
INSURANCE

These notes have been prepared in order that Bursars may readily see the various headings to which attention should be given in the arrangement or consideration of the insurances of the school.

With few exceptions, you should normally find that the insurances have been arranged and are in force. However, these notes may act as a useful 'checklist'.

Whether a School deals directly with its insurers, or employs the specialist services of an insurance broker is a matter of policy, which only the Head, Bursar, or the Governors can decide. However, there is much to commend the employment of a broker in view of the specialist nature of the Schools' insurance market.

These notes have been prepared in conjunction with the Education Practice of HSBC Insurance Brokers Limited. Please note the information and opinions provided are not intended to be a comprehensive study, nor to provide legal or braking advice, and should not be relied on or treated as a substitute for specific advice concerning individual situations. Specific advice should always be sought on individual requirements and it is always necessary to read the contractual documentation issued by Underwriters for full details of the product and cover provided. The information contained in this section reflects the law and practice in place at the time of printing.

PROPERTY INSURANCE

Insurance for school buildings and contents has always included cover for damage caused by Fire, Lightning and Explosion. Note the damage caused by the Explosion of a steam pressure vessel, other than a steam boiler used for domestic purposes, is usually provided under an Engineering Insurance.

Policy holders have called for more comprehensive cover to be made available, and it is now possible, in addition to the basic Fire Insurance, for cover to be extended to include a far wider range of 'damage'.

These so-called '*Special Perils*' are categorised by the Insurance Industry as falling into two areas: '*Dry Perils*', and '*Wet Perils*' - reflecting to some degree the type of loss covered.

Dry Perils include damage caused by Explosion, Riot, Aircraft, Earthquake and Impact by vehicles and animals, including those owned by the insured.

Wet Perils include Storm, Flood, Burst Pipes and (oddly) Malicious Damage.

Cover for Accidental Damage is now almost universally included for school buildings and generally, although not always, for contents.

Subsidence cover may be granted - usually following full investigation of the risk - but it is most common for this cover to be restricted to Private Houses owned by the School.

In addition to Fire and 'Special Perils' cover, it is usual to include cover for losses arising from Theft - including those that do not involve a break-in to the buildings (what used to be termed 'Larceny'). Cover for theft generally includes an allowance for damage to buildings caused by thieves, and may in turn be extended to include theft of metal from roofs, gutters, etc, or even for theft of the fabric itself (including 'portable' buildings). However, with the exception of grounds equipment, it is not normally possible to obtain cover for moveable property in the open.

Certain more vulnerable items, such as computers, musical instruments, sports equipment, boats, grounds equipment, etc, may also be insured on an '*All Risks*' basis, which includes accidental loss or damage. Such cover is common for property regularly taken away from the school.

The more modern approach to Property Insurance is to arrange cover on a full 'Damage' basis - covering virtually all property for accidental damage, including property taken off the premises.

There is, however, great disparity in the available wordings and you would be best advised to seek a policy specifically designed for schools.

Conditions, Extensions Clauses and Exclusions

Insurance policies, being legal contracts, are subject to various restrictions, conditions, clauses and exclusions. Some conditions and clauses are to the Policyholder's benefit; others are included to the Insurer's advantage. Any alteration to the standard text or schedule of the policy, whether included at the time of issue or as a later alteration, is termed an 'Endorsement'.

Common Exclusions:

Wear and tear, normal maintenance, dry rot, damp.

Damage caused by vermin, insects or domestic pets.

Electrical or mechanical breakdown, and sudden and unforeseen damage to boilers and electrical equipment.

Collapse, cracking and normal settlement of Buildings.

Damage caused by any process of cleaning or repair

An *excess* (sometimes referred to as a 'deductible'), which is the amount of each claim the policyholder has to bear, is usually expressed as a fixed monetary amount. The excess can vary and it is possible to obtain a reduced premium in return for an increased excess.

Common Clauses & Extensions:

Reinstatement (See below under 'Sums Insured')

Professional Fees – allows for payment of architects, surveyors, legal fees etc, incurred following a loss.

Public Authorities – allows for the payment of additional costs which may be forced on the school following a loss in order to comply with the planning or other requirements of Local Authorities.

Workmen on Premises – allows the school to permit workmen on to the premises without prior agreement of the insurer.

Temporary Removal – allows for contents to be taken off the premises for cleaning or repair. (Can be extended to include full cover for authorised School use.)

Capital Additions – this provides automatic cover for newly acquired buildings subject to a limit, usually £1,000,000. Some Insurers provide higher cover. The addition should of

course be notified to the Insurers as soon as possible.

Theft of Keys – cover applies to the costs of replacing locks incurred if keys are stolen

Property on loan or hire to the school.

Damage to underground services – cover which may need to be extended to include such items, for which the school is responsible, even if they are outside the curtilage.

Loss of fuel oil and/or metered water.

Conditions and Warranties:

'Conditions' are terms governing the conduct of the contract, and include the Condition of Average (see below), and claims notification conditions.

'Warranties' generally refer to the policyholder's duties and must be complied with, as failure to do so may invalidate the whole policy and not just a particular claim. (For example, a warranty requiring an intruder alarms to be in operation when the school is closed.)

Property of Staff and Pupils

Although it is possible to include cover for the personal effects of staff and pupils under the school's property insurance, cover is generally quite restrictive.

Staff and parents would, therefore, be better advised to arrange their own cover to reflect their own needs. (This also protects the School's claims experience!)

If the School does arrange cover, then the sum insured for 'Contents' should accurately reflect the total amount 'at risk'.

TERRORISM

In response to losses suffered following the Terrorist attacks in the London and Manchester in the early 1990's, the Association of British Insurers and Lloyd's restricted cover from January 1993 under their commercial Property and Business Interruption policies in respect of fire and explosion damage caused by Terrorist activity.

Following the attacks on the United States on September 11th 2001, the restriction on cover for terrorist damage has been widened, and now applies to all damage resulting from a terrorist act. A restriction now also applies to Employers Liability policies, with some insurers limiting

their maximum liability to £5,000,000 any one incident – which is the UK legal minimum requirement for Employer' Liability. It is not usual for Public Liability policies to be restricted but do check your own arrangements.

