

Reducing liability risks... ...a practical guide for charities...

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About this guide

Despite continued pressure on funding, our recent research¹ has found that public liability remains the major area of concern for UK charities.

To help, we've produced this brief guide to charity liability. It summarises the key issues charities can become exposed to through various groups of people including the public, volunteers and employees.

We also look at the potential risks created by different types of fundraising activity. We summarise the rules, some of the potential pitfalls to avoid and some practical tips to help you reduce the risks your charity faces.



This advice is given in good faith and is based on our understanding of current law and practice. Neither Ecclesiastical Insurance Group plc, nor its subsidiaries accept any liability whatsoever for any errors or omissions which may result in injury, loss or damage, including consequential or financial loss. It is the responsibility of the Insured or any other person to ensure that they comply with their statutory obligations and any interpretation or implementation of this guidance is at the sole discretion of the Insured or other party who may read these notes.

¹ The survey of 190 UK charities was conducted by telephone during October-November 2010 by independent research company FWD.

About us

Why choose Ecclesiastical?

We've been insuring not for profit organisations for over 120 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.

Voted best charity insurer² for the last four years running by both charities and brokers, we've worked closely with both to develop a flexible, specialist product that meets the varying needs of different types of charities.



Our vision: To advise and protect those who enrich the lives of others.

Why charities vote us best charity insurer

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

- **Our claims approach** - 98% of customers satisfied with our claims service³
- **Flexible, specialist cover** - our charity insurance can be tailored to your charity's needs
- **Our charitable ownership** - we're owned by a registered charity - Allchurches Trust - and every year we give all our available profits to charity, making us the 7th top corporate donor in the UK⁴.

We also offer charity-specific risk management guides and, in many cases, a free buildings insurance valuation⁵.

Speak to your broker for more information about our approach to the charity and not for profit sector or visit www.ecclesiastical.com/charity to find a broker.

An advertisement for Ecclesiastical insurance, specifically targeting charities. The background is a solid blue color. The text is in white and yellow. At the top, it says "Charities need good value from their insurer. We know, because we're owned by one." The word "owned" is in a very large, bold, white font. To the left of "owned" is a circular seal that says "THANK YOU FOR YOUR SUPPORT" around the edge and "ECCLESIASTICAL" in the center. Below the main text, there is a small paragraph: "Specialist protection for the not for profit sector for more than 120 years. Who understands charities better than someone with first hand knowledge? Ecclesiastical offer bespoke products, charity specific risk management guides and free buildings insurance valuations. We're also one of the UK's top 10 corporate donors! No wonder we've been considered the Best Charity Insurer by both brokers and charities!" At the bottom, there is the Ecclesiastical logo with the tagline "Always on your side" and a call to action: "To find out more, speak to your broker or visit ecclesiastical.com/charity".

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² In research conducted by FWD, an independent market research company, of those brokers and organisations who named an insurer in the survey, the majority voted Ecclesiastical as the best insurer for charity. ³ Source: Ecclesiastical Claims Satisfaction Survey 2010. ⁴ Source: Directory of Social Change.

⁵ Terms and conditions apply.



Liability - an introduction

When it comes to charities, liability lawyers segment the world into three main groups: the public, volunteers, and employees.

When and how a person is defined as moving from one category to another can have major implications for a charity's insurance cover and the liabilities it is exposed to.

There are two main strands to liability:

- **Employers' liability** - the legal liability of an employer for injury caused to an employee whilst acting in the course of their employment.
- **Public liability** - the legal liability for injury caused to members of the public or damage to their property.

Under Health and Safety Regulations the health and safety of any worker, or member of the public, is protected by law. As an employer, a charity has a legal duty of care to ensure the safety of anyone working for them, in whatever capacity, and for anyone affected by those workers' activities.

The Corporate Manslaughter Act 2007

There has been a much stronger focus on health and safety issues since the introduction of this Act. Organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of duty of care leading to a fatality. The Act is linked to existing Health and Safety requirements and penalties include unlimited fines.

Volunteers - employees or members of the public?

While most health and safety law specifically refers to employees and the duties owed to them, the Health and Safety Executive (HSE) advise that it is good practice, and very strongly recommended, that people working as volunteers are given the same level of protection as employees.

If they have no formal contract of employment volunteer “workers” may not regard themselves as having employee status or obligations. They do, however, have responsibilities to comply with good working practices and work within any parameters set out by their “employer” to meet Health & Safety requirements.

