

If your charity's at risk from the rise  
in public liability claims, defend it





“CFDG is happy to support this publication as we are aware that insurance is a major cost for our members and in these difficult economic times it is essential that public liability risks are kept to a minimum so that all charities can focus more of their resources on supporting beneficiaries.”

David Membrey, Deputy CEO, CFDG



With people tightening belts and the fear of even further economic challenges on the horizon, it would seem natural that the charity sector’s number one concern would be funding. But the business threat that public liability poses to charities was recently proven to be even greater than that of their security of funding.

Recent research commissioned by charity insurance specialist Ecclesiastical with independent research agency, FWD, has revealed the true scale of the threat. Charities stated that they felt the single biggest area of risk facing their business was public liability (26.8%), followed by the security of funding (17%).

At the worst economic time possible for charities, the number of claims, both genuine and ‘speculative’, is rising at a pace.

According to the ABI in September 2011, detected fraudulent claims – across all classes – rose 9% in 2010 year-on-year, totalling an estimated £930 million in value over the year.

With their unique and complex personnel structures, encompassing full-time and part-time employees, volunteers, external paid-for fundraisers and third-party organisations to deliver services, the charity sector is uniquely exposed to liability risks through gaps in both understanding and cover.

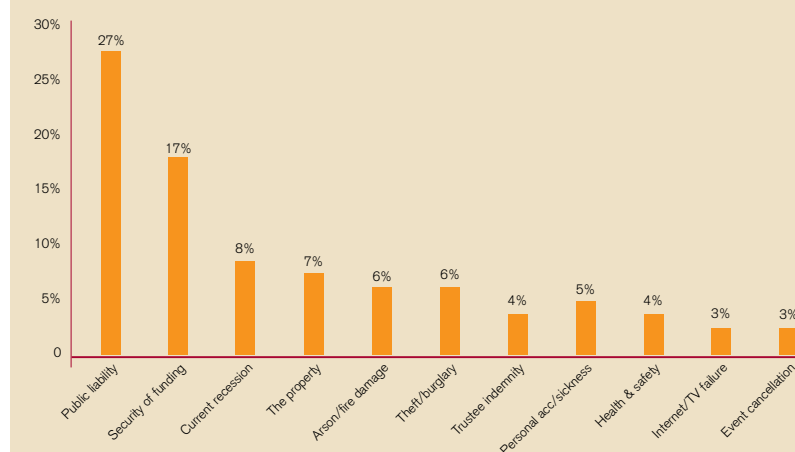
But the sector is also not powerless to fight back and in fact many are fighting back successfully. Ecclesiastical, which is at the receiving end of claims on behalf of a variety of charity customers it insures, has analysed lessons learnt from its experiences. They also work with specialist liability law firm, Plexus Law, to form a partnership that helps charities make a stand against unreasonable claims.

It’s important to note that insurers recognise when a claim needs to be paid. At Ecclesiastical, we are very proud that we were rated 3rd out of 40 insurers for our claims service.\* Ecclesiastical, as a specialist charity insurer, also know when to make a stand – and defend customers – to avoid setting a precedent when claims are unfair.

This report has been commissioned by Ecclesiastical to examine the issues and the risks of public liability insurance – and raise awareness of the ways in which charities can protect themselves and fight back.

\*Source: The Annual Insurance 360 Business Insight Report

#### Main areas of risk facing the charity sector



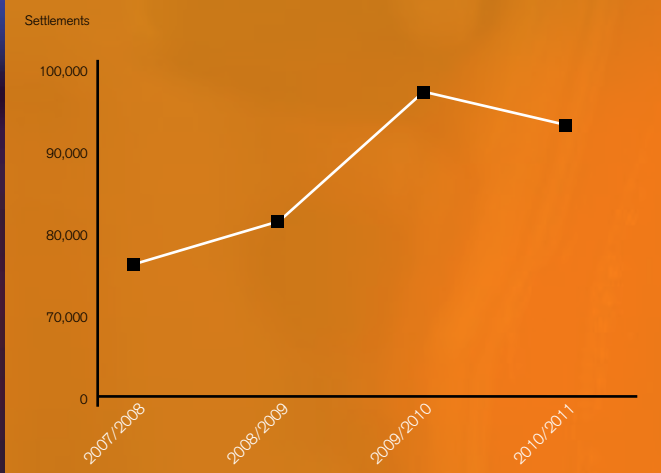
Source: FWD Charity Research (September 2011). What are the main areas of general business risk facing your business today?

## The rise and rise of the 'claims culture'

The UK's current compensation system is failing. While any organisation understands that it has a moral and legal responsibility to claimants to whom it has caused injury, a claims culture is being fuelled which encourages people to believe that they can make 'easy money' through exaggerated, often speculative and sometimes even fraudulent claims.