In addition, the definition of what constitutes 'Terrorism' has been widened to mean 'the use of or threat of force or violence by individuals or groups for religious, ideological, ethnic or similar purposes.'

Schools should be particularly aware that current JCT Contract Conditions for extension, alteration and repair of buildings impose a requirement on the employer (i.e. the School) to arrange full cover for fire and explosion caused by Terrorist attack. This applies not only to the actual works themselves, but also the building being worked upon. This condition applies irrespective of whether full annual cover is already in force. It may be possible to negotiate the removal of this clause but you should discuss this with your architect, quantity surveyor and contractor before work commences.

It is possible to obtain supplementary cover for fire and explosion damage as a result of Terrorism and this is usually provided as an additional peril within your main Property and Business Interruption Insurances.

Although premiums can be high – and depend largely on the area of the country in which you are located – schools are urged to consider this cover. Although it may seem unlikely that a school would attract direct attention from an illegal organisation, it is far more possible that a school could suffer 'collateral damage' following a nearby attack.

Under the terms of the policy, Insurers allow themselves to assume that fire and explosion damage is as a result of Terrorist activity until the policyholder proves otherwise.

Electronic Data Risk Exclusion

This is a generic term, as various insurers have adopted a different name for the same exclusion.

However, what it boils down to is a total exclusion by all property, computer, and engineering insurers of any claim for loss or damage arising out of 'hacking' or the introduction of a virus into computer systems.

Although the market may change, it is not generally possible to purchase supplementary cover for these risks.

SETTING THE SUM INSURED

These days, the generally accepted basis of settlement for Property Damage claims (other than those for damage to clothing, personal effects and wearing apparel) is on a Reinstatement Basis (ie, 'New for Old').

However, this settlement basis will only be used where a reinstatement has occurred, and the claim will be based on the cost at the time of reinstatement, not at the time of the loss itself.

Further, all Property Insurances are generally subject to the Pro Rata Condition of Average which, put simply, means that the insurer has the right to reduce a claim settlement proportionately to the amount by which the Buildings and Contents (and, indeed, Revenue, etc, insured under the Business Interruption Policy) are underinsured – irrespective of whether such under insurance is inadvertent, misguided, or a deliberate attempt to cut back on premium costs. The latter would, of course, not usually be a problem with schools, as the Governors have a legal duty as Trustees to fully protect the assets of the Charity, as have Directors to protect a company's assets. Reference should be made to the Charity Commissioners guidance CC49-Charities and Insurance. Please note particularly the guidance in connection with the Buildings insurance under paragraph 24.

This means that it is essential to set the Declared Values at a level, which accurately reflects the full reinstatement value of the property at risk. Equally important is provision for the effects of inflation – not only during the period of insurance, but also during any subsequent reinstatement period. (Bearing in mind that the period from the date of loss up to the final completion of repairs could be lengthy, particularly if there is argument over the nature of reinstatement, listed building consent, etc.)

Correct sums insured can be arrived at by seeking professional advice, usually from a surveyor/valuer, although insurers and brokers specialising in Schools may offer this service themselves. Once values have been agreed, some insurers may agree to waive the Condition of Average in the event of a claim. This is a valuable extra service and one that you should seek from your insurer/broker.

If the school owns, or has on loan, any valuable artefacts, paintings, pictures, etc., then these should be expertly valued and a copy of the valuation lodged with insurers. It is also very good practise to maintain an Assets Register, showing not only what property the school owns, but also its current 'as new' replacement value. Most

Bursars (and certainly all governors!) would be amazed at the actual value of the contents of their school.

The effect of inflation, especially on rebuilding costs, cannot be ignored and can be overcome in several ways, although the commonest and simplest method is to use the 'Day One' Reinstatement provision. Under this method, once the correct value (the 'declared value') has been arrived at, it is inflated by a factor of between 15% and 50% – depending on the type of property at risk, estimated reinstatement time, predicted inflationary trends etc. – to allow for increases in claims costs during the insurance year and post-loss period. The premium is then adjusted accordingly, although the charge for the extra cover should normally be no more than 7.5% of the basic premium.

VALUE ADDED TAX

VAT is applicable in respect of all new building work and complete re-builds.

There are exemptions for Private Houses and for Buildings partly occupied for residential purposes (e.g., Boarding Houses and Dormitory areas of classroom blocks). VAT is, however, payable under most circumstances on the 'commercially used' parts of these buildings and care is therefore needed in allowing for the VAT element in the sum insured on such buildings.

INSURANCE PREMIUM TAX

Insurance Premium Tax (or 'IPT') is currently levied at a rate of 5% on Gross Premiums charged by insurers. The tax cannot be recovered and increases in levy do not compromise 'Long Term Agreements'.

Value Added Tax is payable on some insurance-related services, most notably Engineering Inspection fees and Health & Safety survey fees.

LONG TERM AGREEMENTS

Most insurers will offer a discount (generally between 5% and 10%) from commercial insurances in return for the Insured's agreement to renew cover with the Insurer for a period of at least three years. At one time, charitable organisations could receive a 30% or 50% 'Long Term Agreement discount. Sadly, those days are long gone. However, at the end of the day, it is the actual premium you pay which really counts

(plus the quality of cover and service) rather than how the eventual 'net' figure is arrived at.

The current trend is to offer a three-year agreement, under which the rates are not guaranteed, but which offer a discount from the fourth year's premium. Provided, of course, firstly that claims remain within previously agreed parameters during the first three years, and secondly that on expiry of the first agreement period, the school enters into a new three year agreement with the same provider. These agreements are considered equitable but should be avoided for other than the Property and Business Interruption covers, as Liability claims in particular can take a long time to settle and are often subject to large interim 'reserves' against settlement, which are outside your control.

Any agreement entered into is legally binding on both sides. Although Insurers might breach the Agreement by increasing rates, should Governors or school officials seek to break existing unbroken agreements without their Insurer's consent, then legally they could at least be obliged to refund the discounts already received.

The current state of the insurance market is such that rate guarantees are no longer freely available, and most long term agreements can be broken at the insurer's option. Long Term Agreements can also be broken if the insurer ceases trading or withdraws from offering cover to a particular sector. Currently rates are very competitive so it is probably in your best interests to accept the Agreement and the discount offered. Although the rate is not guaranteed it is usual for Insurers to maintain the rate for the duration of the Agreement.

