injury or disease suffered or contracted by employees while carrying out their duties. A charity must buy employers' liability insurance from an insurer that is an individual or company working under the terms of the Financial Services and Markets Act 2000. The Financial Services Authority maintains a register of authorised insurers.

The charity (as an employer) must prominently display a certificate showing that a valid policy is in force and the minimum level of cover purchased.

Motor insurance: If a charity owns or operates motor vehicles, it must comply with the provisions of the Road Traffic Acts. This makes it compulsory to have insurance against third party injury and property damage. If trustees, employees or volunteers are using their own vehicles for the purposes of the charity or on the business of the charity, the charity must make sure that the insurance held by the owner of the vehicle covers such use. Any additional premiums necessary may be met by the charity.

There are special requirements in respect of minibuses used to transport people on a hire or reward basis and the charity's insurers should be able to advise the trustees on these.

2.4 What is the insurance position for volunteers?

The short answer

For insurance purposes, charities are advised to treat volunteers in the same way as they do their employees and to ensure that they are covered by the usual types of insurance a charity might buy, such as employers' liability or public liability cover.

In more detail

It is important for a charity to ensure that volunteers as well as employees receive adequate training, supervision and support, and that their wellbeing and that of people that they come into contact with as part of their role is properly considered. For example, the same health and safety standards should be applied to voluntary workers as they would to employees exposed to the same risks.

¹ Employers' Liability (Compulsory Insurance) Act 1969 as amended by the Employers' Liability (Compulsory Insurance) Regulations 1998.

A charity should ensure that its volunteers are protected from harm as a result of any negligence on its part. Also, both the charity and its volunteers should be covered in the event of a third party being injured through the actions of a volunteer. The charity should check any insurance policy to see:

- that it definitely includes volunteers
- how the term 'volunteer' is defined for the purposes of that policy
- whether any upper or lower age limits apply
- that the policy covers the types of activities that the volunteers will be undertaking

The charity should keep accurate records of the volunteers it uses who fall within the definitions in any insurance policy it has.

2.5 Who can advise on what insurance a charity should take?

The short answer

When trustees are thinking about taking out any type of insurance cover, they should carefully consider taking proper independent professional advice if they do not have the expertise themselves.

In more detail

It is usually best to use an insurance broker who has an understanding of charities' insurance needs and who is in a position to place business with any one or more of a range of insurance companies. Charities can also go directly to a specialist charity insurer. The important point is to use a broker or insurer with specialist knowledge of the insurance requirements of charities to ensure that the correct coverage is arranged at a competitive price.

2.6 Can a charity find out what fees and Commission an insurance broker gets?

The short answer

Yes.

In more detail

The FSA Handbook deals with brokers' remuneration which may be by Commission or fee or both. If both, it seems clear that there is a duty to disclose the Commission and fees. The rules are:

- fees - a broker must provide the customer with details of all fees before the customer incurs any liability to pay them
- Commission - a broker must on request disclose the Commission it (or any associate) receives in connection with the policy. This includes arrangements for sharing profits, for payments relating to the volume of sales, and for payments from premium finance companies in connection with arranging finance

Guidance issued by the **British Insurance Brokers Association (BIBA)** makes it clear that customers should be reminded at regular intervals of their right to request information about Commission.

3. Risk assessment and decision making

3.1 Why is risk assessment important?

The short answer

If the law does not require the charity to buy a certain type of insurance cover, the charity's risk assessment will help it decide whether it is necessary. Charities can find detailed advice on risk in the guidance **Charities and Risk Management: A guide for trustees (CC26)**. There are a number of ways to manage any risks faced by a charity, one of which is to buy insurance cover.

In more detail

A robust risk assessment will look at all aspects of the charity's work and business in order to identify risks that it might face. Also, if a charity is considering a new activity or area of work, it will need to look carefully at what the likely risks will be and the costs of managing those risks. Examples of key areas of risk are set out in the detailed risk guidance.

