

This information note is one of a series produced by the Community Woodlands Association. It gives an overview of the legal liabilities and responsibilities of community woodland groups, and outlines key management requirements. Primarily this is in relation to health and safety, but also in regard to protecting assets and financial protection if there are legal claims against the organisation or individuals. Accidents and mistakes will happen, so this note outlines the various insurance policies a community woodland may require, or that it is helpful to know about. Groups should consider taking proper independent professional advice if they do not have the expertise themselves. Many of the general principles are applicable to land managing groups across the UK but references to funders and regulators are for Scotland only.

### Introduction

Liability refers to the responsibility of woodland owners, leaseholders, managers and employers to ensure that members of the public, employees (including volunteers), contractors and owners themselves are kept safe from foreseeable risks and hazards. As a Trustee/Director you are also liable for protecting the charity's assets, which is quite a field in itself!

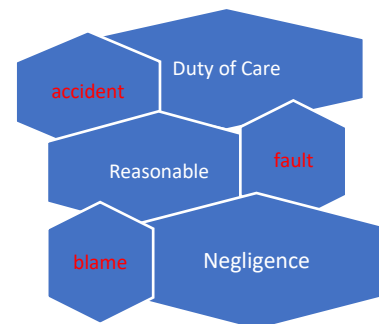
Insurance refers to financial policies to safeguard the public, employees, contractors, volunteers and managers from economic distress in case of unavoidable accident. And also, to protect the financial value of your assets/property against accidental loss and damage.

Many of you will have taken responsibility for woodland, staff and contractors with very little training in natural resource management. The liability issues for woodlands are understandably complex and of rightful concern for many community woodland groups. Woodlands are by their nature rough and sometimes dynamic places, with a plethora of potential hazards. Although cases of injury and death caused by naturally falling trees is very small, historically the forest industry has a poor safety record.

Hopefully this information note will reassure you that while your concerns are justified, simple management systems that implement reasonable checks and action will safeguard you from emotional, reputational and

economic ruin!! There is little defence for negligence when an accident happens!

The following montage might usefully highlight key words or phrases in relation to liability and insurance:



- your responsibility towards others
- what is practical, proportionate to the risk
- do something where you identify risk and document what you do

This information note will cover:

- Public Liability
- Employee & Volunteer liability
- Health and Safety at Work and risk assessments
- Insurance policies to cover these liabilities
- Woodland Insurance

## LIABILITY

### Public Liability (Occupiers Liability (Scotland) act 1960)

An 'occupier' of land has a duty to show care towards people on that land and must consider injury or damage which may be caused as result of any dangers due to the condition of the property, or of anything done or omitted to be done by the occupier which is their legal responsibility.

The 1960 Act explicitly excludes any obligation of occupier liability over risks willingly accepted by the visitor. This applies to the risks inherent in any pursuits undertaken by visitors on the land, and may for instance include mishaps inherent in quite ordinary activities like walking, swimming etc. This provision also relates to the general legal principle known as '*volenti non fit injuria*', i.e. if a person knowingly participates in a risky activity, e.g. rock climbing, they will be taken to have accepted the risk of injury if they have an accident.

If you lease woodland or have some other agreement to manage woodland for community benefit, is it clear who is responsible for public safety?

The Land Reform (Scotland) Act 2003, Part One, established statutory access rights to land in Scotland, but did not affect the extent of the duty of care owed by an occupier of land to other people on that land.

As a woodland manager you have a responsibility to take reasonable steps to ensure the basic safety of visitors to your woodland, after all, and especially as a community wood, you are inviting people into your woodland. These steps might include:

- Checking trees adjacent to all public roads and promoted public access routes on a regular basis. This should be undertaken at a frequency appropriate to the risk. A busy footpath or road should probably be checked every year, or at least every 2 – 3 years, or after major storms or high winds. It is important that the person undertaking the survey has sufficient

experience to do so, and, depending on the use and level of risk you may want a more detailed tree survey carried out every 4-5 years by a suitably qualified professional. If you are hiring a forester or arboriculture consultant to make the inspections, they should hold professional indemnity insurance.