SECURITY

Schools are, of course, very open places – both physically and by nature of their existence. It follows that they are prone to attack by thieves, not only at night but also during the daylight hours. (It is not unknown for criminals to masquerade as prospective parents to either gain immediate access to the premises or to be given a guided tour, which can be put to practical use after hours!)

Accordingly, the inclusion of **Theft** insurance within the School's portfolio should not be overlooked. However, care needs to be taken as to the way cover is arranged.

Theft insurances on commercial premises like shops and warehouses are fairly straightforward and generally restrict claims to those that follow

a break-in at the premises. This means that the buildings have to be kept locked overnight and a high standard of security is imposed on the insured. It would be not only impracticable, but also unpopular to impose such conditions on a School. Insurers and Brokers who have experience of handling school insurances will not insist on restricting cover to 'thefts involving forcible and violent entry or exit only' and this imposition should be avoided if at all possible. Most underwriters may seek to avoid relatively small losses by imposing an excess (usually between £250 and £1,000).

Despite the fact that some insurers are prepared to meet claims even if there has not been a forced entry to the buildings, this does not mean that security can be ignored. In fact, it is in any school's best interest to maintain a good system of security.

Broadly speaking, most insurers will ask for a good level of 'physical' security (locks and bolts) to be in use on external doors and windows out of school hours and obviously, common sense has to be used at boarding schools and during after hours use of the buildings. The majority of boarding schools now have some system of personal attack warning in boarding houses, and this is a commendable practice, although one which has no real bearing on an insurer's consideration of the level of security as it applies to school property.

Alarm protection is now becoming a common requirement, particularly to protect vulnerable areas, such as computer rooms. If you are considering installing an alarm, you would be advised to consult with your Insurers before incurring any expense. Your Insurers will confirm the technical specification of the alarm required. Any alarm system under consideration should include automatic signalling to an alarm receiving centre conforming to BS5979 and preferably to one that also provides call-out support. It is possible to include automatic fire alarm protection on some systems.

Any Intruder Alarm system should be installed and maintained by a company on the official list of recognised firms of any UKAS accredited Inspectorate Body.

To comply with the ACPO (Association of Chief Police Officers) policy on Police response to security systems the Intruder Alarm System must be capable of generating a confirmed alarm condition. Again, refer to your Insurers for technical guidance.

If for some reason the local Police withdraw response to your alarm, due usually to a series of false alarms, then you must notify your insurer

immediately. Failure to do so could negate not only your theft cover but possibly cover for malicious damage and even fire. Most insurers will impose a large excess whilst the response is withdrawn, but they do need to be made aware of the situation.

The use of engraving to mark portable school property cannot be too highly recommended. It really does deter thieves, as does the installation of Closed Circuit TV and (where practical) adequate fencing. Three-metre steel palisade fencing is not pretty but it does provide a strong level of perimeter security, particularly for those areas of the grounds not immediately visible from the school buildings.

The carriage of cash, even in small quantities, often presents security problems. The main problem is not so much the loss of the money itself, as the possible injury to staff caused as a result of an assault.

The simple answer is to try and avoid carrying cash as much as possible, actively encouraging parents to pay fees and incidental charges by cheque or direct debit. Use professional security firms to carry your cash wherever possible.

If staff do have to transport money, try and vary journey times and routes, and also ensure that you are complying with your insurer's 'Accompaniment Warranty' – which requires a minimum number of adult staff to accompany cash in transit.

Large cash sums may also of course invoke money laundering issues.

If all the above measures represent what might be termed 'passive' measures, equally important is the building-up amongst the staff and pupils the emphasis on 'active' security.

'Active Security' means being aware of potential problems, being curious about the presence of strangers and taking an active interest in the well being of the school and its property. This includes having a properly marked, easily accessible and subtly protected Reception area – **on the Ground Floor** – to which all visitors are directed, and where they are logged in and 'badged'.

Good visitor security is not only effective in keeping out unwelcome visitors, it goes a long way towards instilling a sense of physical and mental well-being amongst staff, pupils and parents (including 'potential' parents).

BUSINESS INTERRUPTION

This cover is also sometimes referred to as **'Consequential Loss'**. (Profit-making concerns have 'Loss of Profits' insurance.)

This type of policy is vital if the school is to be able to maintain its services as well as its income following serious damage to the Buildings and/or Contents. The insurance is specifically designed to cover both the loss of income and the increased costs of running the school following damage caused by contingencies insured under the Fire or Material Damage policies. Closure may also be caused by outbreaks of notifiable diseases, defective sanitation, or damage to neighbouring premises. The cover can often be extended to include loss of fees consequent upon the death of pupils.

The sum insured should be set sufficiently high to cover not only loss of fee and other revenue (such as lettings and Sports Hall or Theatre receipts), but also all the **extra** costs that could be incurred if the whole school were to be closed for a period of time. These costs can include the hire of temporary accommodation – including demountable buildings – and the costs of moving to the temporary premises, increased transport costs, costs of having food cooked elsewhere, and so on.

You may also need to effect specific cover to provide temporary rehousing for staff who are provided with school accommodation.

The period following the loss during which the consequential loss claim is assessed is known as the **'Indemnity Period'** and it is equally vital that the period chosen by you is long enough to see the school through an extensive period of closure.

The Indemnity Period starts to run from the actual date of the Fire, etc, and lasts for the number of months or years fixed at the inception of the policy. An indemnity period of between 12 and 36 months is usual and it is important that the sums insured, both on Revenue and Additional Costs is pitched at a high enough level to last throughout this period.

As a general guide, 'single building' schools should not really consider insuring revenue for an Indemnity Period less than 24 months. This applies particularly to Preparatory Schools, where competition for new pupils is often more marked than in the senior schools sector, and where one almost totally imponderable consideration following a serious loss is not those parents who may move their child away, but those who may not come at all as a result.

Senior schools, especially those with a large,

well-spread campus, may be able to restrict cover for fees to one year, or even to insure solely for 'Additional Costs'. However, you should look carefully at the possible effect of major damage on buildings, like Sports Halls and Theatres, which are sources of revenue in their own account, and insure accordingly.

The best way of arriving at an adequate level of cover is to take professional advice, from your insurer, broker, and also possibly your accountant.