All voluntary or charity organisations must ensure that neither employees or volunteers are put into a situation where they could be at risk. To do this effectively charities should:

- carry out risk assessments
- identify potential hazards
- evaluate the risks and decide on reasonable precautions to prevent injury.

See our practical risk management checklist on page 9 for more details on how to carry out a straightforward risk assessment.

Charity shop volunteers

One of the most common situations where charities rely on volunteers to act as employees is in the staffing of charity shops.

In terms of health & safety law and employer or public liability, there is no difference between a volunteer in a charity shop and a worker in the chain store branch next door. There are a range of regulations that could apply to how they carry out their activities including:

Manual handling operations Regulations 1992 (amended 2002)

Apply to a wide range of manual handling activities, including lifting, lowering, pushing, pulling or carrying. For example, employers need to understand and deliver required training.

The Work at Height Regulations 2005

Apply to all work at height where there is a risk of a fall liable to cause personal injury. This includes work carried out by shop volunteers or anyone working on a voluntary basis to maintain or clean premises. For example, organisations need to provide the right equipment and ensure that it's regularly maintained.



“In terms of health & safety law and employer or public liability, there is no difference between a volunteer in a charity shop and a worker in the chain store branch next door.”



Who is liable?

A volunteer carries out regular general handyman duties for an organisation. He works unsupervised and undertakes many tasks on his own initiative. The organisation is aware of his activities.

Having heard of a specific problem, he attempts to rectify it. During the course of his work he has an accident where he is seriously injured.

No one specifically asked him to carry out this task. ***Is the organisation liable?...***

See page 8 for the answer.

Understanding the risks

All organisations must be aware of the work regulations that apply to both paid and unpaid workers. Hand-in-hand with this is the responsibility to ensure that volunteers are aware of risks...

Unsupervised volunteer workers who aren't aware of these issues could pose a range of risks to charities which could expose them to public liability claims.

Take, for example, volunteers manning a charity stand at a public event and deciding that in addition to selling the charity's official merchandise they will boost funds by selling home-made produce.

Should a member of the public suffer food poisoning as a result, it is quite possible that the charity would be held responsible even though they had not instigated the sale of the produce.

Volunteers should always be given clear roles and guidelines.



Full details of legal requirements and advice on how to reduce risk can be found in our Charity risk management guidance notes. These are available free of charge to all Ecclesiastical policyholders. They include advice on planning events, working with vulnerable groups and more. Ask your broker for a copy if you don't have one.

Fundraising

While there are very few grey areas as far as employers' liability for volunteer workers is concerned, things become more hazy when it comes to fundraising activities.

Avid fundraisers may regard themselves as volunteers but that doesn't necessarily give them the same legal status as volunteer workers. If damage to property or personal injury occurred because of the actions of the fundraising 'volunteer', the courts would look at how closely, if at all, they are connected to the charity.

Extreme fundraising

Faced with government grant cuts and reduced charitable giving, many charities feel under pressure to organise unique fundraising activities that help differentiate themselves.

Our recent research⁶ found that **over half of charities were looking to more 'extreme' fundraising methods to stand out.** The move away from traditional fundraising activities such as cake bakes and street collections to sky diving, bungee jumping and the like looks set to continue.

If you're contemplating some more off-the-wall fundraising ideas, you may initially find that your trustees or management body throw up their hands in horror uttering warnings about health and safety and liability issues.

The good news is that while you might expect an insurer to err on the side of caution, our message is that with good risk management it is possible to go to extremes safely.

Types of fundraising event

The Institute of Fundraising defines three different types of fundraising event:

- **In-house events** which are completely organised by the beneficiary charity's employees and/or volunteers
- **Sub-contracted events** - where specialist third party providers are used
- **Third-party events** - where, often, the charity will know little about the planned fundraising activity.

Implications for both employers' and public liability can differ for each. In the first scenario, the situation is perfectly clear cut: as the organising body liability rests strictly with the charity. For the others it's important reasonable precautions are taken.



“While you might expect an insurer to err on the side of caution, with good risk management it is possible to go to extremes safely.”

⁶ The survey of 190 UK charities was conducted by telephone during October-November 2010 by independent research company FWD.