The volume of public liability settlements recorded by the Compensation Recovery Unit has rocketed in recent years, rising by 18% in between 2007 and 2011. Recoveries made by the unit in 2010/11 alone reached an alarming £10,606,832.\*

Volume of public liability settlements



\* Source: Compensation Recovery Unit 2011, DWP

## The influence of the Claims Management Companies

At the heart of stimulating the growth in claims are Claims Management Companies (CMCs).

These CMCs are actively pushing the number of liability claims higher and higher through 'no cost' litigation products. There are a growing number of advertising campaigns which raise awareness of 'no risk' litigation with potentially lucrative returns for the claimant.

In 2010, 51% of consumers said they had been approached by a CMC that year.

It seems unsurprising that in a recent speech to a government select committee, Jack Straw, former Home Secretary, vented his anger towards the threat these companies pose, by publicly labelling them "parasites in the system".

Whilst it's important to note that it is largely motor claims that fuelled his comments, CMCs are encouraging claims much wider than this. Any public liability claims generated by CMCs in turn pose a direct threat to charities' all-important reputation, a key issue when it comes to fundraising credibility from the public and businesses.

In fact, one in five charities is concerned that public liability risk will damage their reputation, compared with one in ten who think funding issues will damage it.

\*Source: ABI

\*\*Source: Insurance Age

†Source: FWD research

### "Parasites in the system."

Jack Straw (on CMCs)



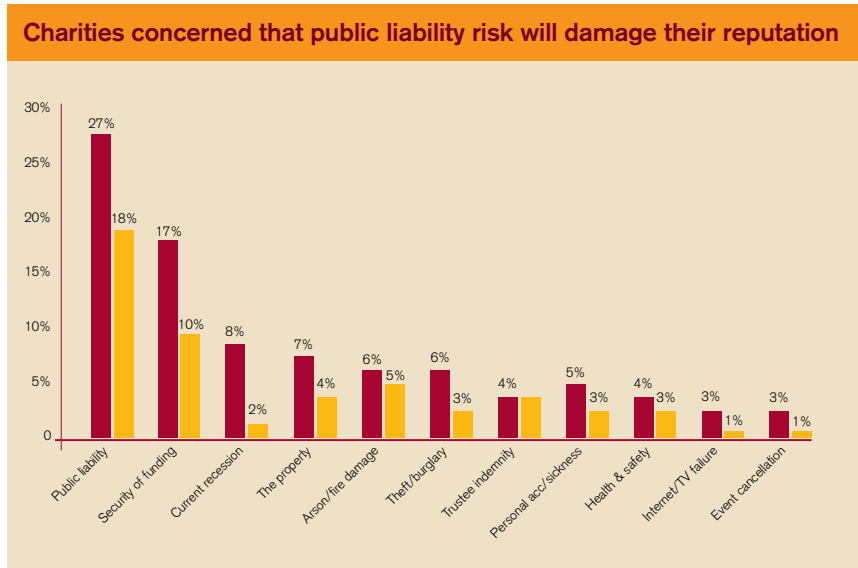


# The cost of litigation for charities

The inevitable cost of the claims culture for charities is having to pay higher insurance premiums. But it's also essential to consider the significant lost working time spent with lawyers in order to prepare and defend cases, and the potential loss of reputation in having a 'messy' case publicised in the press, which could also impact on potential charity income.

The special place of charities in people's hearts does not necessarily confer on them a reduced risk of litigation. If anything, there is a perception that they are 'a softer touch', with some people feeling that charities will have neither the resources nor the appetite to challenge the claim.

In fact, Ecclesiastical claims statistics indicate that once a charity has lost a liability case, it's viewed as a softer target and there is a greater likelihood for repeat claims.



Source: FWD Charity Research (September 2011). What are the main areas of general business risk facing your business today?

“In 2011 we saw 348 public liability claims from or brought against our charity customers. Of these, just over a third were for slips and trips, as well as quite a number for defective equipment.”

Claire Holland, Claims Customer Relationship Manager, Ecclesiastical

# And the winners and losers are...

The main beneficiaries of this rise in liability cases are not claimants but lawyers. The ABI surveyed over 50,000 motor accident claims in 2009 and 2010, and discovered that for every £1 paid in compensation, 87p was paid in legal costs.

The obvious loser is the defendant, who faces the burden of time, cost and stress over a potentially prolonged period. This can be particularly punishing for charities with fewer than ten full-time employees.

If innocent, the defendant is burdened with the injustice of paying to defend an often fraudulent claim in terms of worry, time and fees, while the claimant's case is paid for by the lawyers seeking greater costs and rewards than those with genuine claims.