When considering Business Interruption cover, please be aware that certain Insurers may wish to exclude or restrict cover for Loss of Income following an outbreak of Avian Influenza and Notifiable Diseases.

LIABILITY INSURANCE

Protecting the assets of your school is a relatively simple process – applying a premium to a known cost of replacing the buildings and contents. Far more complications arise when it comes to protecting unforeseen and potentially more expensive claims for legal liability that may arise even from the most innocent-seeming accident or mistake. There is no doubt that we are living in an increasingly litigious society, and protecting against the slings and arrows of outrageous fortune is not an easy task.

Teaching staff in particular are becoming increasingly nervous about their potential liabilities, not surprisingly perhaps because a 'culture of blame' has developed over recent years; a perception not ameliorated by the media publicity given to accidents which occur on school trips. Consequently it is in everyone's interest to make sure that adequate insurance protection is in place for all concerned with the school.

All 'liability' policies exist solely to protect the policyholder (i.e. the school and those connected with it) against having to pay damages and costs arising out of claims against the policyholder for legal liability. The policies do not automatically compensate claimants. Anyone alleging injury, loss or damage against the school has to prove that you have been negligent. You should not, therefore, make any payment, offer any apology or enter into any correspondence with claimants without your insurer's consent. Otherwise, you may find that insurers refuse to indemnify you.

The potential legal liability of schools falls into five basic areas:

- Injuries caused to pupils and visitors
- Loss or damage to other peoples' property.

- Liability for financial loss caused to others.
- Liability for errors and omissions
- Injuries suffered by staff in the course of their employment

Injuries are not necessarily physical injuries, but could also include psychological damage.

(Where a school operates separate subsidiary companies such as an 'Enterprise' company, separate insurance arrangements may be needed and you should consult with your Insurer or Broker appropriately)

Three main types of policy can protect these liabilities:

1. PUBLIC LIABILITY

This important cover indemnifies (protects) the School against claims for damages arising from injury to Third Parties, which includes pupils, parents and members of the general public. In addition to the payment of damages for injuries, the insurance also provides for claims involving damage to third party property.

Schools have a wide duty of care as a result of the legal principle of '*in loco parentis*'. Court awards are constantly increasing and it should be borne in mind that an accident occurring today may not come to Court for a number of years. Over that period Court awards will continue to rise but the claim settlement will fall to be dealt with within the indemnity limit prevailing at the time of the accident. Further, it must be remembered that the limit of indemnity applies in respect of any one accident, irrespective of the number of persons involved.

It cannot be stressed too strongly that the school must consider a high limit of indemnity. If there is a shortfall between the indemnity limit selected and the total amount of the claim then the governors will be responsible for the difference.

As a general guide it is recommended that £20,000,000 be considered the minimum indemnity limit. Some insurers may impose a separate limit in respect of acts of terrorism.

It is important to ensure that the definition of the 'Insured' under the policy is wide enough to include Governors, Trustees, Directors and Officers of a limited company (including any separate trading company), members of staff, voluntary and parent helpers, as well as pupils whilst under the control of the school. The policy should also provide a 'pupil to pupil' indemnity, and cover for PTA's or similar organisations whilst involved in activities directly on the school's behalf.

As well as school trips within the UK, the insurance should extend to include educational visits overseas or holidays sponsored and supervised by the school. The staff and any parents accompanying school parties should be protected by the Public Liability policy.

Please be aware that Insurers may well require you to maintain a record of Criminal Records Bureau Checks in respect of staff.

Extensions to Cover

Liability to the 'public' can arise in a variety of circumstances, so it is wise to consider extending the basic 'PL' cover in a variety of areas:

a) *Property of Staff and Pupils*

Liability policies exclude damage to property in the Insured's 'custody or control'. However, this extension can be modified to include loss or damage to personal property of staff and pupils – but only where the school can be proved legally liable for the damage. An excess may be applied to these and other claims for damage to property.

b) *Motor Contingency*

This protects the school in the event of a third party claim being lodged against the Governors as a result of an incident involving someone using a vehicle which the school does not own, on the school's behalf.

c) *Product Liability*

Covers claims which arise out of faults in goods 'sold or supplied' by the school (e.g., faulty items made in CDT workshops and subsequently 'supplied' to parents). The extension may include food poisoning risks (although these may fall within the scope of the main policy) and, therefore, should be arranged for exactly the same indemnity as the Public Liability cover. However, this limit will generally apply in aggregate to all claims arising during the year. (Public Liability policies generally have no such 'period limit' – the indemnity being for any one accident and unlimited in any one year.)

d) *Work Experience*

If your pupils are sent to an outside employer on 'work experience', then you have a right and a duty to expect the 'employer' to have an Employers Liability policy which includes an indemnity to 'work experience trainees' (see below).

However, if you have made the correct enquiries and pupils go to 'work' in good faith

but a claim then rebounds on the school if the employer is not insured, then your Public Liability insurers may provide contingency cover if the policy has been correctly arranged.

An increasing number of schools are sending students abroad on work experience schemes. In these cases – even within the EU – you cannot rely on local Employers Liability or 'Workmen's Compensation' schemes to protect your pupils and it is possible that your Public Liability policy will not react to claims incurred on a foreign work placement. All such proposals should, therefore, be referred to your insurers before they are sanctioned.

e) *Legionellosis*

Most insurers will seek to cap their potential liability for claims arising out of outbreaks of Legionellosis – usually to a maximum of £5,000,000 in any one year irrespective of the main policy indemnity limit. Some do so by imposing an inner limit on the main policy, others by effectively issuing a separate 'Legionellosis' policy.

Either way, an increasing number of insurers are insisting that schools must comply with Health & Safety Executive Guidelines on combating Legionellosis.

f) *Abuse*

Cover is normally available as part of your Policy but may be subject to a separate limit of indemnity in any one period of insurance.

g) *Hirers*

As schools increasingly make their premises available for use by the community, either by letting out their theatres, sports halls, and swimming pools in the evenings or by arranging weddings and other events, the question of liability to and of hirers is becoming more and more relevant.

Generally speaking, the school's own Public Liability policy will indemnify you in respect of legal liabilities incurred as a result of injuries to visitors on the premises. If there are numerous hirings of School premises however it would be wise to advise your Insurers.