Who is liable? - Answer

*... **Yes**, in this case the activity was deemed to be in breach of the Health & Safety Act. The "employer" was held responsible as no risk assessment had been carried out.*

Sub-contracted events

Generally, the risk element for a charity depends on its involvement in the organisation and execution of the activity: the higher the involvement, the greater the exposure to risk.

Logically then, by handing all of this over to a specialist third party provider you should be able to distance yourself from risk.

In theory, the use of a specialist event organiser creates a legal firebreak should a participant or spectator be injured at the event as liability should rest with the contractor rather than with your charity.

To ensure that this firebreak exists, however, the contractor must be chosen with care.

Charities should take all reasonable steps to ensure any company appointed to organise a potentially hazardous activity is competent. To do this you should check:

✓	Correct insurance cover is in place - if the sub-contractor doesn't have public liability cover your charity could be held legally liable for any injury or damage which occurs as a result of the event.
✓	They belong to a recognised trade body - there are a number of trade associations that event organisers may belong to, most of which require members to abide by professional codes of conduct. For example, companies that provide bungee jumping should be members of BERSA (British Elastic Rope Sports Association) which offers certification for bungee jumping providers.
✓	Proof of previous events and testimonials - from past clients. Providing evidence of their expertise.

Always get evidence of the contractor's public liability insurance

This should be done at the planning stage and should form part of any written contract or agreement.

Verbal confirmation of public liability cover is not sufficient. Either a letter from the contractor's insurer or a copy of the schedule of insurance confirming that insurance is in force should be obtained and kept on file.

Limits of liability vary but it is worth bearing in mind that many local authorities, in placing contracts with external organisations, require public liability insurance to the value of £5 million.

In the event of someone making a claim for either property damage or personal injury, they will have to prove that the organiser is legally liable and has been negligent. This may involve going to court. Because of this, liability cover would also normally include legal expenses involved in handling or defending a claim.

Third party events

For a liability claim to succeed negligence has to be proved. To prove negligence there needs to be a failure in the duty of care. When fundraising activities are being wholly carried out by third parties it is difficult to see how duty of care could apply.

In a vast number of instances a charity will not know about a fundraising activity until the cheque with the proceeds drops on its desk. However, some fundraisers will ask a charity to endorse its venture or will be responding to a major appeal such as Children in Need. These activities are defined by the Institute of Fundraising as 'in aid of' fundraising.

The Institute recommends that organisations 'should consider providing third party event organisers with a checklist of issues to consider' and in its Code of Fundraising Practice Guidance for 'In Aid Of' Volunteers, it provides an advisory letter which includes the need for insurance.



Fundraising codes of practice guides

The Institute of Fundraising produces a series of Codes of Practice which provide guidance for organising fundraising events, including those which are contracted to specialist providers. These set out legal requirements, best practice guidelines and checklists of issues for consideration. By following these guidelines charities can avoid making the wrong choice which could cause both reputation and funds to suffer.

Visit www.institute-of-fundraising.org.uk for more details.



When using specialist providers it is essential to take steps to confirm that the contractor is competent.

The importance of due diligence - the case of Bottomley v Todmorden

Without due diligence when using specialist providers charities can expose themselves to a degree of risk. This is illustrated in the case of Bottomley v Todmorden Cricket Club.

This case, decided by the Court of Appeal, saw a cricket club held liable for injury to a person who was voluntarily assisting a stunt team organising a dangerous firework display.

The stunt team had performed at the club previously. On this occasion, the club was aware that a hazardous stunt was going to be performed but had no formal contract, had not carried out a risk assessment and had no clear idea of what was going to happen.

The stunt team had no public liability insurance and no written safety plan. The Appeal Court judge concluded that they had neglected to take basic, reasonable precautions to ensure that the stunt team had the required competences and were insured. They had therefore failed in their duty of care and were jointly liable with the stunt team for the injury that occurred.

A key failing was that the club took the capabilities of the stunt team on trust. When using specialist providers it is essential to take steps to confirm that the contractor is competent.



How to carry out a risk assessment

Risk assessments are not difficult, but they do take time. It is sensible, therefore, to spread the load as far as is possible and for people to carry out risk assessments in their own particular area such as premises, maintenance, catering, grounds, manual handling or other specialist areas.

The risk assessment process should be overseen and co-ordinated by the person who has overall responsibility for health and safety.

