Charities group

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Trustee Indemnity Insurance

The Charities Act 2006 introduced a new power enabling charities to purchase indemnity insurance to protect trustees from personal liability. This means a charity wishing to purchase Trustee Indemnity Insurance no longer needs Charity Commission consent or an express power in its governing document.

Introduction

Section 39 of the Charities Act 2006, which came into force in February 2007, gives charity trustees the power to purchase Trustee Indemnity Insurance out of the funds of the charity. This insurance can protect the trustees against any personal liabilities incurred when they act in their capacity as trustees of the charity, subject to certain exceptions. The power applies to all charities, unless the purchase of Trustee Indemnity Insurance is expressly prohibited in their governing document. Trustees must still consider whether purchasing the insurance is in the best interests of the charity.

Trustee indemnity insurance – the new rules

1. What can the insurance cover?

Charity trustees can now purchase Trustee Indemnity Insurance out of the charity's funds to indemnify the charity's trustees against any personal liability for:

- any breach of trust or duty committed by them in their capacity as charity trustees
- any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of the charity (if it is a charitable company), or as directors or officers of any company carrying out activities on behalf of the charity

However, the insurance must not include cover for a trustee in respect of:

- liability for any fines imposed in criminal proceedings, or penalties arising due to non-compliance with a regulatory requirement
- liability incurred in defending criminal proceedings in which the trustee is convicted of fraud, dishonesty, or wilful or reckless misconduct
- liability that arises out of any conduct which the trustee knew (or should reasonably have known) was not in the interests of the charity

2. What must the trustees consider?

Trustees may only purchase Trustee Indemnity Insurance if they are satisfied it is in the charity's best interests. They must ensure that the policy they select is suitable and that the cost is reasonable. Charity trustees must also observe their general 'duty of care' in the Trustee Act 2000, so they must exercise all reasonable care and skill when making and carrying out the decision – including obtaining expert advice if necessary.

The Charity Commission also recommends, as best practice, that trustees review whether they have put suitable policies and procedures in place to reduce risks before purchasing the insurance.

3. Is there an express prohibition?

Before purchasing Trustee Indemnity Insurance, trustees must examine the charity's governing document to make sure purchasing it is not expressly prohibited. If there is an express prohibition, the Charity Commission must be contacted. They may agree to overturn the prohibition by making a scheme – this can be done fairly quickly.

An express prohibition is one that specifically prevents the purchase of Trustee Indemnity Insurance. A more general prohibition (for instance, against trustees benefiting personally), will be overridden by this new statutory power, so Charity Commission consent will not be required.

Action points

Before paying for indemnity insurance for your charity's trustees, you should consider the following.

1. Is purchasing the insurance out of the charity's funds justified? If necessary, obtain expert advice.

2. Review the governing document. If it expressly prohibits the purchase of Trustee Indemnity Insurance you will need to apply to the Charity Commission. If there is no express prohibition then you have the necessary authority under section 39 of the Charities Act 2006.

3. Choose an insurance policy that is appropriate to the level of risk, and check that it does not cover any of the matters which must not be included (see above). Again, if necessary, obtain expert advice about this.

4. Continue to ensure that action is taken to minimise the risks to trustees and the charity (eg through training sessions for trustees, and seeking expert advice when needed).

Contact

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