This is particularly true if a separate trading company is established, particularly one set up especially to handle lettings. (See also 'Professional Indemnity' & 'Employers Liability' – below)

If members of staff make use of school facilities during holiday periods, for their own financial benefit rather than the school's, then they will need to arrange insurance in their own right

and cannot rely on the school's policies to protect them.

If you employ a contractor to come on to the premises to carry out work, then you should insist that they have adequate Public Liability cover in their own right, in the event that they cause any injury to pupils and staff or damage to school property. Similarly, any person or organisation hiring the school for out of hours activities should also be adequately covered. not only for any liability they incur to the school, its property or personnel, but also one to another.

Companies and properly constituted clubs and societies will generally have annual Public Liability policies – which should be extended to include damage to leased and rented premises. (In fact, the school's own Public Liability policy should also include this extension). However, individuals hiring the school by the day (e.g., for a wedding) should be obliged to obtain a short period cover.

It is possible for hirers to arrange a separate 'Special Events' policy, which may also have extensions of value to the hirer; such as, 'all risks' on equipment, cancellation and pluvius cover. It is even possible to obtain a specialist 'Weddings' policy.

Alternatively the school's own Public Liability insurers may grant some cover for 'Indemnity to Hirer'. If this extension is included, however, it is generally only for a bare minimum of cover, by which the insurer agrees to pick up the hirer's liability for damage to the premises. (Effectively covering against the rights of the property insurer to seek recovery for a loss). These extensions, although cheap in premium terms, do not normally indemnify hirers for injury either to their own 'guests' or to persons not connected with the hire. Any claim under this section will, of course, adversely affect the school's own claims experience.

It is possible, and far more advisable to arrange a separate policy for Hirers' Indemnity, giving full liability cover. It is also recommended that this cover is arranged with a different insurer to the school's own liability insurer. The policy can be arranged on an annual basis, rated on hire receipts, in such a way that costs can be passed on to hirers via the hire charge.

2. PROFESSIONAL INDEMNITY, GOVERNORS' & TRUSTEES' LIABILITY

Whilst the Public Liability Insurance covers the School's liability in negligence for personal injury or damage to property, other liabilities can arise in the operation of the School.

Professional Indemnity Insurance provides an indemnity against liability at law arising from breach of professional duty, including errors and omissions committed in good faith.

Staff could be in error in teaching the wrong syllabus for examinations, issuing incorrect examination papers, failing to process University applications correctly, etc. The United States experience should be borne in mind, where a number of claims have arisen from alleged 'failure to educate'. This, sadly, is a rapidly developing trend in the UK, as is alleged 'failure to recognise dyslexia'.

Claims alleging bullying or abuse are also on the increase. Whilst the courts are tending to treat these as 'personal injury' claims, this is still a grey area. If no apparent injury has been suffered and if the claim is judged to be one of financial loss, then it falls to be dealt with by Professional Indemnity rather than Public Liability insurers. (Which argues strongly in favour of having both risks covered by the same insurer if possible)

Cover for Governors & Trustees is arranged on a similar basis to the Professional Indemnity Insurance and often within the same policy. The policy should also extend to indemnify principals, owners, directors and officers of proprietary owned companies and schools (and should encompass directors and officers of any separate trading company). Cover essentially provides protection against liability at law for damages arising from errors and omissions as well as for 'Wrongful Acts'.

A 'Wrongful Act' is normally defined as 'actual or alleged wrongful trading, breach of contract, breach of trust, breach of duty, act, neglect, error, omission, misstatement, misleading statement or breach of warranty of authority or other act done or wrongfully attempted'. Wrongful trading bears the meaning set out in the Insolvency Act 1986.

The Policy of course excludes claims arising from dishonesty, fraud or malicious conduct, but it is important to note that the dishonesty or fraud of one governor would not necessarily be imputed to the other members of the Governing Body. Fines and other criminal penalties are excluded, as also are claims, which fall to be dealt with under other insurance policies – e.g. those involving injury to persons, damage to property or actions arising from a breach of professional duty.

The limit of indemnity under a Governors Liability and/or Professional Indemnity policy for schools is normally lower than under the Public Liability cover and insurance is arranged

on a 'claims made' basis. This means, unlike Public Liability and Employer's Liability policies, which react to claims **incurred** during the currency of the insurance, Professional Indemnity policies only react in respect of claims **notified** to the Insurer within the period of insurance. This means that, if a claim is made against the governors for an incident alleged to have taken place some years ago, your current Professional Indemnity Policy may not react.

However, the 'period of insurance' is taken by most insurers of this class of business to include the unbroken period during which the same insurer has provided cover to the same insured. If you are considering changing insurers, you should insist that any new policy include a reasonable 'retroactive period'. This makes allowance for claims for incidents which occurred prior to inception, of which you may not be aware, but which may cause an action to be brought against the school, trustees or governors after you have changed insurers. The retroactive period should be at least three years prior to the inception date of the new policy.

The minimum level of indemnity recommended for both Governors Liability and Professional Indemnity is £2,000,000 in the aggregate in the insurance year. However, an indemnity of up to £5M should not be discounted. Libel and Slander are normally included under this cover.

3. EMPLOYERS' LIABILITY

There is a statutory obligation on employers to effect insurance cover for a minimum amount of £5,000,000 any one incident in respect of their liability to pay damages to employees who suffer injury, illness or death in the course of their employment arising from the negligence of the employer.

The existence of cover has to be evidenced by a Certificate of Employers' Liability Insurance; a copy or copies of which must be displayed at each site operated by the insured. The certificate has to be retained for a minimum period of forty years after it has expired.

Insurers generally offer policyholders a limit of £10,000,000 per occurrence. A higher limit is more appropriate and it is possible to purchase extra cover and a minimum limit of £20,000,000 is generally recommended. Insurers are now imposing a limit of £5,000,000 any one incident in respect of employers' liability arising from acts of terrorism.

The standard policy includes within the definition of 'employees' persons undertaking work experience. This is particularly important for schools as not only may you have such trainees working with you, but also some of your senior pupils will no doubt undertake work experience with commercial companies. You should ensure that such companies have the normal Employers' Liability Policy including cover for work experience trainees. If you are in any doubt contact your own Insurance Broker or Insurance Company.