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- On low risk sites, for example with no roadside trees, you may be competent to undertake routine tree safety inspections and carry out remedial work yourself.
- If you become aware of a problem e.g. a hung-up branch, or a tree that is partially blown over, then you should take remedial action. Ignoring a known hazard is negligence.
- Work may include felling dead trees within reach of a public footpath, and checking for, and dealing with, broken, split or hung-up branches that could fall on a member of the public.
- It is essential that whenever a survey and remedial work is undertaken that a record is kept. This will ensure that if there is an accident you cannot be found to be negligent. Consider mapping and physically numbering (aluminium nail and tag) trees that you specifically consider of some risk and wish to monitor rather than remove.
- Check infrastructure, such as paths, gates, bridges, hand rails, steps, signs, etc to ensure they are fit for purpose. Fence off constructed steep faces, e.g. quarries. Bike trails and other

specialised facilities may require their own inspection and maintenance regime. Again, document your inspections and take and record action to repair defaults.

- When work is being undertaken in the woodland, ensure that you have nominated a works site manager and that they have put up necessary warning signs and path diversions to ensure people are not at risk of accidents caused by the work.

### Employer's Liability

Whether you are a charity, voluntary organisation or commercial company, the organisation has a duty of care towards its employees, including volunteers.

A key part of employer responsibility is the Health and Safety at Work Act 1974.

It is good practice to ensure that contractors undertaking work in your woodland are suitably qualified (trained and experienced) to undertake the tasks required of them in a safe manner. Keep a record of their training certificates as well as insurance cover. If you employ staff directly you must ensure they are suitably trained for the tasks given to them.

In addition to the duty of care for employees, the act places duties on employers to conduct their undertakings in such a way as to ensure, so far as is practicable, that persons not in their employment who may be affected are not exposed to risks to their health and safety. The **Management of Health and Safety at Work Regulations 1999** provide more specific direction on how to carry out these duties and introduces the principle of **risk assessment**. The regulations require every employer to make a suitable and sufficient assessment of “the risks to the health and safety of persons not in their employment arising out of or in connection with the conduct by them of their undertaking.”

The basic requirement is for the employer to ensure, subject to reasonable practicability, that they do not create risks to any person's

health and safety in the way the undertaking is run. This could include tree felling, but also deer management, machine operations or herbicide application. The test of whether land managers' actions are “reasonably practicable” may be judged to some extent by any Codes of Practice relevant to their operations, as for instance published by organisations like HSE or the Forest Industries Safety Accord.

### Volunteers

It is important for a charity to ensure that volunteers as well as employees receive adequate training, supervision and support, and that their wellbeing and that of people that they come into contact with as part of their role is properly considered. For example, the same health and safety standards should be applied to voluntary workers as they would to employees exposed to the same risks. Take time to get to know your volunteers, and in confidence, find out if they have any medical issues that leaders need to know about. “Working with Volunteers” is the theme of a separate information note.



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A charity should ensure that its volunteers are protected from harm as a result of any negligence on its part. Also, both the charity and its volunteers should be covered in the event of a third party being injured through the actions of a volunteer.

### Risk Assessment

It is important that you assess all risks to a person's health and relevant to the site and the work being undertaken. You will also

need to do a risk assessment for any event you organise, whether on or off the site.

In a risk assessment, you identify hazards associated with an activity, estimate the degree of risk associated with these hazards and identify precautions which should be taken to avoid the hazard or reduce the risk. This need not be either difficult or expensive to do and there are standard risk assessment forms you can use (see Resources Section). Those carrying out the work should read and sign & date the risk assessments relevant to the work.

If you employ a contractor to carry out work you must ask them to complete their own risk assessment for the job, but it will refer to the information that you need to provide them. So, map out the work site: services, especially buried gas, water and electricity, steep drops, pollution risk features such as river banks and water courses, key access points for members of the public, access points and routes you want the contractors to use.

The purpose of risk assessment is set out in the Approved Code of Practice which has been produced by the Health and Safety Executive (HSE) as follows: "The purpose of the risk assessment is to help the employer or self-employed person to determine what measures should be taken to comply with the employer's or self-employed person's duties under the 'relevant statutory duties'. This phrase covers the general duties in the 1974 Act and the more specific duties in the various Acts and Regulations associated with it. In essence the risk assessment guides the judgement of the employer or the self-employed person as to the measures they ought to take to fulfil their statutory obligations"

## **INSURANCE**

Insurance cover is not a substitute for good management!

The provision of insurance is an essential, though admittedly unexciting element of the ownership, management or control of your community woodland. Some types of

insurance are a legal requirement, others a duty of care towards your organisation and others advisory.