The following questions can help trustees look at the potential risks identified and decide whether insurance is the most appropriate way of managing them:

- Which of our areas of activity present a real or significant risk of a particular form of loss or liability occurring?
- How much would it cost to take out insurance to cover that risk? Have we shopped around or asked our broker for competitive quotes?
- Can we take other measures to manage the risk, for example increasing security measures or improving internal financial controls?
- Would it be better for our charity to pass the risk to a third party (apart from an insurer), for example, the movement of cash from the premises to the bank might be contracted out to a professional cash handling company?
- If we decide not to insure against a risk, would our charity be able to continue its work or remain viable if it incurred losses from that risk?
- If we are an unincorporated charity, have we considered the risk of personal liability? As trustees we may find ourselves with a personal liability through no fault of our own if our charity's assets are not sufficient to cover any liability it incurs.
- Should we reduce or stop the activity which gives rise to the risk?

3.2 What other considerations might influence a decision about whether or not to buy insurance cover?

The short answer

Insurance cover should only be taken out if the level of risk which is to be passed to the insurer makes the insurance premium worth spending (unless it is required by law).

In more detail

Any decision to buy insurance is a matter of judgment and one which charity trustees must make in the interests of the charity, taking professional advice if necessary. As long as the trustees have acted reasonably and have taken advice where appropriate, the consequences of any loss not covered by insurance will have to be met by the charity (subject to the point made in section 3.1 about the charity's assets being insufficient).

If insurance is compulsory for a particular type of activity, or the trustees think it is necessary, the charity should consider whether it can afford to continue that activity. Collaboration in the purchase of insurance with another charity or other organisation doing the same thing might make the insurance cheaper. However, charities should bear in mind that in the case of employers' liability insurance, if more than one charity is to be covered by a single policy the law requires that each employer has a minimum cover of £5 million.

Alternatively, the trustees might look at whether the charity can carry out its work in a different or better way by merger or collaboration with another charity. See the **Work with other charities** guidance for further information.

If a charity is a member of a national organisation, it should contact the national headquarters for advice on insurance. Many national organisations and umbrella bodies have negotiated group schemes that are open to their members.

3.3 What is the situation for charities operating internationally?

The short answer

Charities that work internationally will face more complex risks to staff, volunteers and property. It is essential for charities to assess and plan for the management of risks that their staff, volunteers, local partners and other resources may face – especially in high risk areas.

In more detail

Charities may provide certain types of insurance for their staff and volunteers working overseas - examples are medical, accident, critical illness or travel cover. The terms of employment or other agreement should make it clear what cover is provided by the charity and where someone is expected to provide their own.

A charity based in England and Wales is not required to buy employers' liability insurance to cover any of its employees that are based abroad. However, it should check whether there are any requirements in the country in which their employees are based to take out insurance or take any other measures to protect its employees.

Charity staff and volunteers can be insured against special risks such as kidnap and ransom. In this type of insurance, the insurer will only respond to a claim for reimbursement of a ransom that has already been paid. In general, it is a condition of the policy that its existence should be kept confidential at all times and that the policy will be voided if this condition is breached. As with other types of insurance, insurers are placing greater emphasis on preventative measures being put in place.

Trustees should be aware that, although the paying of ransoms is not in itself illegal in UK law, it may be elsewhere. In addition, there are offences that may be committed if money or other property is made available for terrorist financing. They should take professional advice if considering buying this type of insurance.'

4. Insurance for charities that own or occupy land or buildings

4.1 What sort of insurance cover might be necessary?

The short answer

The extent or nature of any insurance bought will depend upon the charity's assessment of the risks it might face because of its ownership or occupation of land or buildings. If the trustees decide that the risks should be managed by buying insurance cover, what will be appropriate will depend on whether the charity is:

- the owner of the freehold
- the lessee, or
- a freehold owner or lessee who is also a landlord

In more detail

Owner of the freehold: If a charity is the freehold owner of a building and insurance is not the responsibility of the lessee or tenant (if any), the Commission recommend that the trustees should normally insure the building for its full reinstatement value, even if there is no actual duty to do so. This means that the sum insured (ie the maximum amount that would be paid under the insurance) should be sufficient to meet the cost of:

- any demolition work which might be necessary
- clearing the site
- professional fees (architect, surveyor etc)
- replacing the building in the same style etc as the original
- complying with any relevant planning requirements or building regulations

The sum insured is the maximum amount that an insurer will pay under a contract of insurance. The expression is usually used in the context of property and life insurance where (subject to the premium cost) the insured determines the amount of cover to be purchased. This means that it is very important that the sum insured is adequate. If a claim is made and the sum insured is not enough, the insurance company will only pay a proportionate amount of any claim, even if the value of the claim is below the sum insured.