HEALTH & SAFETY

School Governors have the same legal duties as any employer to safeguard the welfare of their employees and to comply with certain statutory obligations, and are subject to the same penalties for non-compliance. Breach of a statutory duty can also severely weaken the school's (and its insurer's) defence in the event of a claim for personal injury and/or damage to property being lodged.

A breach of Health & Safety law, which results in injury or death, can lead to serious criminal charges, including, ultimately, one of Corporate Manslaughter. Some Employers and Public Liability policies do provide for the payment of court costs in defending criminal prosecutions brought under Health & Safety legislation, but this is to help strengthen defence of any civil action. No cover is available to pay fines.

Good Health and Safety practice is always to be commended and can only enhance the standing of the school. Insurers and brokers experienced in schools can help and advise you in fulfilling both your statutory and moral obligations:

Most insurers will automatically carry out a 'risk survey' of the school either before or after assuming cover and will put forward requirements and recommendations regarding security, fire precautions and good, general safety practices. This survey, being instigated by the Insurer, is normally free of charge. However, there are some wider services which insurers, as well as specialist consultants, are able to provide – for a fee.

These include advice on the many and various regulations that affect safety in the workplace as well as the provision of testing and certification of machinery, boilers, lifting equipment, electrical wiring installations and portable electrical equipment.

It is possible to arrange for an insurer to

conduct a health and safety audit to ensure that the school is complying with relevant legislation.

ADDITIONAL INSURANCES

The main 'Combined' policy, covering Buildings, Contents, Business Interruption, and Liabilities, is probably the most complex of the insurances that Schools will have to arrange. There are, however, other important covers that you may wish to consider, which are available either as separate policies, or sometimes, as extensions to the main Material Damage policy:

'All Risks' Policies

Mention of this type of cover has been made before, under the section on Buildings and Contents. However, it is sometimes advisable to arrange specific accidental damage covers on certain types of property which are particularly vulnerable to damage or which are regularly taken out of the school. These items can include sports equipment, musical instruments, office equipment, computers etc.

If the School owns tractors, grass-cutting equipment etc., solely for use in the grounds and not taken on the road, it would be as well to cover these items for accidental damage. If the tractors are used off the premises, it is necessary to arrange separate motor insurances.

All risks policies which specify individual items at risk should be avoided, as there is a great danger of items being missed off the schedule or individually undervalued. As in all property insurances (including those on the Buildings and Contents) it is as well to arrange the policy to cover 'block' items, with as wide a definition as possible, to avoid missing any property out and also to minimise any chance of under insurance.

Money

Cover can be arranged to meet losses of money due to theft or accidental loss and is generally included under the main "Combined" Policy. In addition, policies can also be extended to include misappropriation of cash by employees, although full-scale employee fraud should be insured against under a 'Fidelity' policy.

The term 'Money' is usually deemed to include not only cash but also negotiable and 'non-negotiable' items – such as crossed cheques etc.

Policies are often extended to give cover for injuries to staff and damage to their clothing fol-

lowing an assault whilst handling or carrying cash.

Glass

Accidental damage to glass, china and earthenware is normally included automatically as part of the Buildings. However, it is as well to check. Glass claims can mount up and insurers are trying to avoid large numbers of 'attritional' losses. Accordingly, it is not uncommon to find that an excess of at least £100 applies to each incident

If you are fortunate to have valuable stained glass windows (for example in the Chapel) it is important that Insurers know together with a likely cost of renovation, repair or replacement if damaged.

Engineering Insurance

These are separate, specialist policies that cover some of the contingencies excluded from most 'Material Damage' policies. This includes, for example, sudden and unforeseen damage to and explosion of boilers, damage to electrical equipment and breakdown of mechanical, electrical and heating apparatus. Damage to 'own-surrounding property' caused by the explosion of steam pressure plant is generally the province of the Engineering insurer rather than the Fire insurer.

Traditionally, this type of policy was arranged on a 'specified item' basis, with periodic inspection (see below) a condition of the insurance. It is now possible to arrange cover on a 'blanket' basis, automatically insuring all types of plant and machinery within a school, with no inspection condition, but excluding certain types of equipment, such as grounds equipment, computers and office equipment.

Some types of machinery, including boilers, steamers, mechanical plant, fume cupboards, and all types of lifting equipment are required to be independently inspected under the terms of various Health & Safety legislation – the majority of which legislation applies equally to schools as to other places of work. It is a requirement that portable electrical equipment is safety-tested annually and that wiring installations are certified every five years. (Fire insurers also require this). Engineering insurers are able to provide these services, the fees for which are subject to VAT. (See also notes on 'Health & Safety'.)

Computers

For teaching computers, cover is generally available on an 'All Risks' basis, as part of the main

material damage cover on the Contents and this should be sufficient (given a small enough excess) to protect against the losses involving these computers and peripherals.

However, many schools are now well down the road of using computer networks in an administrative function. In this case, the usual type of 'All Risks' policy may not give sufficient cover and specialist policies are available, which include cover for loss of data, hire of temporary replacements, consequential loss and, in some cases, breakdown.

Legal Expenses

Cover is available to provide for payment of legal costs incurred in the day to day working activities of the school.

These include such areas as: -

Employment disputes

Contractual disputes with suppliers

Breaches of Race Relations/Sex

Discrimination/Disability Discrimination law

Tax investigations

Jury Service compensation

The costs of representing the School at an industrial tribunal (not to mention awards made by the tribunal) can be particularly expensive and this is, therefore, one class of insurance that you should not ignore. A minimum indemnity of at least £125,000 per claim should be considered.

In addition, most legal expenses insurers include a legal personnel advice service. Some also provide a range of other services, including attendance at school disciplinary hearings.

The policy will not normally cover claims involving motor vehicles, but such cover can be brought as an 'add-on' to a motor insurance policy.

Fidelity Insurance (Theft by Employees)

Protects the school against losses caused by the dishonesty of staff. Cover can also extend to include losses caused by the dishonesty of Governors. If properly arranged, you will not need to ask staff to fill out individual applications, although you will need to take up references on new staff.

Ideally, you should look for an Insurer prepared to give 'block' cover, that does not specify individual staff and one that does not insist on prosecution as a pre-requisite to claim payment.