When assessing what insurance cover you need, identify what is a legal requirement, assess what it will cost you if you are not insured and the scale of assets that might be lost if you are not insured. What are the risks if your management systems are robust enough to minimise those risks? How do the insurance premiums stack up over a number of years compared with the financial implications of not being insured? How will you fund your insurance premiums? What are the implications for a volunteer sustaining an injury while carrying out an activity in the wood, that puts that person off work and out of income for a sustained period?

### **Legal Requirements**

#### ***Employer's liability insurance:***

If you employ staff, all employers are required to have a minimum insurance cover of £5 million from an authorised insurer for injury or illness suffered or contracted by employees while carrying out their duties. The policy must cover all permanent, seasonal and short-term staff. Advice from the Association of Business Insurers and the Charity Commission is that this policy should cover volunteers, however TCV/Zurich consider that "Volunteers do not fall within our definition of an employee" and provide cover for volunteers is through their Public Liability and Personal Accident Insurance.

Employer's Liability insurance covers legal liability for damages and costs, for injuries to employees arising out of (or in the course of) their employment. Employers are legally required to have Employer's Liability insurance for all direct employees (although not necessarily for self-employed people).

You must get Employers' Liability (EL) insurance as soon as you become an employer - your policy must cover you for at least £5 million and come from an authorised insurer.

Note that a valid certificate of insurance must be displayed in the company office. (If you

don't have an office, ensure your employees are given copies and upload it to your website.)

**Motor insurance:** If your organisation owns or operates motor vehicles you are legally obliged to have motor insurance. If employees, trustees, or volunteers use their own vehicles on the business of the group, you must make sure that the insurance held by the owner of the vehicle covers such use.

### **Responsibility to your Organisation**

Charity trustees have a duty to protect their charity's assets and resources. All charities face risks, and insurance can be an appropriate way of protecting them against any loss, damage or liability arising from these risks. Insurance is not the only solution to the management of a risk.

### **Property insurance**

If your organisation owns a building separate to or within the woodland then buildings and contents insurance might be required to protect against fire, theft, etc. You may also want cover for any tools and equipment owned by the woodland group, and also for bridges and other significant infrastructure.

### **Woodland Insurance**

Woodlands can be insured against Fire, Lightning, Explosion, Aircraft, Earthquake and Landslip (often abbreviated to FLEA). This is useful where an investment has been made into a woodland and where you will be required to pay back or renew that investment if it is lost. For example, restocking a plantation within a deer fence with forestry grant support; if the new trees are lost to fire within 10 years of planting, not only will you want to re-plant the trees to secure the investment in growing timber, you may need to pay back grant if you don't. You may also have a deer fence to replace. Once a woodland has grown up enough to be at low risk to fire (the field layer is not as flammable and tree crowns are not in contact with the field layer) you may decide that fire insurance is not required. If you are taking out fire insurance, ensure it includes sufficient cover if you need to call out a helicopter.



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As your woodland matures your concern may then be about wind/storm damage. Storms affect whole regions, so access to markets and contractors to salvage any timber value after a storm can be restricted. For many community groups it may not be a matter of protecting an investment, but simply a need to cover the costs of clearing up the windblow and replanting the affected area if the salvage value of the timber is too low to pay for these costs.

Woodland insurance is available from specialists such as NFU Mutual and Scottish Woodlands.

### **Advisory Insurance**

#### **Property Owners Liability**

This type of insurance covers woodland owners/leaseholders against claims by the general public for accidents during informal recreation and visits. In the case of community woodlands, where public access is actively encouraged, the cost of cover will be greater than for a private woodland. However, the level of risk can be managed by undertaking a simple and straight-forward risk assessment of the woodland. The policyholder can usually select the level of cover required (£5 or £10 million).

The insurance policy will usually cover all woodland activities including the use of herbicides, pesticides and even explosives. Special cover may be required for burning of debris.

Public Liability insurance may also cover organised visits and events, such as school trips etc. – as long as the insurers have been

informed in advance. For major events (e.g. involving temporary structures, or entry charges) it is possible to take out one-off event insurance.

## **Other Insurance Policies**

### ***Personal Accident***

Personal Accident insurance gives your group members reassurance that they can claim for injuries sustained during group activities

### ***Trustees' Liability***

Trustee indemnity insurance (TII): this protects members of the voluntary management committee from personal liability with respect to claims related to their actions in their roles as committee members or directors.

Trustee indemnity insurance covers trustees from having to personally pay legal claims that are made against them (by their charity or by a third party), for a breach of trust, or a breach of duty or negligence committed by them in their capacity as trustees. TII directly protects an individual trustee, rather than the charity itself, and is regarded as a form of personal benefit to a trustee, so a charity will need a clause in its governing documents to permit this (most have this clause).