The solution to this failure is set out in Lord Justice Jackson's report on reforms to the compensation system. It sets out a highly plausible and successful set of reforms that have already been introduced in Ireland, where individuals have fought back against the compensation culture – and won.

Lord Jackson advocates a legal system reserved for genuine claimants, with fair justice being administered in a timely and cost-appropriate manner: an initiative that would be warmly welcomed.

For every £1 paid in compensation, 87p was paid in legal costs.



“Having recently had a claim brought against us by a member of the public, I was surprised by the significant amount of time and resources that had to be expended in defending the claim. Arranging visits from the loss adjustor, preparing witness statements, taking photographs and drawing up floor plans, reviewing and commenting on papers as well as keeping trustees briefed at all times – all this inevitably diverted attention from other responsibilities.”

Mr Hugh Pierce, The Ipswich Institute

## Issues that often lead to litigation for charities

Undoubtedly, the distinct nature of a charity's structure can potentially expose it to particular liability risks.

First among potential risks is that caused by the diverse make-up of people who work for a charity. With many volunteers and part-time employees spread across a diversity of locations or based at home, it is often problematic to educate all of these people to a consistent level on what constitutes a danger to the charity and monitor it effectively.

Volunteers, with no formal contract, will often not consider themselves bound to maintain the responsibilities of the charity in the same way as paid employees. Contracted or not, they have responsibilities to comply with good working practices and ensure others are not at risk.

What is also worrying is the fact that some charities still do not have some of the basics of risk management in place. 14% admit to not having a risk register showing controls.\*

## Some key areas which increase the risk of litigation for charities

- Volunteers or part-time workers can 'overstep' their responsibilities, such as undertaking tasks or selling products on behalf of the charity without the charity having sanctioned them.
- Many charities need to run events and activities to raise funds, for which they may use third parties.
- Add to this the fact that they often work with vulnerable groups, which can increase their risk.
- Staff aren't always fully aware of their responsibilities and risks.
- A tough economy can increase litigious claims.