An example might be where a property is insured for £10m but is really worth £15m, a claim for damage to half the property would only pay out up to £5m.

If the trustees ought to have bought more extensive cover, they may be liable to make good the shortfall out of their own pockets. To reduce the risk of a shortfall, the Commission recommend that trustees initially obtain advice from a professionally qualified building surveyor about what the sum insured should be, and the surveyor should be asked to confirm regularly (perhaps every two years) that the current figure is adequate. If it isn't, the trustees should notify the insurer immediately so that an adjustment can be made.

Similarly, if any alterations, improvements or additions are made to the building, a surveyor should confirm the up-to-date overall rebuilding cost (inclusive of professional fees). If this is greater than the sum currently insured, the trustees should notify the insurer immediately so that an adjustment can be made.

Some insurers will provide a valuation service, and some will even provide this service free of charge. If the trustees choose an insurance policy which is index-linked (so that the amount of the insurance is adjusted automatically each year by the insurers to reflect changes in the costs of labour, building materials etc), the Commission still recommend that they check with their surveyor every 3-4 years that the current figure is adequate.

Charities must also inform their insurer or insurance broker if:

- their use of the building changes dramatically
- they are about to undertake any structural building work
- no-one is occupying the building on a regular basis

These recommendations would, in the Commission's view, go a long way in protecting trustees against possible liabilities resulting from large fluctuations in the value of property, or the cost of building materials. Changes in property prices and building materials are not necessarily adequately reflected in the retail price index.

Charities can obtain additional insurance to cover a loss of income or additional expense in renting alternative accommodation if the property becomes unusable for a period (due to an insured event such as fire).

Charities which are lessees: Where a charity occupies property under a lease, it is essential that the terms of the lease are checked to see who (the charity as lessee or the landlord) is responsible for insuring the building. In some cases, responsibility for insuring the buildings may, under the terms of the lease, be limited to certain risks such as fire, lightning, earthquake and explosion. If the charity as lessee is responsible for repairs to the building, the trustees may need to consider whether other risks should also be insured against.

If the lease is for only part of a building, the landlord may be liable for the insurance of the building as a whole, but each lessee may be liable to pay to the landlord (in addition to the rent) an appropriate contribution towards the cost of insurance. The amount of the contribution is usually calculated according to an agreed formula laid down in the lease and added to the rent payable by the lessee.

Charities which are landlords: When leases are drawn up the trustees must consider who is responsible for insurance. If the charity is to remain responsible for the buildings insurance (eg in the case of multi-occupancy), the trustees need to make sure that the rents agreed reflect this, or that the lease allows the landlord to recharge each of the lessees with an appropriate part of the insurance costs. If the lessee is to be responsible, the trustees must ensure that adequate insurance is held by the lessee. The lease might contain a provision for the charity to be given copies of the buildings insurance documents and to have some control over the level of cover.

4.2 Contents insurance - what should charities consider?

The short answer

The duty to protect charity property (see **section 2.2**) extends to the contents of a building such as furniture, equipment and cash, and charities should have a suitable policy. Trustees need to consider whether their insurance:

- should be on a 'new for old basis'
- covers loss arising from theft
- needs to include cover for accidental damage
- covers specific items such as computers
- covers money in transit or on the premises where appropriate

In more detail

'New for old' is the most common form of contents insurance cover. It is important for the charity to make sure that it identifies the current replacement value of an item for insurance purposes. For example, a charity may have been donated a computer or be able to buy one below the current market price, but for insurance purposes it should use the current market replacement value. If it doesn't, the charity would not be fully recompensed for replacing it in the event of a loss.

It is possible for contents insurance policies to include an automatic index-linking facility and the trustees will need to consider whether this is appropriate for their charity.

If a charity lets property, contents insurance is usually the responsibility of the lessee if the contents belong to the lessee. Where a letting is furnished, the charity as landlord will need to ensure either that the lease makes the tenant directly responsible for insurance of the contents, or that the tenant pays, through the rent or service charge, for the insurance which the charity takes out.

For some charities, for example a museum or an art gallery, insurance against the loss or destruction of contents may not be appropriate. This could be because the contents are irreplaceable or because the cost of replacing them would be too high. If the trustees were to meet that cost, they might not be able to undertake their other core activities (for example the display, maintenance and repair of the collection).