Trustees are not protected from criminal convictions, fines following criminal proceedings or charges imposed by regulatory authorities. Trustees are not protected from wilful acts of fraud, dishonesty or reckless misconduct.

Where charity trustees have acted honestly and reasonably, they are, in any event, entitled to an indemnity from the charity's assets for any liabilities incurred by them as trustees. Insurance of such liabilities will benefit the charity rather than the trustees, although it will also ensure trustees are covered even if the charity does not have sufficient assets to provide the indemnity.

If the charity is a company, or carries out a part of its business through a separate company, the trustees' personal liability for any wrongful acts as company directors or officers (including liability for wrongful

trading) is similarly covered to the extent it is not deliberate or reckless.

If a charity is incorporated (as a company, a SCIO, etc), the organisation, rather than individual trustees, is liable for debts and other costs, and the range of situations where trustee indemnity insurance will help is relatively narrow. Essentially if you've broken the law, it's not going to help, but if you're incorporated, and you've taken proper care in your decisions, you're usually already protected. However the insurance will cover legal fees, which even in the case of unfounded claims could run to thousands of pounds and be in some circumstances beyond the capacity of the charity to cover.

### ***Fidelity insurance***

This is cover to make good a loss arising from fraud or dishonesty on the part of employees who are handling the charity's cash or other valuables. It can be extended to include fraud or dishonesty on the part of the trustees and/or volunteers. Such cover will only be provided where you can demonstrate that your administrative arrangements are adequate and properly supervised and is not a substitute for sound financial and personnel risk management.

### ***Professional Indemnity***

It is essential that anyone offering professional advice to your community woodland (e.g. forestry consultants, chartered surveyors, tree surgeons etc.) has Professional Indemnity Insurance – usually £1 million or more. It covers legal liability to third parties for breach of professional care caused by neglect, error or omission. When employing such professionals, always ask them to send you a copy of their certificate of insurance.

### ***Buying Insurance***

Group schemes may be cheaper than a bespoke policy, but an individually negotiated policy may better suit your specific insurance cover requirements. You can arrange insurance directly through insurance companies, or go through insurance brokers,

whose role is to search a range of companies for the best deal to suit your needs.

Regulations, insurance companies and premiums vary from time to time - check for any changes since this information sheet was compiled.

Different brokers package cover in different ways

The charity 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, e.g. does it include the use of power tools, including chainsaws?

### **Renewing Insurance**

When renewing your insurance, remember to take time to update valuations of equipment and buildings. Check that names and training certificates have been updated in case these are required, for example in relation to named individuals using chainsaws.

### **Resources**

**Community Woodlands Association** (advice and support for community woodlands)

<http://www.communitywoods.org>

**Making Local Woods Work** (advice, tools and resources for woodland social enterprises)

<https://makinglocalwoodwork.org>

**Forestry Commission National Tree Safety Group:** <https://ntsgroup.org.uk>  
Common Sense Risk Management of Trees (2011)

**Health and Safety Executive** [www.hse.gov.uk](http://www.hse.gov.uk)  
– <https://www.hse.gov.uk/simple-health-safety/risk/index.htm>

### **Forest Industry Safety Accord**

<https://ukfisa.com/>

for a full range of operation safety leaflets that woodland owners and managers should be aware about when they commission work.

<https://ukfisa.com/Safety/Safety-Guides/fisa-guidance-on-managing-health-and-safety-in-forestry>

**Visitor Safety Group** - <https://www.visitorsafety.group/practice-introduction/assessing-managing-risk/>  
A subscription organisation, currently £25, to get access to a range of documents and information.

**Scottish Outdoor Access Code** – [www.outdooraccess-scotland.com](http://www.outdooraccess-scotland.com)

Outlines responsibilities of land managers and visitors. Includes:

<https://www.outdooraccess-scotland.scot/doc/brief-guide-occupiers-legal-liabilities-scotland-relation-public-outdoor-access>

which has succinct reference to the law and a number of legal test cases.

### **The Association of British Insurers**

<https://www.abi.org.uk/data-and-resources/tools-and-resources/>

### **Charity Commission**

<https://www.gov.uk/government/publications/charities-and-insurance-cc49/charities-and-insurance>

### **Other References:**

<https://www.wildlife-woodlands.co.uk/information-for-woodland-owners/woodland-insurance/>

<https://r-a-p.co.uk/your-responsibilities-as-a-woodland-owner/>

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