



# Guide: Trustees Indemnity

Should your group considering trustees indemnity insurance?

What is trustees indemnity over?

Trustee Indemnity Insurance provides some peace of mind for non-profit organisations because, *to some degree*, it protects members of the board if they are personally sued as a consequence of mismanagement. Board members might be concerned that they might be personally financially liable from their trusteeship, particularly in a climate where charity regulation is increasing.

What is covered?

Trustees Indemnity provides a wide range of cover for both the individual liability for the members of the management committee and (in many cases) it provides some additional cover for the charity itself. We have provided some examples of situations where a Trustee Indemnity policy may protect a charity at the bottom of this guide.

How can trustees find themselves personally liable?

Many people do not realise the potential financial exposure connected to their responsibilities as a trustee.



Both the Charity Commission and UK courts can order a trustee to make payment for financial losses suffered if the trustee has not acted with suitable care in discharging their duties.

In reality, claims are few and far between and this is generally reflected in trustee indemnity insurance premiums. As long as a trustee has acted in good faith and can be shown to have acted reasonably, successful litigation is thankfully not that common.

Who is classified as a trustee?

Board members do not have to be designated as such to benefit from trustee indemnity cover, it normally extends to any senior management of the charity too. It is also worth noting that cover is still of benefit to board members in organisations who are limited by guarantee because unless the damages sought cause the organisation to close, then there is an exposure following a 'breach of trust or duty' that the board should consider.

Trustees indemnity for incorporated groups

Some trustees will have their liability exposure limited by the legal structure of their charity or voluntary group.

Many voluntary sector organisations are making or considering the decision to become incorporated in order to protect the trustees should the organisation become insolvent.

Mistakenly, a number of trustees feel that by incorporation, their own personal liability is entirely limited. This is not the case, indeed incorporation can actually impose additional duties and liability in some areas.

The directors of the corporation (who will be the same as charity trustees) will not be insulated from their corporation's own direct responsibility and as the directing "mind and will" they are still possibly held personally liable.

Should every charity buy trustees indemnity insurance?

Not every charitable organisation, whether incorporated or unincorporated, should have charity trustees indemnity insurance. The strong argument put forward by the Charity Commission is that each organisation should attempt to mitigate or limit the chances of any potential loss or wrong

doing so as to avoid having to take out the appropriate insurance cover.

However, even highly organised charities with sophisticated risk mitigation might still consider a residual need for some financial protection for trustees.

Of course, spending money on this protection needs to be considered carefully by any non profit group. The Charity Commission offer advice to boards making this decision, including consideration towards whether funds within the charity can be justifiably spent on such covers.

However, in an increasingly litigious society, where trustees of charitable organisations are not immune from claims being made against them, we recommend this is an area of cover that your non profit organisation considers.

As a final consideration, your group might also think about trustee recruitment. Finding trustees with appropriate skills and experiences can be a challenge and organising appropriate insurance protection might provide comfort for potential trustees.

Can I organise cover within an existing policy?

Trustees Indemnity Insurance can be provided as part of a combined charity insurance product or it can be organised as a stand alone product

Having an insurer on your side in the event of an allegation

During a difficult time, it can be massively beneficial to have the experience and resources of an insurance company in your corner.

Insurers have extensive experience, and can call upon expert advice to protect and assist trustees when claims or investigations arise. They are therefore a useful support mechanism and insurers will often take over the running of the claim leaving staff and trustees free to get on with the good work of a charity work.

Most cases involving allegations of wrongful acts by trustees can be successfully defended, so insurance is primarily involved in meeting defence costs rather than awards.

Trustee Indemnity meets costs involved not just in cases of wrongful acts, but also of ‘investigations’ – For example, by the Charity Commission and the HMRC.

How much cover should our group get?

There is no ‘right or wrong’ about how much cover to buy. Each charity should assess risk and that exercise should give an indication of the sorts of claims that could be brought against trustees. As an experienced charity broker, we can also provide you some statistics (on request) to indicate what other similar size organisations have covered. Of course, each organisation is different and what another charity has done is not necessarily right for your own organisation.

## Example Claims

**Claim For Alleged Trespass:** The neighbouring landowner to the trust claims that recent constructions carried out by the trust infringed on their property. The trust claims that documents from the 18th century show that the previous owner passed the land over to them, whereas the claimant declares that the land never legally belonged to the previous owner. It appears that the claim will be upheld and that the claimant is indeed the legal owner of the disputed property. The trustees will be responsible for damages and for restoring the land to its former condition.

**Claim For Alleged Defamation:** Following publication of an article, the charity trustees were sued for defamation by another charity with similar objectives. The claimant stated that certain statements made in the article were untrue and gave a false representation of the charity. The matter was eventually settled out of court with considerable fees being paid.

**Claim For Alleged Breach of Authority:** A claim was made against a trustee by one of the charity’s employees. Before the charity ceased operating the trustee had indicated that employees would receive an enhanced redundancy payment, which was in breach of his authority. As a result, several employees had made financial decisions based on that statement, and hence ran up costs to cancel these arrangements.

**Claim For Alleged Denial Of Access:** A claim was made against the trustees as they had sub-let a section of their premises to another organisation. This had been done without consultation to the landlord and broke the conditions of the lease on the property, and subsequently he ordered the eviction of the sub-tenants. The evictees brought a claim against the trustees for denial of access.

**Claim For Dishonesty Of A Trustee:** A claim was made by a charity, which had suffered a loss in excess of £12,000. Due to poor internal controls, one of its trustees managed fraudulently withdraw substantial funds. Although it is an unpalatable risk to consider, unfortunately, trustee fraud is a rare but potentially very damaging risk to a charity.

**Claim For Libellous Action:** A claim was made against the trustees for alleged slander. After initial discussions the allegation was retracted and an apology offered. The solicitor’s fees, which had been incurred were settled for over £1,500.00.