

Community First Presentation – Speaker Notes – 19/01/2023

Good Morning Everyone, thank you for your time this morning. My name is Andrea Thompson and I am one of the Account Executives within the Care & Social Welfare Team at McClarrons.

I just want to give you an overview as to who McClarrons are and how we work.

McClarrons are an independent which means that we are not tied to any one Insurer therefore can truly work on behalf of our clients to search the right product and Insurer for you. Some Brokers will have scheme arrangements and therefore only approach their scheme insurer. We have access to a number of markets.

Employers Liability

In relation to volunteers I do have a further slide which enhances on this later in the presentation

- Excess does not apply
- No exclusion typically for Communicable Disease

Public Liability

- Excess will apply for damage to third party property
- Most Insurers do have an exclusion for CD cover or may offer an inner limit – that is whereby any third party/client contracts covid for example and pursues a claim

Professional Indemnity

- An excess will generally apply under this section
- Usually this cover is on a claims made basis, therefore will respond for incidents which are made within the period of insurance. This cover responds whereby there is a financial loss as a result of advice/service and there has been no injury or damage – Industries who have a high exposure for Professional Indemnity are accountants, solicitors, architects and consultants

Management Liability

Claims made against individuals typically allege negligence or an error/omission in the decisions made in the day to day running of the organisation. Any allegations of wrongdoing must be investigated and defended, which is costly. This means trustees' personal finances are at risk, so it is important for organisations to provide protection.

Some Combined Policies will extend to include an optional cover for Trustee Indemnity.

For stand alone Management Liability Package Policies there are 3 key areas of cover:

Directors & Officer/Trustee Indemnity – protects the personal wealth of Trustees/Directors and any other management staff within a decision making position from the legal costs and awards in defending against claims or investigations (civil, criminal)

Employment Practices Liability – covers the directors of the business from claims from potential, current and former employees alleging breach of contract/employment law.

Corporate Legal Liability – claims which are made against the business itself in tandem, protecting the legal entity from defence costs incurred in relation to civil, regulatory claim or investigation

What would happen to you without management liability cover:

The company assets/funds will not be able to help you defend claims made against you.

Possible outcomes of not being able to defend a claim could lead to:

- Disqualification
- Criminal Prosecution
- Personal bankruptcy
- Loss of job and business reputation
- Family trauma and financial hardship

How, Why and Who

Claims arise from a wide range of circumstances and it is important to remember that a claim does not have to be justified and factual to initiate costly legal defences. For instance:

- Mismanagement
- Negligence
- Unfair dismissal or discrimination
- Libel and slander
- Breach of fiduciary duty
- Sexual harassment
- Anti-competitive behaviour
- Regulatory investigations such as the Health & Safety Executive and HM Revenue & Customs or the relevant regulatory body by industry

Litigation can come from anywhere – employees, shareholders, creditors, regulators, competitors or anyone who feels they have suffered a loss arising from the director/trustee wrongly acting in their position can potentially sue.

Some examples:

Claim for misuse of Trust Funds

Following an investigation by the Charity Commission, it was declared that the trustees named had illegally gained payments from the trust by use of another trading company of which they are directors. The Charity Commission has stated that there exists a conflict of interests and that these salaries and dividends must be returned, and the trust is re-structured. The claim itself would be for reimbursement of legal fees incurred.

Claim for legal fees to defend a Charity Commission Investigation

Upon the liquidation of the charity it was alleged that the Trustees mishandled the winding up and distribution of remaining assets. Though the Charity was Limited by Guarantee, and the liabilities of the Trustees and Directors were negligible, claims have been made by creditors alleging that the Trustees mishandling resulted in the Charity's inability to pay all of its creditors.

Other Insurances to consider

Buildings & Contents – I have a further slide relating to community buildings which will enhance on this subject further

Business Interruption

- Triggered by a material damage claim such as a fire, this can cover loss of revenue over a selected time frame.

Motor Insurance

- We would recommend working with a Broker/Insurer who understands Charities and the work undertaken.
- Is cover required for volunteer drivers ?
- Has the vehicle been modified including any modification for disabled equipment
- Are you carrying out passenger transport ? – Some Insurers will consider this as Hire and Reward – certainly if money is changing hands ?

Legal Expenses

It is extremely important to understand the conditions applicable to a legal expenses policy, such as the prospect of success clause – whereby a claim has to have a more than 51% chance of success and advice precedent clauses which means that you have to seek the advice of your Insurers before taking any action and follow their advice accordingly. Should you not contact your Insurers they may not support the claim if they feel you have prejudiced their position. Employment Practice Liability Cover under a Management Liability Policy does not have a prospect of success clause.