Travel Insurance

Most schools arrange a variety of journeys throughout the year.

A full travel insurance, incorporating cover for baggage, money, medical expenses (for foreign trips) cancellation, delay, etc is available, with levels of cover especially designed for schools. Cover can be arranged as 'one-off' policies for individual journeys but it is also possible (and advisable) to obtain an annual policy, which automatically covers all journeys made in the year with the premium adjusted annually on the total number of pupils in the school. This ensures that all trips are automatically covered, although separate cover for certain, more hazardous activities may need to be separately arranged.

MOTOR INSURANCE

1. MOTOR VEHICLES

The method for calculating motor premiums relates to many factors, the most important of which are the full details of the vehicles involved, the ages, state of health, and experience of the drivers, and, most important of all, the use to which the vehicles are put.

Vehicles that are owned and operated on behalf of schools should be insured fully for the use they are put to by any of the authorised drivers.

With specific reference to the use of multi-seater vehicles, (i.e., minibuses) where a charge is made or a fee accepted to transport children or adults, whether it be a direct or indirect charge, it could be construed that 'hire or reward' use is involved which may well be excluded from the use being given by the insurer.

Educational establishments can obtain special permits for use of minibuses and other multi-seater vehicles, and use under such permits is not usually considered as hire or reward. Some insurers stipulate that hire or reward use is included but only for use under the Section 19 permit. It is recommended that each establishment clarify their position with the Area Traffic Commissioners and/or their insurer.

It is most important that drivers of multi-seater vehicles are in possession of the correct licence and if there is any doubt they should check with DVLA.

It is advisable for legal expenses cover to be purchased as an adjunct to motor policies. This will cover such contingencies as uninsured loss recovery, which is not normally covered by a commercial legal expenses policy.

It must be expected that there will be an increasing use of motor cars and motor cycles by

day pupils to and from the school, and possibly also by boarders. If these vehicles are allowed within the School grounds the School may consider it prudent to obtain formal confirmation from the parent that the relevant third party motor cover is in force for the pupil concerned. It should also be made clear both to parents and to the pupil using the vehicle that they must not allow others to drive or to travel in or on them in the school grounds or during 'school time'. What happens outside the school grounds or outside 'school time' is a matter for the parent to decide though doubtless the Head would report any dangerous conduct to parents.

2. MOTOR CONTINGENT LIABILITY

Another worry facing the School is the increasing use of staff and parents' motor vehicles (as opposed to the school's own vehicles) in connection with school activities, such as the carriage of teams to a match. It is important that the driver of the vehicle checks with his or her own insurer that such activities are included within the definition of the purpose of use. If this is not the case, the driver will be contravening the Road Traffic Act. This is equally true of vehicles – such as coaches – hired with a driver.

One way for schools to ensure that staff who use their vehicles in connection with school activities are made aware of the necessity of having adequate insurance, is to insist upon a signed statement to the effect that the driver has written confirmation from his insurers that policy cover extends to include school use. Such a statement may form part of a claim form for the reimbursement of mileage allowance. Alternatively, a notice should be displayed in the Common Room drawing the attention of staff to the necessity of having adequate insurance arrangements.

There is a possibility of the School being held totally or partially liable in the event of an accident arising out of a vehicle being used on its behalf but not belonging to the school. (The School is, of course, responsible for the insurance of its own vehicles.) Such liability can be covered at a modest cost under a Motor Contingent Liability Policy. This cover is often given as an extension to the Public Liability Policy.

3. OCCASIONAL BUSINESS USE INSURANCE

Where staff members, governors or parents occasionally use their cars for school purposes, such as carrying pupils or collecting supplies, if

an accident occurs, even if the person concerned is fully insured, he or she may suffer a loss of No Claims Discount.

Occasional Business Use Insurance is effected by the School to cover such occasional use for school purposes, including damage to the car and avoids staff members having to claim on their own policy. Most importantly, the cover provides full Third Party 'Business Use' cover. This cover can also be extended to cover governors' and staff members' spouses if required.

PUPIL, PARENT, & STAFF SCHEMES

1. FEES REFUND SCHEME

The Fees Refund Scheme serves to protect parents from loss of fees in the event of absence of their child due to illness, accident, or the closure of the school due to an epidemic among the pupils. The existence of the scheme at a school helps maintain goodwill with parents.

The School can effect an insurance policy and pass on a charge to fee-payers' accounts. The policy will enable the school to make a refund of fees for each whole day of absence after the pupil has been away from the school for a minimum continuous period of at least 5 days for day pupils or 4 days for boarders (claims can also be made for boarders whose illness is treated at school – refunds being based on three-quarters of the fees).

The School incurs no additional expenditure in operating an insured scheme and usually receives a discount based on the percentage of pupils participating, to cover administration costs or to reduce the charge paid by parents. Thus the school may receive an income without becoming involved in any risk. Insurers may grant additional insurance cover such as 'Accidental Death of a Fee-Payer' when a school includes a high proportion of pupils in the scheme. Cover may also be extended to recompense the School in the event of pupils being killed in an accident or being expelled or withdrawn without notice.

An alternative Scheme, Pupils Absence Insurance Scheme, is now available which is an insurance cover for the parents. This is generally a cheaper option for the parents and some Schools who have not previously offered a Fees Refund Scheme may wish to consider this.

It is now possible to arrange cover in order to maintain fee payment if the fee-payer is made redundant, suffers a business failure or succumbs to long term illness or a serious accident.

2. PRIVATE MEDICAL COVER

(a) Pupils

It is possible for parents to cover their children against the cost of providing private hospital, specialist and treatment charges incurred as a result of illness or injury. A scheme for pupils at schools is available from a specialist provident association. Parents pay a modest termly subscription through the school for their child to be enrolled in the scheme. This enables such pupils to see a specialist promptly and if hospital treatment is necessary this can be arranged at convenient time so that the child's education is disrupted as little as possible.

(b) Staff

It is often in the School's interest that members of staff are covered for private medical costs because non-urgent treatment may be arranged at a suitable time, both for the employee and the School, e.g., holiday time or mid-term breaks.

There are special group schemes available for schools' staff and their dependants. It is possible to enrol as few as three staff members to form a group at advantageous subscriptions.