Systematically look at each area of the premises and note all the hazards and risks, and any existing safety measures. Note also any person who may be specifically at risk. You must then note any additional safety measures or 'controls' which will reduce those risks as far as possible. As well as the interior of the buildings, you must also look at the yards, car parks and other external areas.

In addition to the risks arising from buildings you must also carry out risk assessments for activities away from your premises such as visits, outings and fundraising activities.

Where five or more people are employed there is a legal requirement to record the significant findings of the risk assessment. We would strongly recommend that written risk assessments are produced irrespective of the number of employees.



A hazard is something with the potential to cause harm. This can include substances or machines as well as methods of work.

Risk is the likelihood of the harm from a particular hazard being realised and its severity.

Risk assessment checklist

In order to help you, the following is a checklist of common hazards that you should look for in each area being assessed. If any of these hazards are present then record them and what you need to do about them. Look for any other hazards that may not be included in the checklist, such as specific activities or pieces of equipment that may cause harm.

Accidents and first aid

- Provision of first aid equipment
- Persons with first aid training
- Procedures to deal with accidents
- Transport arrangements to hospital
- Examine existing arrangements and assess what is needed

Fire safety

- Combustible materials, flammable liquids and accumulations of waste
- Heaters, smoking and other sources of heat
- Provision of fire exits, escape routes and signage
- Provision of fire detection equipment and fire fighting equipment
- Evacuation plans

Electrical safety

- Condition of fixed electrical installation, including switches and sockets
- Condition of portable electrical appliances, including leads and plugs
- Use of unauthorised electrical appliances and temporary wiring
- Mechanical damage to wiring
- Overloading of circuits using multiple adaptors

Gas safety

- Condition and maintenance arrangements for fixed gas boilers and heaters
- Condition and arrangements for use, including storage and changing of cylinders for portable liquid petroleum gas heaters

Control of hazardous substances

Internal

- Cleaning materials and detergents
- Paints, solvents, adhesives and other chemicals
- Types, amounts, storage arrangements
- Fumes and dusts
- Provision of personal protective equipment

External

- Pesticides, herbicides, petrol
- Types, amounts, storage arrangements
- Provision of personal protective equipment

Other

- Blood and bodily fluids
- Drugs
- Clinical waste and sharps

Plant and machinery

Internal

- Kitchen equipment
- Laundry equipment
- Lifts, hoists and other lifting equipment
- Ladders and scaffolds including storage and accessibility
- Display screen and computer equipment
- Any other machinery and equipment

External

- Lawnmowers, gangmowers, strimmers, etc.



Other

- Sluices and bedpan washers

Slips, trips and falls Internal

- Loose carpets, rugs, mats and other floor coverings
- Loose and uneven tiles, stone paving and floorboards
- Trailing leads and other obstructions
- Spillages of water and other liquids
- Worn, steep and uneven steps and stairs
- Inadequate lighting and lack of handrails

External

- Uneven and poorly maintained yards, car parks, paths and steps
- Potholes, tree roots and unprotected drops
- Long grass and undergrowth
- Poor drainage of paths and growth of algae
- Inadequate lighting and lack of handrails

Lighting

Internal

- Adequacy of lighting
- Pay particular attention to stairs, steps, cellars, basements and attic

External

- Paths, steps, drives, car parks, boiler room steps and entrances

Falls from a height

Internal

- Arrangements for light bulb changing
- Storage at high level
- Use of unsecured ladders
- Unprotected openings and walkways at high level

External

- Clearing of gutters and valleys
- Low parapets and balustrades

Food hygiene

- Extent of food preparation
- Nature of foods to be prepared and stored
- Temperature controls
- Areas used for food preparation
- Facilities for washing and preparation of foodstuffs
- Facilities for storage of foodstuffs
- Experience, training and competence of food handlers

Manual handling

- Moving and lifting of stock, plant and other equipment
- Transfer and handling of people where appropriate
- Numbers required
- Specialist equipment needed

Display screen equipment

- List all computer equipment
- Who uses it and for how long
- Check seating, workstation, screen, software
- Lighting and glare

Hazardous buildings/glazing

- Loose brickwork, stonework, falling masonry, slates, tiles, gutters, flagpoles
- Detail any glass in windows below waist height and in doors or beside doors below shoulder height that is not of safety material or protected against breakage
- Narrow panes up to 250mm need not be included
- Check if any asbestos present

Personal safety

- Threat of violence
- Lone working
- Handling of cash
- Means of raising an alarm, summoning assistance

Other activities and hazards

- Events, exhibitions, work away, etc.
- Age-related hazards (children/elderly)
- Disability access/provision
- Fêtes, sponsored walks, fundraising activities
- Look for and note any other hazards which could cause someone harm, that are not included in the above checklist



Risk assessment calculator

You can calculate a risk rating in order to prioritise the implementation of the additional safety measures required if you need/want to.

