

Understanding contractual liability & insurance

Protecting your organisation
from uninsurable risks
hidden in everyday
agreements.



1 Introduction

Charities today operate in an increasingly professionalised and contractual environment. Whether delivering public services, partnering with local authorities, or licensing software, many charities are entering formal agreements with binding terms and commercial language.

Finance directors are often the final sign-off on such contracts, and yet one crucial risk is frequently overlooked: contractual liability. In simple terms, this is the risk a charity accepts when it agrees to take on obligations that go beyond what the law would usually impose. The issue is not just legal, it is also financial.

The most relevant insurance policy in this context is often professional indemnity cover, which protects against claims of negligence in advice or service delivery. However, standard PI policies usually exclude liability that arises purely from a contract. That means if your charity agrees to take on extra responsibilities in a contract, even with the best intentions, those promises may fall outside your insurance protection.

This paper sets out what contractual liability means, where the key risks lie, and what practical steps finance directors can take to protect their organisation. A single clause in a funding or service agreement can leave a charity exposed to six-figure losses, often without realising it at the time of signing. The good news is that many of these risks are manageable with a bit of forethought, and by bringing insurers into the conversation early.



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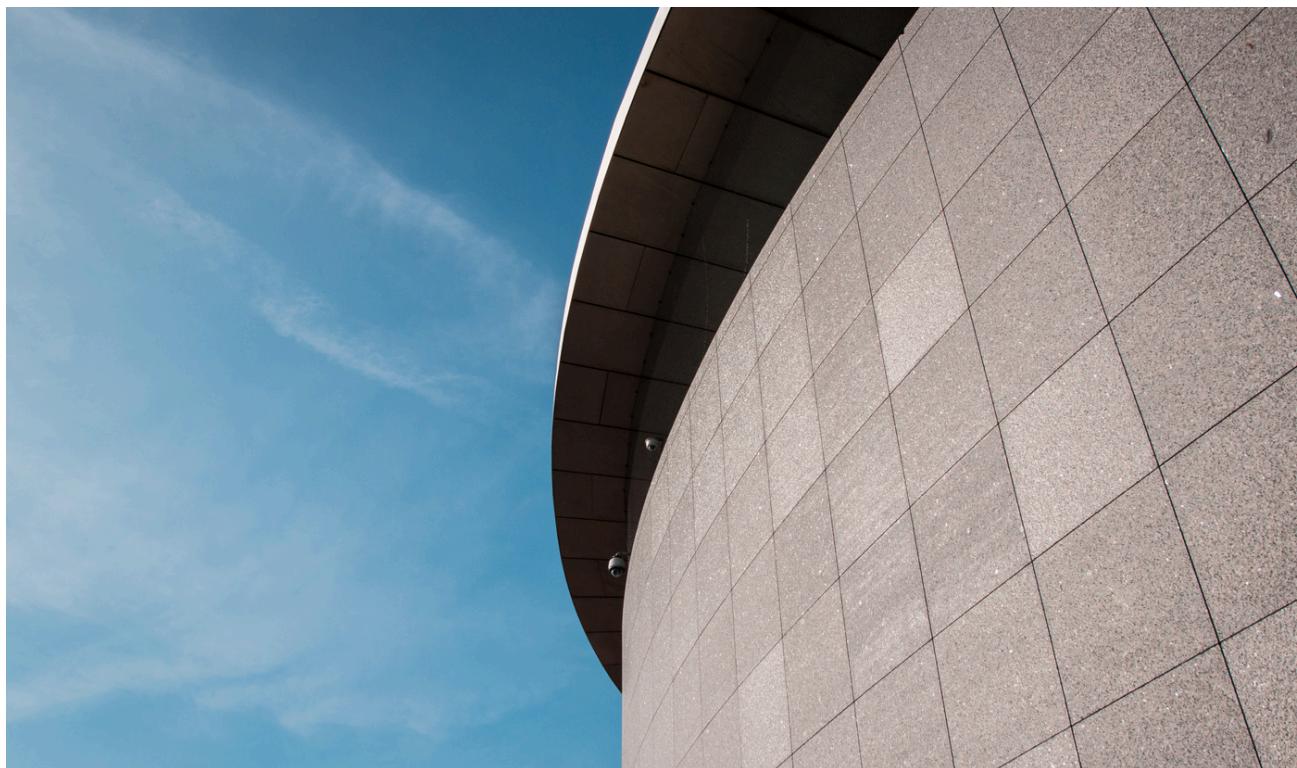
What is Contractual Liability?

