

Charity Briefings

Trustees Indemnity Insurance

Section 67 of the Act claiming estates with the charity Trustees and the persons connected with them must not be remunerated unless various conditions are met.

The conditions are:-

- The maximum amount of remuneration is set out in a written agreement
- The maximum amount is reasonable in the circumstances
- It is in the interest of the charity the services to be provided by the charity Trustees for that amount.
- After the agreement is entered into only a minority of the charity Trustees receive remuneration.
- The charities constitution or government documents does not expressly rule it out.

Trustees indemnity insurance falls within the definition of remuneration because it provides a personal benefit to the charity Trustee and therefore it is subject to the same conditions and restrictions as any other type of remuneration.

Because most policies state that all charity Trustees who trust the indemnity insurance will fall foul of the condition that only a minority of the charity Trustees can benefit from remuneration. Therefore charity Trustees would be in breach of the act if they authorise Trustee indemnity insurance.

OSCR has raised this with the Scottish Executive as an unexpected and unintended consequence of the legislation and at the moment the Scottish Executive are considering whether to introduce amending the legislation to resolve this issue. There is no equivalent in Scotland to Section 26 of the Charity Act 1993 and therefore it is not possible at the moment for OSCR to authorise Trustees to take out Trustee indemnity insurance.

It is still competent in Scotland for Trustees to take out Trustee indemnity insurance and to pay the premium themselves.

OSCR are confident that the Executive will rectify this anomaly and are not enforcing this aspect of the Act in the interim. For further information from OSCR please follow:- <http://www.oscr.org.uk/TrusteeIndemnityInsurance.stm>