BRIEFCASE

Shutting down an organisation and ‘run-off’ insurances

The way insurers provide abuse cover is changing…

Are you winding down or closing a charity or social enterprise?

If you are, then it is likely that you will need to consider whether you have any on-going need for insurance protection, and you will want to have clear budgeting for on-going costs (or, ideally, pre-paid insurance policies in place) before your accounts are closed off.

What should you consider?

- What is the legal position of any parent or associated entities following the winding down or closure, and to what extent do on-going liabilities transfer across to them?
- Have you signed contracts in the past which commit you to ensuring that policies are arranged for a given period during and after completion of services? This is a common requirement, especially for Professional Indemnity, but could also apply to general insurances where, for example, it has been a requirement of providers of funding.
- To what extent do policies provide “Claims Made’ cover (which ceases when policies lapse)?
- What is the likelihood of claims arising in the future from past activity or losses?
- To what extent do policies provide cover to individuals (in their personal capacities, for example, as Trustees or Directors) and do those individuals need to continue to be protected following the winding down or closure of an entity? Could future ‘investigations’ (for example, by the Charity Commission or HMRC) create a need to defend or represent such individuals?
- Are you really closing down all activity, or may there be some residual administrative work which needs to continue for a period of time following the discontinuing of actual services?

Which insurance policies are most likely to be affected?

- Liability policies are likely to be affected, especially where they are on a ‘Claims Made’ basis of cover.

  Public Liability and Employers Liability cover is on an Occurrence basis, but you may still have certain elements of those policies which are on a Claims Made basis of cover. That ceases when the policy is not renewed.
- Trustee Indemnity policies typically provide cover to both the entity and to the individual Trustees and Directors. Even if the entity closes, the Trustee or Director can continue to be personally liable for wrongful acts committed prior to the winding down or closure (or, indeed, for wrongful acts committed in the actual winding down or closure process). The same reasons that led the Trustees and Directors to seek insurance cover when the entity was active apply when considering whether they should have cover after is ceases to be active.

Seek advice early

Seek advice (typically from your existing insurers) on the various aspects of your insurance arrangements and identify which if any policies may need to continue. Once identified, get suitable costings which can form part of your closing accounts. Where possible (for example, Trustee Indemnity / Directors’ & Officers’ insurance), try to get one-off pre-paid cover where the cost is finite and payable as a one-off sum to cover multi-year cover for an agreed period. Otherwise get a finite cost for the first year and ask for budget premiums for future years.