\*Source: CFDG: Managing risk in the new world 2011



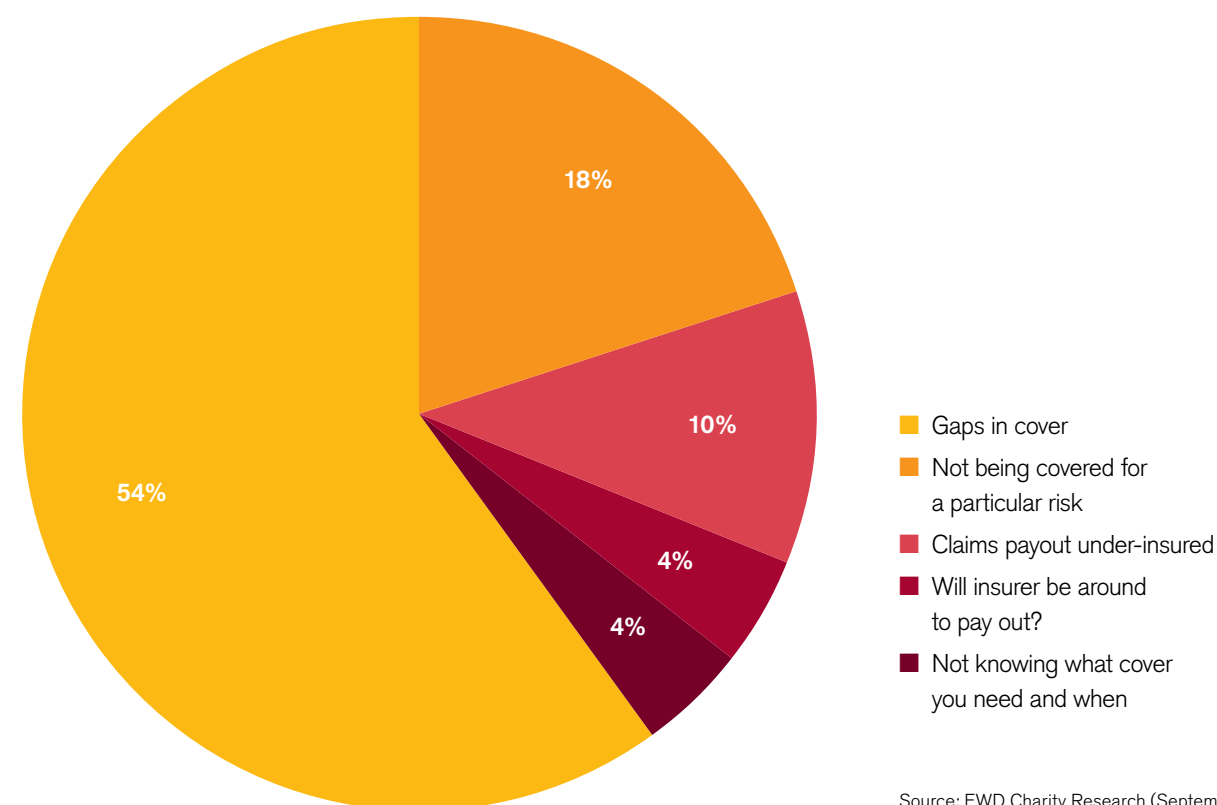
# Charities fight back

The first thing for charities wishing to defend against (or rather fight back against) the onslaught of litigation is to be fully informed. It's essential to understand your responsibilities and risks relating to the different groups of people your charity employs, directly or indirectly, including employees, shop workers and third-party contractors.

## Leave no gaps

The next thing to carefully consider is the selection of appropriate cover. By using a specialist insurance broker who can fully assess your needs and talk you through them, you can ensure you have the right cover should you ever face a case of liability in the future. This will also help you avoid potentially costly areas of cover. The recent FWD research revealed that the biggest risk and fear for charities when arranging insurance was gaps in their cover (54.2%), followed by risk of not being covered for a specific risk (17.6%).

Top five biggest fears when arranging insurance cover



Source: FWD Charity Research (September 2011)

# Better than cure

Prevention, it's said, is better than cure. Here are some of the preventative actions charities need to take to manage their risk.

## Risk assessments.

While risk assessments can take time, they're not difficult. A thorough risk assessment can prevent the easily preventable and sometimes not so obvious risk which could lead to a liability claim in the future. The task of carrying out the assessment can be shared, but should always be overseen by the person who has overall responsibility for health and safety.

## Training.

Ensure your key employees are properly trained and that such training is periodically refreshed.

## Understand your responsibilities.

On occasions it might be necessary for you to utilise the services of third-party contractors. If this is the case, make sure you appreciate what your respective responsibilities are, to avoid the possibility of inadvertently assuming some of the contractors' obligations and potential liability.

## Keep accurate records.

Ensuring the organisation, in all its forms, has hard and fast evidence and records of any incidents, means that the validity of any potential claims can more easily be assessed. And should it get to legal proceedings, these records can more easily be called upon to provide evidence. The Rules of Court mean that an injured party can often wait years before bringing a claim. Accordingly, ensuring that you have a proper system for the retention of records and other documentary evidence is essential.



## What to do if a claim is filed against your charity

Should an incident or accident occur on your premises, immediately check your policy. This will help you to ensure that you comply with the obligations set out in them regarding reporting the matter to your insurer. If in doubt, consult your broker, or your insurer directly if you do not have one.

Should an accident occur, then ensure that the incident is properly investigated and its circumstances accurately recorded in your accident book.

If a letter of claim is received from the injured party's solicitors, immediately forward this letter to your brokers (or in the absence of brokers, the insurers direct), together with copies of all documentation you have retained relating to the incident.

Once you've done that, your insurers will take control of the matter and will work in partnership with you to ensure the most appropriate resolution.

“Because of the nature of legal liability risks in this sector, charities and their brokers need to ensure they are underwritten by a provider that will recognise their specific needs in the terms and detail of their cover. That way, charities can avoid exposing themselves to gaps and minimise their risks.”

Martyn Turner, Charity and Community Underwriting Manager, Ecclesiastical

## Would consumers give charities special dispensation when it comes to public liability claims?

In a survey of British adults, specially commissioned by Ecclesiastical with YouGov in 2012, regarding awareness of public liability, we asked how consumers react to Claims Management Companies and whether consumers would treat falling over differently in a charity shop versus a non-charity organisation – the findings showed:

- 56% say the extent of their injury and 10% say that their relationship with the charity would influence their decision to make a claim against a charity.
- 15% say if they had an accident in a shop which isn't their fault & they are slightly hurt they would consider making a claim against the shop, while just 5% would consider making the claim if it was a charity shop.
- 4% say they would consider making a claim if they were a volunteer at a charity fundraising event and had an accident which wasn't their fault and were slightly hurt.

All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 2,009 adults. Fieldwork was undertaken between 10th - 12th January 2012. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).

# Why not ask us if we can help guide you through this complex subject?

Ecclesiastical has been insuring not-for-profit organisations for over 125 years. Today, we insure thousands of the nation's charities of all sizes and complexities – including youth and children's charities, pastime clubs, advice and support groups and many more.

So it's no wonder we've been voted best charity insurer for the last five years running by both charities and brokers.\*

Charities name our quality of service, our value-for-money cover and understanding of the market as key reasons why they consider us the best charity.

\*Of those brokers who named an insurer in the survey, the majority named Ecclesiastical as the best insurer for charity insurance. Research carried out by FWD, an independent market research company.







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