3. DENTAL ACCIDENT INSURANCE FOR PUPILS

The most common permanent damage caused to pupils through sporting and other accidents is to their teeth. While modern dental care can generally provide restorative treatment, such treatment is often expensive.

Specialist insurance is now available to provide accident benefit cover and compensation for loss of teeth for pupils following dental injuries. Cover is offered to parents through the school with premiums being collected on a termly basis.

Cover may be extended to include benefits payable following dental emergencies and access to a 24 hour 'Helpline' when required.

4. PERMANENT DISABILITY INSURANCE – PUPILS AND STAFF

The Independent Schools Council considered this problem in great detail following certain accidents at school, where no compensation was payable in respect of the injured child and where no legal liability attached to the School. The ISC Recommended Scheme, managed by HSBC Insurance Brokers Ltd, Education Practice (previously 'Holmwoods') since 1980, offers cover both at school and during holiday periods anywhere in the World. The School collects premiums on a termly basis. Staff can also be included.

5. PUPILS' PERSONAL EFFECTS INSURANCE

Schools are recommended to advise parents in writing that they are unable to accept responsibility for loss or damage to the personal property of pupils. It is possible to offer parents an optional policy that provides 'all-risks' cover for their child's property by payment of a termly premium.

6. SUPPLY TEACHER INSURANCE

Cover can be arranged against the costs of providing supply cover for sick or injured staff. Schools can select the daily benefit and the period required. This policy protects a school's budget from unforeseen increased salary costs and ensures that the academic progress of pupils is not unduly affected.

MAKING A CLAIM

Sadly, no matter how well your School is run there will come a time when the worst happens and you actually have to use your expensive insurance cover. Unfortunately, this is the only time when your Insurers get the chance to prove whether or not their product was actually worth buying and, consequently, claims cause more friction between customer and Insurer than just about anything else. Most arguments come about either because the insurance has not been properly explained – or not enough questions asked by the School at the outset – or because misunderstandings arise when a claim is notified. If you are properly prepared when disaster strikes, then a lot of trouble can be avoided.

In the main, most claims are for relatively small amounts, in which case, the Insurers will simply ask for a completed claim form, giving details of the loss; what was damaged, when, where, and how. This should be accompanied wherever possible by receipts, either for the damaged article or its replacement, and in this way most small claims – up to about £1,000 – can be settled fairly amicably. Larger claims can take more time and present more problems, but the basic principles remain the same.

The first thing to remember, when calamity hits you, is not to panic. Some people do seem to take offence if their Insurer or Broker appears to take a matter-of-fact attitude when a claim is notified but, of course, they are more accustomed than you to claims occurring and, hopefully, have staff properly trained to deal with

them. If you have a Contingency Plan, use it. Keep a list of useful contacts and phone numbers handy and have people already made aware of their roles in an emergency.

If a fire or other major event occurs during school hours, get the pupils and staff to a place of safety first – then notify parents where, when and how their children can be collected.

As soon as possible after the event notify your Insurer or Broker verbally and start preparing the ground with your Broker's help for your written claim, the essentials of which should be submitted within a week to ten days after the loss. In the case of large or complicated claims, Insurers may appoint an independent Loss Adjuster to act on their behalf in settling the loss. Such an appointment should not be construed as in any way reflecting on the School. No one is trying to accuse you of a 'fiddle'. Loss Adjusters are generally very fair and highly professional. If you approach them in the right way, they can also provide you with help and assistance.

Do carry out **essential** emergency repairs as soon as it is feasible – and safe – to do so and keep all bills etc for later presentation. Try and keep salvaged or damaged articles safe for inspection. Remove all salvageable property to a safe place but do not dispose of it, or any damaged property, until the Insurer or Loss Adjuster has given the go-ahead.

Obtain two or three competitive estimates wherever possible but do not accept major estimates, or give the go-ahead for major repairs until you have authorisation – and certainly **do not** pay any large bills, no matter what the pressure from the repairers. A reputable repairer will not assume or ask if you are insured, will not offer two different estimates – one for you and one for the Insurer – and will normally be quite happy to negotiate with the Insurer's representative.

If you incur any additional costs to keep the School open following major damage, such as overtime, equipment hire, extra transport costs, etc, keep a careful record of them to support a consequential loss claim later. The Insurers must, however, authorise any large additional expenditure.

So far as potential liability claims are concerned – where allegations of negligence are being levied against the School – remember that the onus of proof lies with the claimant and put everything back firmly in their court. Do not encourage them to make a claim and certainly do not admit any responsibility either verbally or in writing.

Anyone claiming against you should do so in

writing and claims must be referred direct to your Insurer or Broker, who should be made aware of the situation by you, preferably via a written statement setting out your side of the argument.

Following the changes resulting from the Woolf Reforms of 1999, all claims must receive a written response within 21 days of notification – and therefore must be notified to your insurer or broker within that timescale so that a response may be given. The written response has to identify your insurer.

No extension to the 21-day time limit is allowed, and no dispensation is given for holiday periods or temporary closure of the school or office.

After the initial notification step back and let your Insurers take over. Refer all correspondence from third parties unanswered to your Insurer or Broker and do not appoint solicitors or incur costs without the Insurer's consent.

If the School uses an Insurance Broker to handle its insurances, then the Brokers themselves should be able to provide you with free and impartial advice following a claim. Some large Brokers will have their own claims depart-

ments which may have a delegated authority to appoint Adjusters (or even to settle minor claims) on behalf of Insurers. Most large, specialist Brokers do not charge for handling or negotiating claims.

However, if you deal direct with Insurers, then to all intents and purposes, you will be left to negotiate with their claims experts on your own.

Although the only time most Insurers get the chance to prove their worth is following a claim and this service should be their best advertisement, any Insurance Company will act primarily for itself and, whilst no Insurer will seek to avoid paying a valid claim, they all need the occasional nudge to get things moving and most will not tell you, the client, where to look in the small print to find something to **your** advantage. This is where an insurance broker can offer valuable independent advice and assistance.

Provided they are properly handled, the vast majority of insurance claims are settled with no problems at all. Be as co-operative and relaxed as possible and let the specialists take care of your worries.

The ISBA is grateful to HSBC Insurance Brokers for the provision of this Chapter free of charge. See www.hsbc.com or contact david.collard@hsbc.com or Tel: 01444 458144

