

Risks and insurance guide for COVID-19 community response groups

Can our group be sued for what we are doing?

The quick answer:

It's possible, but if the volunteer was acting for the benefit of society or any of its members and demonstrated a predominantly responsible approach towards protecting the safety or other interests of others, it is likely that they would not be found negligent by the court.

The detailed answer:

If somebody causes loss or injury to another person during the course of an activity, it may be open to the injured party to sue them for damages for negligence or, in some circumstances, breach of statutory duty in the civil courts. The law of negligence is part of the Common Law, but there are some statutory duties of care that exist (for example the duty owed by the owner or occupier of land to visitors and trespassers) which work in a similar way to the law of negligence.

For a person to be found negligent the court must be satisfied that they owed the injured party a duty of care and that their conduct fell short of the applicable standard of care. For example, the court will consider whether the defendant acted reasonably in all the circumstances of the case against an objective test ('the ordinary and reasonable man') - but what is expected will vary from case to case. The court will consider a range of matters including the size of the risk, the likelihood of the risk happening, the gravity of the consequence and the cost and practicability of avoiding the risk. Where a defendant was acting in an emergency the courts make allowance for the need to act without time for reflection.

In England, the Social Action Responsibility and Heroism Act 2015 applies when a court, in considering a claim that a person was negligent or in breach of statutory duty, and requires the court to have regard to whether:

- the alleged negligence or breach of statutory duty occurred when the person was acting for the benefit of society or any of its members.
- the person, in carrying out the activity in the course of which the alleged negligence or breach of statutory duty occurred, demonstrated a predominantly responsible approach towards protecting the safety or other interests of others.
- the alleged negligence or breach of statutory duty occurred when the person was acting heroically by intervening in an emergency to assist an individual in danger.

In England, this is the closest we get to a "Good Samaritan" law.

Can we get insurance to cover this risk?

The quick answer:

Yes, you could but you would need to:

- Decide who will be the policyholder/insured (an individual or the group as a whole?)
- Work out how you will pay for it
- Find an insurance company who can deal with this at the current stage of the crisis
- Read the policy carefully to make sure it covers you for everything that you intend to do

The detailed answer:

All organisations face risks, and insurance can be an appropriate way of protecting your organisation against any loss, damage or liability arising from these risks.

Two types of insurance are compulsory:

- If your group employs staff, you must have employers' liability insurance. The charity (as an employer) must prominently display a certificate showing that a valid policy is in force and the minimum level of cover purchased.
- If your group owns or operates motor vehicles you must have motor insurance that covers third party injury and property damage.

Other than those, the law does not require your organisation to buy any certain type of insurance cover, so a risk assessment will help you to decide whether any form of insurance would be appropriate.

There are many other types of insurance available to voluntary and community sector organisations including:

- public liability - covers the cost of defending your community group if someone is injured, or their property damaged, due to your negligence
- professional indemnity - covers your group against poor or negligent advice provided to its service users which has resulted in them suffering a financial loss. It's generally considered essential cover if your group provides advice; an example would be offering counselling sessions. It covers the legal costs in defending the claim, as well as any compensation or damages payable to the claimant
- trustee indemnity - covers the legal expenses of defending a trustee against disqualification, investigations and allegations of mismanagement that might be made against them
- buildings /contents – for organisations that are responsible for managing, occupying or owning premises
- event – covers loss/costs resulting from cancellation and abandonment, postponement and curtailment of events
- product liability - covers the cost of compensation claims if someone is injured or their property is damaged by a product that you've sold or supplied
- travel insurance / personal accident

You should check any insurance policy to see:

- that it definitely includes volunteers
- how the term 'volunteer' is defined for the purposes of that policy
- whether any upper or lower age limits apply
- that the policy covers the types of activities that the volunteers will be undertaking

You should check the small print when choosing any insurance policy:

- coverage - what your insurance will and won't protect if you need to make a claim
- exclusion - a risk or item specifically not covered by a policy
- warranties and conditions – what you agree to as part of the insurance contract
- excess - this is the first amount of any insurance claim that the policyholder agrees to pay as part of the policy conditions – the insurer pays the rest
- limits – this is the maximum that a policy will pay out in claims. This could be a monetary cap or number of times claims can be made in the period of cover.