Contractual liability arises when a charity takes on a responsibility or agrees to an obligation that it would not otherwise have under common law. A typical example is an indemnity clause, where the charity promises to hold harmless or fully indemnify another party for losses, even if the charity was not negligent.

While this might seem like a reasonable gesture, especially when working with trusted partners, such clauses can create uninsured exposures. That is because many public liability and professional indemnity policies only cover liability for actual negligence or breach of duty. If a charity voluntarily agrees to go further than the law requires, it may fall outside the terms of the policy.

Put simply, if your insurance would not have paid the claim without the contract, it is unlikely to pay it with the contract either.

This distinction can catch out even well-managed organisations, especially when contract review processes are focused on delivery and compliance, rather than financial risk.



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Case Study: A Charity and an NHS Trust

A medium-sized mental health charity entered into a service delivery agreement with a local NHS Trust. The aim was positive: expand outreach services across the community with joint funding. The Trust supplied the contract, a standard legal boilerplate, containing an indemnity clause requiring the charity to fully and unconditionally indemnify the Trust for any losses arising from performance or non-performance of services.

Six months into the programme, a service user experienced a serious incident. While investigations found no clear negligence, the Trust faced reputational fallout and initiated legal action. They sought to recover associated costs from the charity under the indemnity clause.

The charity turned to its insurer. But the insurer declined the claim. The reason was that the loss did not arise from any proven wrongdoing by the charity. It arose solely from a contractual promise to pay, a promise that sat outside the scope of the insurance policy.

With no legal fault, but a binding indemnity, the charity faced a five-figure cost out of its own reserves.

This was not a rare or reckless charity. It was acting in good faith and under time pressure. But by accepting broad liability without review or advice, it took on a risk its insurance could not absorb.



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Common Contract Clauses to Watch For

While every contract is different, certain clauses tend to crop up frequently and pose particular risks. These include:

- **Unlimited indemnities:** Clauses that require your charity to pay for any and all losses, regardless of fault.
- **Open-ended language:** Phrases like losses howsoever caused or arising in connection with can stretch liability far beyond what is intended.
- **Uninsured obligations:** For example, agreeing to cover another party's legal costs or reputational damage, even if your charity did nothing wrong.
- **Waivers of subrogation:** Giving up your insurer's right to recover from others can invalidate your cover.
- **Insurance requirements:** Some contracts require levels of cover, or types of insurance, that your charity does not actually hold.
- **Contract renewal rollover:** While not necessarily an insurance contractual liability issue, the risk exists that contracts automatically renew unless you take action to terminate them within a specific window. This might then tie you via rollover or evergreen clauses to terms that are no longer suitable for you.

These are often hidden in standard documents, especially those produced by statutory bodies or large delivery partners. It is easy to assume they are non-negotiable, but in practice, they often can be discussed, amended, or at least flagged.