Any risk which could result in a serious injury or a fatality must receive priority attention.

You need to grade both the likelihood and severity from 1 to 3. The grades are then multiplied together to give a risk rating.

Likelihood

The likelihood of something happening can be graded as:

- 1** = Low (seldom)
- 2** = Medium (frequently)
- 3** = High (certain or near certain)

Severity

The severity of injury if something does happen can be graded as:

- 1** = Low (minor cuts and bruises)
- 2** = Medium (serious injury or incapacitated for 3 days or more)
- 3** = High (fatality or a number of persons seriously injured)

Having assessed both likelihood and severity, a risk rating can be calculated by multiplying the likelihood by the severity.

This will give a rating from 1 to 9.

Risk rating matrix

Likelihood	3	3	6	9
	2	2	4	6
	1	1	2	3
		1	2	3
		Severity		

The implementation of additional controls can then be prioritised as follows:

Risk rating

- 1 – 2 = low priority
- 3 – 4 = medium priority
- 6 – 9 = high priority

- With low priority, no action at all may be required
- With medium priority, additional control measures may be required or a different method of working adopted
- With high priority, it may be necessary to stop the particular activity, or restrict access to the area until action has been taken



The risk assessment should be overseen and co-ordinated by the person who has overall responsibility for health and safety.

Protecting you from costly claims slip-ups...

By the time you need to claim, we'll have already done our best to make sure that you have a policy that's right for you.

When you make a claim, we'll look at how your policy covers you, and settle your claim fairly - just as you expected when you took out your policy.

But at Ecclesiastical we don't just pay out claims, we defend you from them too.

Not just a walk in the park

We recently worked closely with Everatt & Company, one of our specialist solicitors, to successfully defend a claim which could have had far reaching financial implications for many charities.

On 8th March 2008, Helen McBride an animal care assistant at Gables Farm Dogs & Cats Home (GFDCH) was walking a dog in her care around an exercise field owned by the charity. She slipped on the allegedly muddy field surface, nearly falling to the ground, only saving herself by holding on to a nearby chain linked fence.

The claim

It was claimed the slipping and jarring movement caused an injury to her hip, causing pain and discomfort for three years post accident.

The Claimant's case was that had the charity properly considered matters, it would have provided a purpose built footpath around the field for her to walk on.

If the claim was successful the charity may have had to lay footpaths wherever they felt their employees may have to walk or cease exercising the animals in their care.

The defence

Recognising the potential importance of the claim we instructed Everatt & Company to defend the action on the basis the Claimant's formal allegations were unsustainable in law and flew in the face of common sense.

The defence team worked closely with GFDCH - assisted greatly by their excellent record keeping.

The outcome

On 4 February 2011, Deputy District Judge Challan dismissed the case concluding the exercise field was not a traffic route for the purposes of the Workplace Regulations but was the Claimant's place of work.

Therefore, he found that in view of the type of work being undertaken by the Claimant, the floor surface was entirely suitable. The Claimant was ordered to pay the costs of the defence.



"The fantastic result was achieved mainly by Everatt's and Ecclesiastical's determination and the work that they put in prior to the trial."

Ruth Rickard, Deputy Manager of Gables Farm Dogs and Cats Home

"It is a victory for common sense and clear proof that the only way to put a stop to an emerging claims culture in this country is to stand up to it."

David Bonehill, Ecclesiastical's Claims & Risk Services Director

"Many insurers would simply not have defended this case. Ecclesiastical spared no resource in preparing the defence and were ultimately fully vindicated in the stance that they adopted."

Jacqui Kendall, Everatt & Company

Risk management guidance notes

Full details of legal requirements and advice on how to reduce risk can be found in our Charity risk management guidance notes. These are available free of charge to all Ecclesiastical policyholders. They include advice on planning events, working with vulnerable groups and more. Ask your broker for a copy if you don't have one.



For more information ask your broker about us or visit
www.ecclesiastical.com/charity
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