

Public Liability – Information

Definition

Any person injuring another or damaging another's property as a result of acting negligently may have an action for compensation brought against them. It is for this reason that the MSA has arranged public liability insurance to protect clubs organising events against this potential legal liability. Insurers cannot cover events of whose existence they do not know and for the policies to be effective a club must obtain an appropriate permit or exemption from the MSA.

Scope of Cover

The policy is arranged to provide indemnity to the level £30,000,000 for any one accident. This is the limit of the Insurer's obligation no matter how many people are injured or how much property damage is done as a result of a single incident or accident. In respect of pollution/contamination claims the limit of the Insurer's liability is £30,000,000 in the aggregate and cover is restricted to sudden, unintended and unexpected pollution.

The costs of defending Clubs against allegations likely to be the subject of indemnity under the policy are also met by Insurers. They will of course take over the control and conduct of that defence.

The first £250 of any claim for damage to property will be the responsibility of the club and this excess is payable in respect of each and every accident which gives rise to a claim. Where prior experience indicates that a heavy claims exposure exists the excess may be increased, but not without prior notification to the club concerned.

Who is Protected?

The Master Policy protects an organising or promoting club and its officials for their potential legal liability to third parties injured or whose property is damaged following an accident arising from the holding of an event. This term includes official practice and associated activities necessary to an event (such as setting up a course for a speed event). The cover additionally protects officials (not necessarily officials of an organising club), or sponsors of an event or of races or championships, within the event. Competitors and Venue landowners are also covered but not one competitor claiming against another competitor.

What is Protected?

Events arranged by Clubs held under an MSA Permit or Certificate of Exemption.

Marshals' training days are covered subject to prior notification and approval.

What is not Protected?

Events not held under Permit or Certificate of Exemption are not covered, neither are any Record Attempts nor activities other than the normal competition.

Approval may be given for the demonstration of vehicles subject to a specific application being made to and specific approval being given by the MSA.

The policy cannot be extended to cover aviation activities or claims.

Social events run by clubs are not insured under this policy though Jardine Lloyd Thompson will be able to assist clubs requiring legal liability cover for other club activities, or special attractions.

Liabilities arising from the use of vehicles on the public road are not insured under the public liability policy. If this cover is required application should be made to Jardine Lloyd Thompson who will be able to offer facilities to insure the exposure.

Events abroad are not covered without special arrangement and approval being sought through Jardine Lloyd Thompson.

Insurance policies are subject to specific terms and conditions. Thus if there is any doubt at all whether any activity or aspect of cover is insured or not it is important that you refer to Jardine Lloyd Thompson for clarification.



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Are Competitors Covered?

The term competitor is used in its widest sense to describe drivers, entrants, sponsors of individual competitors and where appropriate passengers.

Where events occur on private land, i.e. where the insurance provisions of the Road Traffic Act do not apply, competitors are protected by the MSA's public liability insurance.

It is impractical for the MSA to provide competitors with cover where any part of an event takes place on the public highway in circumstances to which the Road Traffic Act applies. To cover liability under the Road Traffic Act, competitors are expected to make their own arrangements by the extension of existing motor policies. However, Jardine Lloyd Thompson are in a position to assist clubs organising rallies to provide Road Traffic Act cover.

However, this insurance does not protect competitors in respect of liability to mechanics or other helpers forming part of the same entry nor do they protect mechanics, entrants or sponsors in respect of claims by the driver. Claims by one competitor against another actually competing in the same event are excluded.

Are Landowners Covered?

The MSA Master Policy indemnifies landowners in respect of their potential legal liability to third parties following an accident in connection with an event for which they have loaned the use of their land. This indemnity is to deal with the risk that an allegation is made after an accident that the cause was due to some defect in the landowner's premises.

The MSA public liability policy will only normally pay for damage to a landowner's property if it is considered that the club has been in some way at fault and has a legal liability. The policy is specific in not providing cover to safety barriers, marshall posts, and other course installations and damage to road and land surfaces.

Contractual Liability?

Contractual Liability is the term used in Insurance policies to indicate an obligation accepted by one of the two contracting parties which goes beyond the position that would exist otherwise under the common law of negligence. Insurers exclude such obligations because they do not wish to be bound under their policy by any prior commitment unless they have been given notice of the commitment and agreed to it. Please refer to Jardine Lloyd Thompson for any specific clarification.

If obligations are undertaken under contract in respect of damage to other property e.g. hired public address equipment, armco barriers or advertising hoardings then the liability cover offered under the Master Policy will only operate to the extent to which it is judged you may have a legal liability under the common law in negligence.

Under normal circumstances any extension of cover will not include inevitable damage to road and land surfaces. Clubs are expected to take reasonable measures to protect vulnerable property, especially any property of high value which might be subject to damage.

Medical Malpractice

The Master Liability policy is automatically extended to provide medical malpractice cover for volunteer Junior Doctors and paramedics registered with the HPC and volunteer medical assistants including nurses registered with the MSA, attending MSA authorised events. The limit of indemnity is £5,000,000 in the aggregate and the cover is subject to an excess of £250 each and every claim.



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Public Liability – Action Plan

In order that clubs may be certain that cover is in place for any given event the following are the steps that are to be taken:

- (a) Apply to the MSA for an appropriate Permit or Certificate of Exemption.
- (b). Consider if specific advice is needed from Jardine Lloyd Thompson on the event, e.g.
 - Activities other than normal competition or those specifically approved by the MSA
 - Contractual liabilities incurred to property owners or landlords.
 - Where cover under the Road Traffic Act is required
- (c) If special exposures to risks not covered in the standard MSA liability insurance exist such as in (c) above then full details should be made available to Jardine Lloyd Thompson in good time for them to respond on the nature of the cover required and its costs.

Claims

In the event of any accident involving injury to a spectator or official, or damage to third party property, a full report must be made to the MSA as soon as possible. There must be no discussions or correspondence whatsoever regarding the incident other than to confirm that the facts are being reported to the MSA. Delay in reporting could result in the Insurer's refusal to deal with a claim if their position had been prejudiced by delayed notification or by settlement or commitment having been made. In the unlikely event of an injury being fatal, this report must be made by telephone at the earliest possible opportunity. These requirements also apply to serious or fatal accidents to competitors.

In the case of accidents involving spectators or their property it is important that the names and addresses of any witnesses are obtained and also those of marshals stationed in the vicinity of the accident.

After an incident organisers or individuals may receive a letter from a solicitor which should take the form of 2 copies of a 'letter before action'. Such letters should not be acknowledged but must immediately be sent to the MSA. Insurers will then have 21 days to acknowledge receipt of the 'letter of action' followed by a period of 90 days to investigate the claim and make a decision on liability.

Failure to meet these deadlines can result in judgment by default with the attendant adverse penalties and cost accruing to the defendant.



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