

Does a Playing Out Group need Insurance?

There is no legal requirement for a voluntary group to organise insurance for their activities, unless you are an employer. This clearly would not apply to a voluntary 'Playing Out' Groups.

However, would insurance be advisable? What could go wrong and how might insurance provide peace of mind?

Furthermore, what about those local authorities that are insisting on cover being in place in order for them to close roads to allow playing out.

We will take a whistle stop tour of playing out groups. We will consider the risks involved and insurance considerations. Each playing out group will be different and so this paper cannot be construed as individual advice. If you want to discuss how your own group might be effected, by all means, get in touch.

The Legal Entity

One of the questions surrounding street groups is the nature of the groups themselves.

Both individuals and groups can be pursued in the event that an individual alleges that an injury was caused by the negligence of the other party.

In the case of street play, a claim might be bought against;

A group

It would make no difference as to whether the group has a formal constitution, if a group of people have come together to organise the event, then collectively, those individuals may be accused of failing in a duty of care to provide a safe environment, in the instance that someone has been injured.

An individual

For example, imagine the behaviour or activities of one participant lead to an injury or damage to property. The injured party might bring a civil case against the person concerned.

If you have organised insurance, then the policy may protect the individual concerned. For example, if the individual is clearly a volunteer of the group, then as long as the policy arranged has some cover for volunteers* then the claim would be defended and the group financially protected.

If the individual is simply attending the group and injures another person at the session, then it is more complex. Many insurance policies provide cover for 'member to member' liabilities. This means that 'members' of a group will be defended in the same way that the group would be. The extent to which an individual neighbour participating in street play would be seen as a member of the group would be tested in a claim. For most groups, it might be quite difficult to demonstrate membership and the neighbours might simply be seen as individuals attending the day.

That being the case, insurance would only protect, the group; that being determined as the organisers and volunteers setting the street play up.

We are always happy to discuss an individual street play scenario with any group.

*In respect of covering volunteers, it is worth noting that most insurance policies define volunteers as employees rather than members of the public. This means that to have insurance for claims bought by volunteers, a group would need Employer Liability Insurance as well as Public Liability Insurance.

Groups

On the phone we discussed the playing out situation where residents who organise street play aren't constituted groups and whether they be seen as a group in law, and if for example if one resident takes out insurance will it cover their neighbours by dint of how a policy is worded? Would the neighbours have to be named in the policy to ensure they were insured?

What Could Go Wrong?

The only way for any voluntary group to eliminate risk from their activities is to cease activities altogether. If your goal is community cohesion and reclaiming the streets for children, then this is clearly not an option! By undertaking activities, there is an element of risk introduced.

Risk has two elements to it. Once you have identified something that you might be concerned about, you might consider:

1. How likely is it that this could go wrong?
2. What impact could that have?

Every group will have different answers to these questions because it very much depends on the context of your activities and the environment you operate in. For example, if you were considering operating a bouncy castle, you would have specific concerns around this, particularly considering that there have been multiple deaths from bouncy castle incidents in Europe in the last twelve months and in one case, the organisers face criminal proceedings.

In respect of playing out groups, there might be a number of common considerations:

- A child being injured during play due to:
 - The environment
 - The equipment
 - Lack of supervision
- A child or member of the public being injured in a road traffic accident
- Damage to property, belonging to property owners or the council.

These are just examples but in an increasingly litigious society, more often, cases of injury or damage to property result in allegations of negligence.

Of course, groups should not lose sleep over risk. Simply, consider as a group; *How do we make sure that the street play session that we organise are successful, fun and safe?*

Risk Assessment

A risk assessment is the way in which your group might approach assessing the risks on the day. It would record the potential risks and also list the 'controls' that you have in place.

For example, a control for the road accident would be 'closing the road'.

Once you have conducted a risk assessment, you are in a position to best judge whether insurance is a suitable control for some of the risks that you face.

What is the responsibility (and exposure) of the Organiser

If you are responsible for organising the activities of the group you might be concerned about risks that you are taking.

As a voluntary group, health and safety law is unlikely to apply to your event but this does not mean that there is no exposure.

While you may have no criminal case to answer in the event of an incident, it does not remove your exposure to a civil case being brought against you. A civil court might find that you breached your duty of care in organising an event and this would make you personally liable for subsequent compensation claims.

Again, a claim is not a common event and if obvious risks are identified and dealt with before the session, it makes the likelihood of something going wrong even more remote. Yet, accidents do happen and in our increasingly litigious society, an injured party might resort to civil action.

What About Disclaimers?

Some groups, recognising that there is an element of risk to what they do, choose to manage their exposure by disclaimer. After all, if participants were warned ahead of participation, does this limit the responsibility of the group?

The answer to this is no and we would always strongly advise against relying on a disclaimer in this way. Under the Unfair Contract Terms Act 1977, a group cannot use a notice to exclude or restrict their liability for negligence causing death or personal injury.

A court may take some heed of the disclaimer but your legal obligation is not removed – You owe a duty of care to those participating in the activity you are responsible for.

Of course, all allegations are different and whether a playing out group would be responsible for an injury to a child would depend greatly on the circumstances.

Public (and Employers) Liability

This is the insurance cover that most voluntary groups purchase to protect themselves from such claims.

Essentially, Public Liability Insurance provides cover in the event that damage to a third parties property or an illness or injury is the result of the groups negligence.

While Employer Liability sounds entirely irrelevant for a voluntary group, it is worth considering because in most insurance contracts, volunteers are classed as employees. If neighbours become involved in activities then this means that the policy will extend to include exposures

Minimum premiums for Public Liability cover start at around £80. Insurers use minimum premiums because below a certain floor, it would be administratively uneconomic to provide a contract of insurance. This is relevant to Playing Out Groups because the risk of an event requiring the liability insurance is small. Hence, the premium for a group organising 12 sessions and the group that organises 1 session is likely to be the same.

Local Authority Mandated Insurance

A reality for many groups is that a requirement for insurance is imposed by the local authority. This is often in response to a plan to close the road to enable play.

Local Authorities and the emergency services tend to have a blanket requirement approach to this issue. Whenever your activities come into contact with these bodies, they will ask for you to conform to their insurance requirements.

Not only does this often mandate a group to organise cover but often there will be a specific limit of cover that the local authority is seeking. While Public Liability cover can be arranged for limits of £1,000,000 of indemnity and upwards, the council will often automatically request £5,000,000 or even £10,000,000.

It is worth discussing this with the council to see if they have any flexibility on this limit. Certainly, we have helped some clients push back on, seemingly excessive, insurance requirements imposed upon them.