Medical Malpractice example

This could be, for example, a failure to administer or prompt the use of medication. This cover would typically be required should your organisation provide personal care, advice on care plans or any form of treatment.

Cyber Insurance

There are also extensions available for Business Interruption and System Restoration in the event of cyberattacks that a typical charity policy would not provide cover for.

Given the amount of personal and sensitive data charities can hold, cyber insurance is a key cover to consider and one we would highly recommend.

Common Misconceptions:

I don't need to insure donated items as they cost us nothing

It is important to consider the potential implications of losing any donated items and not being able to replace them in a timely manner, or at all.

You should also consider business interruption that could be caused by the loss or damage of such items. For example, if an activity or event was dependent on a piece of equipment that was subject to malicious damage, then there could be 2 claims:

- Repair or replacement of the equipment
- Loss of income from loss of production

Although donated items do not carry a cost to the organisation, they still need to be insured for the replacement value of a modern-day equivalent. Most policies provide "new for old" cover, which is why you need to insure for an equivalent piece of equipment at today's value.

We will get the lowest limit of Public Liability as we don't need it by law

Public Liability insurance covers the cost of claims made by members of the public for incidents that occur in connection with your business and its activities. It covers the cost of compensation for things such as personal injury, loss of or damage to third-party property, and death.

Therefore, although not a legal requirement, it is important to consider Public Liability insurance for your organisation. If your organisation has facilities that are open to the public, runs events, or provides services to vulnerable individuals, then special consideration needs to be given to what limit of indemnity you should opt for.

If you have any contracts with Local Authorities, or visit or provide services at other organisations' venues, you may also find that they require you to hold a certain limit of Public Liability cover, anything from £1million to £10million for example local market to sell produce or promote the charity and seek new volunteers.

I don't employ anyone so I don't need Employers Liability

Although you may not be required to carry Employers Liability by law dependent on the structure of the organisation, this does not necessarily mean you have no exposure to potential loss.

A volunteer or trustee under your direction and control can be deemed an employee under the policy definition and the consequences of not having Employers Liability could be costly.

Should an individual under your supervision or control have an accident whilst carrying out the designated activity on your behalf and allege you were negligent then the organisation would have to pay for legal defence costs. Should the business be found negligent, you could then also be responsible for the third party's legal costs as well as any compensation.

Community Buildings

If owned by you it is your responsibility to insure them and arrange suitable Property Owners Liability Insurance

If leased then the owner of the property should have adequate insurance – some policies do extend to include cover for damage to hired or rented premises where you use third party locations.

Underinsurance

Buildings should always be insured for the amount it would cost to rebuild them – this should include site clearance, debris removal, costs of surveyors, architects, planning, labour and materials.

Contents and equipment cover will typically be on a “new for old” basis and therefore any amount insured should be that of a modern-day equivalent.

Business interruption (loss of revenue) is covering the future, not the past. Therefore, you need to make sure this amount covers your projected future revenue. It is up to you how many years revenue you cover but we recommend a minimum of 36 months as realistically, in the event of a total loss from fire it could take this length of time to reinstate the property – shorter or longer indemnity limits are available.

It’s a common mistake but a costly one – determined by the ‘condition of average’ clause. This clause is used when calculating the settlement for a claim where the policy undervalues the sum insured. In the event of a loss, the amount paid out for a claim will be in the same proportion as the value of the underinsurance.

Therefore, if you have insured your buildings at £200,000 and following a loss they are valued at £200,000, there is no issue, you have insured them adequately. However, if you’ve insured your buildings for £100,000 and the actual value is £200,000, you have underinsured by 50%.

This means, should you suffer a loss of £100,000 you would receive a claims settlement of only £50,000. Any settlement calculated on the insured value will be halved by your insurer.

The condition of average applies to buildings, contents and business interruption.

Bear in mind that since the pandemic there has been a significant rise in cost for building materials and construction and some of the reasons for this are:

- shortage of HGV drivers
- housing market boom/repairs, extensions/improvements
- Increased energy costs
- Shortage and backlog in production of supplies since Covid
- Large infrastructure projects being undertaken across the country

It is important to remember that when insurers talk about your 'building sum insured', they want to know the estimated cost of rebuilding your property, not its market value; your property should always be insured for its rebuild sum insured.

Some policies include 'day 1 increase/uplift' or 'index linking'.