Insurance for irreplaceable items can sometimes be gained on an 'agreed value' basis. Whilst the item itself may be irreplaceable, the insurer can agree a replacement value and any claims payment will be based on this figure and can be used to purchase alternatives.

In addition, insurance cover may be obtainable at a reasonable price against the cost of repairing items which are damaged, or against the cost of investigating theft and of attempting to recover stolen items. Security measures might be reviewed in order to reduce the risk of loss and this might make insurance cover easier to obtain.

The Commission recommend that trustees take professional advice before deciding what would be reasonable in the circumstances and what would be in the interests of their charity.

4.3 Public liability insurance - what should charities consider?

The short answer

This may be appropriate for charities which own or occupy land or buildings. It offers legal liability protection:

- against claims from members of the public for bodily injury/illness, loss or damage to material property incurred on the premises of the charity
- against claims arising under the Occupier's Liability Acts 1957 and 1984 - these Acts place on the occupier of a property a duty of care in respect of visitors to, and trespassers on, their property²

In more detail

Public liability insurance may also be appropriate for charities which carry on a business activity away from their own premises or arrange events attended by the public. In this way, the charity and its trustees, employees and volunteers would be indemnified against claims from members of the public for bodily injury/illness, loss or damage to material property inflicted in the course of the activity, event or supply. Some leases or contracts that charities may enter into for the use of property may require this type of insurance.

In the event of a claim exceeding the maximum amount payable under the policy (the 'limit of indemnity'), the trustees might find themselves personally liable for the shortfall. This would be the case if adequate cover was available, but they unreasonably failed to purchase it, having regard to all the circumstances including the nature of the risk and the cost of the cover. There is no statutory minimum level of cover.

4.4 Disclaimer notices - what effect do they have?

The display of a disclaimer notice (often found in cloakrooms and car parks) in respect of injury, damage or loss to any person or property whilst on the premises or making use of the premises, may not have the effect of avoiding liability.

Charities will need to take professional advice on the use of disclaimer notices.

² Section 2(2) of the 1957 Act provides that 'the common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there'.

5. An overview of other insurance cover available

5.1 Events and appeals insurance

Charities that want to organise fundraising 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 sometimes called 'pluvius insurance'. There are usually strict time limits and arrangements for measuring rainfall levels with this type of insurance. The Commission recommend that trustees wishing to take out this kind of cover should seek professional advice.

Public liability insurance (see **section 4.3**) is normally recommended for major events, and advisable for smaller ones too. Some venues will require this type of insurance and will specify a minimum level of cover.

If a charity is conducting an appeal, insurance is available to cover the costs of establishing and administering the appeal in case the response is not as good as expected. It could also be extended to cover loss of cash raised at an event when being carried or kept at the home of a nominated or senior individual of the charity. When proposing a large fundraising appeal, trustees should consider whether this type of policy is appropriate. You can find further information on fundraising in the guidance **Charities and Fundraising (CC20)**.

5.2 Fidelity insurance

It is possible to obtain cover to make good the loss to the charity arising from fraud or dishonesty on the part of any of its employees where they are handling the charity's cash or other valuables. It may be possible (and advisable) to extend this cover to also include fraud or dishonesty on the part of any of the trustees and/or volunteers. This type of cover (sometimes called 'theft by employee' or 'employee dishonesty' insurance) is not a substitute for sound financial and personnel risk management and is usually provided only if the charity can show that its administrative arrangements are both adequate and properly supervised. You can find further information on proper checks and controls in the guidance **Internal Financial Controls for Charities (CC8)**.

If trustees are advised by their legal or other independent professional advisers that this cover is necessary or desirable, any fear of appearing not to trust their employees must take second place to their duty to protect the charity's assets, resources or reputation.

5.3 Legal expenses insurance

Charities may purchase insurance 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.

Legal expenses insurance is normally bought in the usual way before any dispute or claim has arisen, and limited cover for individuals is sometimes included in a household contents or motor policy at little or no extra cost. 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.

5.4 Legal advice helplines

Some legal expenses (and other insurance) policies available to charities include free access to legal advice, 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.

5.5 Loss of revenue/increased cost of working

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

5.6 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 (especially where complex or potentially contentious), the charity may be liable if this is provided negligently. The charity should 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 should be considered carefully. 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.

