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Courting Trouble

A recent Royal & Sun Alliance survey found one in three people admitting that they would sue a charity if they injured themselves at a charity event or on charity premises. Given the high profile that the so-called 'litigation culture' has at the moment you could be forgiven for asking 'why only one in three?'

The growing restrictions on the availability of Legal Aid has been balanced by the opening up of the legal market, whereby solicitors can offer litigation services based upon a type of 'no win no fee' system, often insurance backed, and are allowed to advertise this fact (both relatively new developments). As such, there are a number of areas in which charities need to be wary.

To begin with, charities get no special protection from claims, and accidents will happen; in the case of Clapton v Cato last year, an occupier of a dwelling was found liable to a visitor who had the tip of his finger amputated by the spring-loaded flap on a letter box. That is why the first step must be to check on the insurance policy of the charity.

An injured party, or claimant to give them their procedural title, will only have a successful claim against a charity if certain legal hurdles are overcome. Among these are establishing that the charity owes a legal duty to the claimant which has been breached, and that the claimant has suffered some loss as a result.

One way to avoid or modify the legal duty is to consider whether there are third parties better placed to carry the risk of liability: for example, if a charity intends to host an event, can or should the responsibility for this be contracted out? The answer is 'sometimes'. In Maguire v Sefton MBC and Precor earlier this year, a visitor to a leisure centre run by Sefton was injured when an uphill climbing machine failed. The Court of Appeal held that the Council would not be liable because it had engaged Precor to maintain the machine and Precor (who were liable) had recently given the machine a clean bill of health.

Certainly events, such as fun runs to take an obvious example, are inherently risky. Professional event organizers should, for a fee, be better placed to manage the event, bear the insurance liability and deal with any claims.

However, care must be taken in selecting such organisers: in Bottomley v Todmorden Cricket Club, the club hosted a firework display. Mr Bottomley was seriously injured while working for the (uninsured) contractors who were assembling the fireworks. The Court of Appeal held that the cricket club was liable for his injuries because it had not taken sufficient precautions (including checking the contractor's insurance provisions) in relation to what was an obviously dangerous activity. On the same point of law, in Gwilliam v West Herts Hospital NHS Trust a hospital hosting a funfair was liable when a child was injured using a Velcro 'splat wall' that was operated by (uninsured) contractors.

Any well managed event will also include a disclaimer for visitors or participants, and these can be very effective in certain circumstances - for example, damage to vehicles parked in an event car park – but there are limits on their effectiveness.

Sometimes the work of a charity means that the public has to visit its premises. As the occupier of a shop or office, a charity will be under a legal duty to ensure that its premises are reasonably safe for the purposes of visitors — what is called occupiers' liability. Usually it will be impossible for a charity (or anyone else) to use a disclaimer to avoid any liability for personal injury arising from the charity's own negligence. There should clearly be a procedure in place in any premises for identifying hazards, such as signs for slippery floors or low ceilings. The courts have confirmed that an occupier will be protected where the appropriate warnings have been given and, solely through their own 'fault', a claimant has injured himself.

Special care must be taken where children are involved; rightly, they will not be expected to have the same understanding of risks as an adult.

If a complaint is made to a charity, what is of paramount importance is that it is dealt with promptly, courteously, and at an appropriate level. Too often litigation is commenced by a claimant simply because they did not feel that their complaint was being taken seriously. It is also wholly possible to express sympathy for the claimant's predicament without in any way acknowledging legal liability.

Looking specifically at personal injury claims, there is now a well-established procedure that a claimant must follow long before they or their solicitors send papers to court. This will identify the legal basis of their claim and should include medical evidence of the extent of their injuries. At the time of receiving a preclaim letter legal advice should be sought as to how best to respond.

A key concern for charities must be the possible publicity implications of any claim. Court papers are now accessible to the press and public and, as such, a charity can no longer expect that the details of a dispute will be protected.

A charity should always consider a settlement offer (if authorised by insurers) as this can be tied to a confidentiality agreement. Further, an early settlement offer can be made on a basis which, if litigation cannot be avoided, can help protect the charity recover its legal costs later in proceedings.

Charities which are established as unincorporated associations or as trusts should also consider whether it is appropriate to transfer all or some of the charity's activities to a company - or the anticipated Charitable Incorporated Organisation - to take advantage of the benefits of limited liability.

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