Day 1 Increase/Uplift: The insurer will increase the buildings sum insured by a set percentage to account for potential inflation during the insurance year. The percentage will vary from insurer to insurer but will usually be between 10% and 50%.

Index Linking: At each renewal, a percentage increase will be added to the building sum insured to take the inflationary impact of changes to building costs into account, such as materials or labour charges. We are seeing the percentage of index linking at an all-time high at present, typically between 8%-15%.

Having either of these conditions in your policy is most certainly an advantage but both are dependent on you having the rebuild value correct in the first place. Keep in mind, these extensions are for inflationary reasons and are not there to compensate for underinsurance at the time of going on cover.

It is recommended to obtain a building valuation every 3/5 years from a RICS Qualified Surveyor (Royal Institute of Chartered Surveyors) (highest standards of surveying). Some buildings may just warrant a desktop survey which can be undertaken more competitively priced.

Business Interruption goes hand in hand with your commercial building's insurance; after all, if you cannot use your building due to damage, it is extremely likely the business will lose turnover in some form. Depending on your business, you may be insured for loss of gross profit and/or increased costs of working.

In relation to the current climate and supply issues, you need to evaluate whether your indemnity period is long enough to ensure your business is in the same trading position it was prior to the loss when you reach the end of it. If not, you may come to the end of the indemnity period and not be at the same level of pre-loss turnover; this could be a result of not factoring in the current supply issues and tradesman availability within your indemnity limit, for example.

Listed or Non-Standard Construction

The same applies, however Listed premises may need to factor in higher material costs due to specific materials being required, longer timescales required to take into account reapplying for planning permission if needed. Most Insurers will require an up to date reinstatement valuation for these types of properties and dependent on the value may wish to undertake a survey. Premiums are typically higher rated for listed and non standard.

Property Owners Liability

In short Property Owners' Liability Insurance protects landlords and property owners in respect of claims made against them in respect of their legal liability for personal injury or property damage suffered by third parties and arising from the policyholder's ownership of the property

Hiring out for venues/event

Ensure you advise your Insurers the purposes for which you are hiring out the property. Is alcohol involved and if so do your Insurers have any specific conditions relating to this.

Ensure that the property is in a good state of repair

Check the use by those hiring the property as it is their responsibility to have adequate insurance with a reputable Insurer for their activities recommend £5m limit. If they cause damage you can claim against them

Complete a hirers agreement – ensure the hirer has Public Liability Insurance in place

In relation to large gatherings, events – Check as to whether there is a maximum limit of attendees imposed by Insurers

Business Description – Failure to disclose all business activities could result in a claim not being met – ensure that Insurers are aware of all the activities you undertake

Fundraising events are usually covered as standard however check as to whether there is a limit for attendees at any one time, i.e. 500 maximum. If any firework displays then check any conditions or exclusions under your policy relating to this

Village Halls is something which we have not actively pursued as there are a number of schemes available with very competitive premiums, i.e. Aviva.

Repair Hubs/Repair Cafes

There are a number of networks and groups for Repair Hubs and Repair Café's throughout the UK. This is an interesting service and one which some insurers do not fully understand. Insurance is available however would point out that checking the policy schedule/wording is critical as there may be some specific conditions or exclusions around electrical items/PAT testing qualifications and whether cover can be provided for property being worked upon not belonging to you.

Inflatables/Bouncy Castles

I am sure that this is no surprise however Inflatables and Bouncy Castles are not liked by Insurers due to the number of incidents surrounding these. Consider using a third party to provide these and who will supervise and also carries their own insurance. Full risk management would need to be carried out and consideration could be given to signing declarations.

If Insurers do offer cover for these activities then they will certainly impose conditions relating to supervision, around the erecting and dismantling and ages using the equipment.

We have had an incident which occurred whereby mixed aged groups were using a bouncy castle and unfortunately someone was squashed. The parents claim was successful and the insurance paid out.

There was the terrible case in Australia whereby 5 children died after falling 30ft from a bouncy castle that was caught in a gust of wind.

Always refer to your Insurers if you are considering the use of inflatables at any events.

Use of trampolines are usually excluded unless you use a TP premise which carry their own insurance

Any Questions

I hope that you have found some of the content of interest and happy to answer any questions.

Thank you for your time today and I hope that the presentation has been helpful the next slide provides my contact details and I would be happy to have a chat with you if you have any specific questions or require a review of your insurances.

Andrea Thompson

McClarron Insurance Ltd

07542 301207

andrea.thompson@mcclarroninsurance.com