

LEGAL EXPENSES INSURANCE FOR CHARITIES

A SHORT GUIDE TO LEGAL EXPENSES
INSURANCE - THE COVER AVAILABLE
TO CHARITIES AND KEY EXCLUSIONS



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Even with all of the right policies and practices in place, charities can still find themselves involved in legal disputes. Dealing with litigation problems can be expensive, whether it be hefty fines and legal representation costs or excess time spent focussed on the legal issue, reducing the time you have to focus on your aims.

Fortunately, insurance policies such as commercial legal expenses cover can help protect your organisation in these circumstances and set you on the road to recovery. This type of policy provides cover for legal costs that occur while pursuing a claim or dispute against a responsible party. As a form of 'before the event' insurance, these policies must be taken out before the event occurs.

Policy limits range from £250,000 of cover upwards, but many policies impose a smaller 'per claim' limit too.

This short guide looks at:

- Legal expenses insurance cover
- Employment practice liability cover
- Normal policy exclusions

Legal expenses insurance cover

Legal expenses insurance can provide cover for a range of circumstances. **It is normal for policies to have a 'prospects of success clause'**. This clause requires a 51% or more chance of the policyholder winning a claim or successfully defending their case for the cover to kick in. This means the cover will not respond in the event that the policyholder has no realistic chance of winning their case.

Cover is typically available for the following circumstances:

Employment disputes

Covers the legal costs involved in defending your organisation when faced with allegations of wrongful dismissal, discrimination, harassment and failure to promote or employ or alleged breach of statutory duty by you against an employee. This section also covers you for amounts awarded to the other party in the event you lose a case and are required to pay compensation.

Contract disputes

Covers the legal costs involved in pursuing or defending a legal action relating to a contractual dispute. Contracts covered include purchase, hire, sale or provision of goods or services.

Debt recovery

Covers you for costs in recovering debts owed for goods or services provided by you. Cover for rent arrears is normally excluded but can be purchased as an add-on or separate policy.



Property protection

Covers the legal costs involved in pursuing or defending a legal action relating to property owned by you (excludes rent arrears). Occurrences covered include damage by a third party and claims for nuisance or trespass to the property.

Personal injury

Covers the legal costs and expenses for defending employees and their family members following a specific or sudden accident that causes their death, or bodily injury to them.

Tax and VAT protection

Covers the legal fees related to:

- HMRC investigations with representation at a first-tier tribunal, upper tribunal or at appeal against a decision.
- VAT disputes related to a local review procedure intended to reach an agreement with HMRC, a first-tier tribunal, upper tribunal or VAT tribunal (or appeal).
- Disputes regarding compliance with regulations related PAYE, social security and national insurance contributions after a review by the HMRC.



Compliance and regulation

Covers the legal costs associated with:

- Appeals against health and safety or food safety enforcement notice, as well as dealing with authorities or the HSE prior to a charge.
- Defence in criminal prosecutions or civil legal proceedings, as well as any disputes or proceedings (including the right to appeal) in connection with the Data Protection Act.
- Appeals against terms of a statutory notice or against the suspension, revocation, imposed alteration or refusal to a renew a government-issued licence or certificate of registration for an activity.
- Representation at a formal investigation or hearing by any trade association.



Criminal prosecution defence

Covers the costs of mounting a defence against criminal prosecution charges brought against an individual who works for you, up to the point of conviction. Cover applies when the alleged crime was committed unintentionally (while in the course of their work for you).

Legal advice and support

Most insurers offer a 24-hour helpline that gives advice on legal matters affecting your charity. Some legal expenses insurers also have a helpful document repository which includes template legal documents and an employment manual (employment procedures guide).

Employment practice liability cover

We noted earlier that legal expenses insurance usually has a 'chances of success' clause - which means the cover will not kick in unless you have at least a 51% chance of your case succeeding.

Many charities want insurance for legal costs surrounding employment issues but are concerned that the 'chances of success' clause leaves them without adequate cover. Fortunately, employment practice liability insurance (EPL) is designed for this situation. EPL provides cover for the costs in defending actions brought by staff or ex-employees as well as officeholders and regulatory bodies - when there has been a breach of employment law. Policies also cover damages and awards where an employee's rights have been breached.

EPL policies do not have a “prospects of success” clause. The insurer has an absolute duty to fund defence costs relating to a wrongful employment practice and to pay a reasonable out-of-court settlement, employment tribunal compensatory award or damages awarded by a court. Claims costs are usually much higher than employment claims covered by a legal expenses policy.



Normal policy exclusions

Although exclusions will vary based on the specifics of the claims, the primary exclusions include:

- Fines or penalties from a court or tribunal
- Disputes between the insured and insurer
- Legal expenses in connection with judicial review
- Disputes about actual or alleged defamation or malicious falsehood
- Disputes between policyholders, any associated company or partner
- Any legal expenses other than those agreed in writing by the insurer
- Defence of legal proceedings due to seepage, pollution or contamination
- Acts, omissions or disputes that occur prior to the start of the policy in which the policyholder knew (or should have known) could cause a claim
- Disputes regarding patents, copyright, trademarks, passing-off, trade or service marks, registered designs or confidential information
- Disputes relating to franchise rights or agency rights in which the policyholder has the ability to alter the legal relation of another
- Defence of civil proceedings from actual or alleged tortious liability or breach of duty
- Allegations against the policyholder/employee regarding assault, violence, dishonesty, illegal immigration, money laundering or the manufacturing, dealing in or use of alcohol, illegal drugs or obscene materials

If you have questions about anything in this paper, or would value advice and help on arranging legal expenses insurance please contact one of our specialist advisors at charity@accessinsurance.co.uk



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