Some of the people with whom a charity has contractual relationships, such as accountants, architects and other professionals will also have professional indemnity insurance. Trustees need to be aware of the fact that professionals are required to take out such cover. If the charity receives very poor service from professionals resulting in additional costs for the charity, then they should consider making a claim against the professional involved.

5.7 Staff sickness

Insurance can be obtained to cover the costs of paying sick pay to employees. Some types of insurance can cover the costs to a charity of providing cover for an employee who is off sick.

If a charity takes out staff sickness insurance which makes any payment directly to the staff member who is off sick, then this is a benefit in kind to the employee who is taxable on the premium. If however the charity takes out cover which reimburses the charity itself when a staff member is off sick and the employee has the right to sick pay incorporated in their contract of employment, there is no taxable benefit to the employee.

It is important that a charity does not take out cover which pays the employee if the employee already has the right to sick pay in their contract of employment. If this happens, the charity will not be reimbursed for the sick pay paid under the policy.

5.8 Terrorism and political violence

Although all insurers can offer cover against the effects of terrorist activities, it is available as additional cover and no longer included in standard insurance policies. This type of insurance provides an indemnity if insured property is destroyed or damaged due to terrorist acts. This type of insurance could be any kind of guarantee from an insurance company that they will pay out should something be destroyed, damaged or otherwise altered due to terrorist acts. It covers the protection of property as well as protections if a person is kidnapped and ransomed.

5.9 Travel insurance

Trustees, staff and volunteers for many charities will need to travel frequently and charities will need to have a clear policy about what insurance they will provide and when they expect trustees, charity staff or volunteers to provide their own. There is likely to be considerable reputational risk if this is not clearly understood and a claim is to be made against the charity.

5.10 Trustee indemnity insurance

Trustee indemnity insurance (TII) covers trustees from having to personally pay legal claims that are made against them (by their charity or by a third party), for a breach of trust, or a breach of duty or negligence committed by them in their capacity as trustees.

The main difference between TII and other types of insurance taken out for the benefit of the charity is that TII directly protects an individual trustee, rather than the charity itself. For that reason, TII is regarded as a form of personal benefit to a trustee and a charity will need a proper legal authority before it can buy it using its own funds. Many charities have long had this type of authority in their governing documents, but if not, s.189 of the Charities Act now provides a general power to buy TII using charity funds. The cost must be reasonable and trustees must be sure that TII is in the best interests of their charity.

Trustees are free to buy TII out of their own pockets if they wish - this would not require any legal authority.

This means that the only time a charity needs to approach the Commission for authority to buy TII is when the charity's governing document explicitly forbids its purchase and, in our experience, this is extremely rare. The statutory power to take out TII is not excluded by a general prohibition on trustees benefiting from the charity.

Charity trustees can buy TII to cover them against any personal liability in respect of:

- (a) any breach of trust or breach of duty committed by them in their capacity as charity trustees or trustees for the charity, or
- (b) any negligence, default, breach of duty or breach of trust committed by them while acting as directors or officers of the charity (if it is a body corporate) or of any body corporate carrying on any activities on behalf of the charity.

The terms of such insurance must, however, be so framed as to exclude the provision of any indemnity for a person in respect of:

- (a) any liability incurred by him or her to pay:
 - a fine imposed in criminal proceedings, or
 - a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising)

- (b) any liability incurred by him or her in defending any criminal proceedings in which he or she is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by him or her; or
- (c) any liability incurred by him or her to the charity that arises out of any conduct which he or she knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which he or she did not care whether it was in the best interests of the charity or not

Where charity trustees have acted honestly and reasonably, they are in any event entitled to an indemnity from the charity's assets for any liabilities incurred by them as trustees. Insurance of such liabilities will benefit the charity rather than the trustees, although it will also ensure trustees are covered even if the charity does not have sufficient assets to provide the indemnity.

If the charity is a company, or carries out a part of its business through a separate company, the trustees' personal liability for any wrongful acts as company directors or officers (including liability for wrongful trading) is similarly covered to the extent it does not fall within (c) above.

5.11 Contributors

The Commission would like to thank Ecclesiastical Insurance Group plc and Zurich Insurance plc for their helpful technical advice on the contents of this revised guidance.