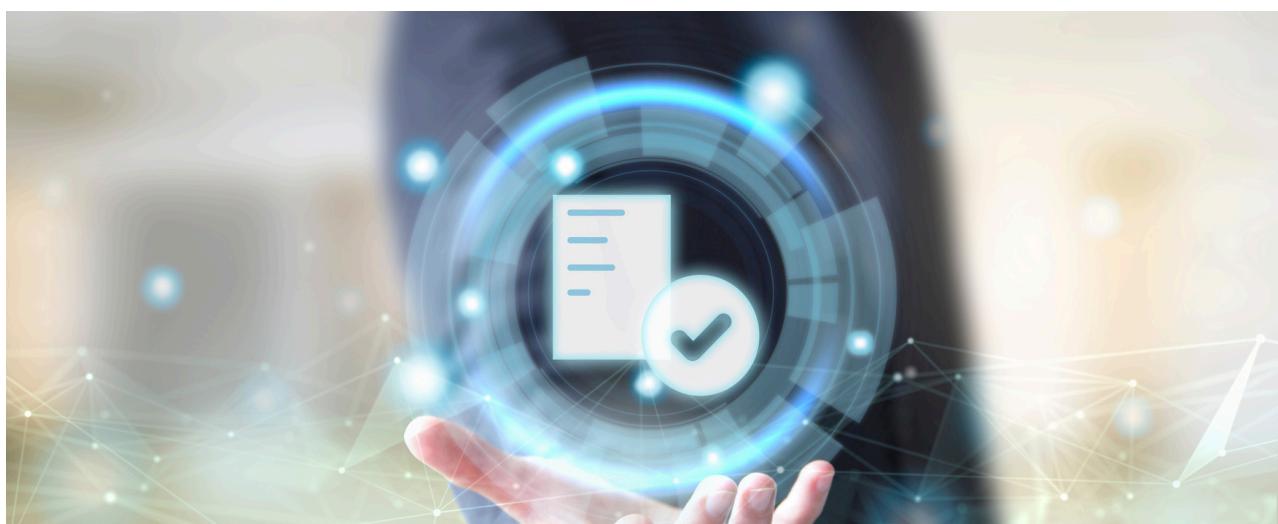
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How to Limit Your Liability

There are simple and practical steps finance directors can take to manage this risk:

- 1. Cap your liability:** Avoid clauses that impose unlimited liability. Ask for a financial cap, ideally linked to the value of the contract or a fixed amount your charity can afford.
- 2. Limit indemnity obligations:** Indemnities should apply only where your charity is at fault, for example, to the extent arising from the negligence of the charity.
- 3. Add insurance-friendly language:** Where appropriate, include wording such as to the extent covered by insurance. This can prevent uninsurable promises from being enforceable.
- 4. Avoid broad catch-all phrases:** Narrow vague language. Replace any and all losses with direct losses arising from proven breach.
- 5. Talk to your broker early:** If a contract includes anything unusual, especially indemnities, share it with your insurance adviser before signing. This allows for adjustments, guidance, or even a policy extension, if needed.

Charities often feel they lack negotiating power, especially when working with funders or public bodies. But many terms are included by default, and sensible amendments are often accepted when flagged.



Contractual liability may seem like a legal technicality, but for charity finance directors, it is a real and growing financial exposure. In a sector where every pound matters, the risk of signing a contract that quietly overrides your insurance cannot be ignored.

The good news is that this is a manageable risk. By identifying high-risk clauses, limiting liability where possible, and engaging with insurers before signing, charities can protect themselves without sacrificing mission or momentum.

Contract reviews are not just a legal function, they are a vital part of financial stewardship. And the finance director is perfectly placed to lead that charge.

HOW ACCESS INSURANCE CAN HELP YOU?

Our service is often described as bespoke, as we build insurance policies based on your unique risks. Here's why charities choose to work with us:

You only pay for the cover you need

As an independent Chartered broker, we recommend the most suitable cover for your risks to protect you properly. We work in your interests rather than insurers. We compare multiple insurers on your behalf, and you can be confident that we provide you with a competitive quote.

We're charity specialists, owned by a charity

Charity is at the heart of what we do, from our vision, our specialist advice to our internal culture. Over 18,000 charities, community groups and social enterprises trust us to advise on and arrange their insurance each year.

We're also proud to be part of the Benefact Group, a family of financial service businesses that gives all available profits to charity, and is ultimately owned by a charity, the Benefact Trust. Over £1m is given annually through the Group's giving programme, Movement for Good, which anyone can get involved in.

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