

**DIOCESE OF ARUNDEL AND BRIGHTON**

**INSURANCE GUIDE  
FOR  
VOLUNTARY AIDED SCHOOLS**

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The Arundel and Brighton Diocesan Trust is a Registered Charity No. 252878

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### **AMENDMENTS:**

Sections 1 and 11 – IT losses covered  
Section 8 – engineering inspection insurance deleted

## **INTRODUCTION**

This Guide states the position that applies in England from the 1st April 2002 following the changes introduced on that date by the Regulatory Reform Order. These changes relate to the division of “Liabilities” for Voluntary Aided (VA) schools’ premises repairs and maintenance costs.

There are three fundamental principles which need to be borne in mind at all times when it comes to considering the insurance arrangements for VA schools.

1. Catholic Dioceses in England have included certain risks associated with their VA schools within the Diocesan insurance arrangements since the 1944 Education Act, for the following reasons:
  - a) VA school buildings form part of the Diocesan Trust
  - b) the Diocesan Trustees have legal duties, under both Charity Law and Canon Law, to protect and insure the properties contained within the Trust
  - c) if the responsibility for such property were to be passed to the Local Authority (LA), there would be no legal duty or contractual obligation on the LA to repair or reinstate a VA school suffering serious damage
  - d) even where LAs insure against such risks, there is normally a very significant excess (£250,000 plus is not uncommon)
2. In all respects (other than “premises”), LAs should treat VA schools exactly the same as they do all other State schools the LA is obliged to “maintain” within the LA’s boundaries.
3. The LA is obliged to provide sufficient funds to each VA school, to enable the school to meet all its insurance premium costs, including the premiums levied on the school under the Diocesan Trustees’ insurance arrangements.

The Diocese provides insurance cover for its VA schools under the policy issued by the Catholic National Insurance Limited (CNML), a registered insurance company. The Diocese has appointed the Catholic Church Insurance Association (CCIA) to act as intermediary and advisor on all school insurance matters. Contact is always made only to CCIA and not CNML.

### **1. BUILDINGS AND CONTENTS**

The governors of VA schools and the LA share responsibility for repairing and replacing lost or damaged schools’ property.

Where the financial responsibility is that of the governors, financial assistance is normally available from Department for Education and Skills (DfES) by way of grant aid. The level of grant aid available is normally 90% of the cost of repair or replacement.

The property insurance policy issued by the CNML covers the governing body’s and Diocesan Trustees’ interests only, net of grant aid from the DfES where applicable. No cover is afforded to the LA.

Also covered under the CNML property policy are those items of contents which fall to the responsibility of the governors, and where no indemnity is available from the LA for the cost of repair or replacement.

## **BUILDINGS AND CONTENTS - continued**

The division of liabilities for VA schools' premises repairs and replacement costs in England since 1st April 2002 is as follows:

- losses to buildings - internal and external including furniture, fixtures and fittings above £2,000 = capital. Therefore the responsibility of the governing body. Such losses qualify for grant aid and the CNML policy makes up any shortfall, subject only to any policy excess
- losses to buildings - internal and external including furniture, fixtures and fittings below £2,000 = below de minimis level set by DfES. Therefore regarded as "Revenue" and is the responsibility of the LA
- losses to IT equipment and contents, (excluding furniture, fixtures and fittings), less than £2,000 = Revenue, and fall to be the responsibility of the LEA; above £2,000 = Capital and therefore Governors' responsibility, losses funded via Grant Aid from DfES and shortfall met by CNML policy, subject to policy excess; **[amended]**
- Losses to buildings and contents of any building on playing fields = 100% responsibility of the LA
- Losses to any "unadopted" buildings and their contents (e.g., chapels on school sites, nurseries, de-commissioned teaching areas, youth centres and teachers' accommodation) = governors responsibility, and would not qualify for grant aid. The Diocesan insurance provided by CNML would meet such losses in full, subject to any policy excess.

### **3 GENERAL PRINCIPLES OF PROPERTY INSURANCE**

The premium charged by CNML takes into account that the policy cover excludes any grant receivable from the DfES and the liability of the LA. CNML will pay up to a maximum of £25,000,000 in respect of any one loss to a VA school.

**Note:** It is important that CCIA be informed if a VA school, or any part, becomes ineligible for grant from the DfES. For any buildings and/or contents that do not qualify for grant aid, the full reinstatement value of the buildings and replacement cost of contents should be advised to CCIA by contacting the Diocesan Finance Office.

The amount recoverable under the policy will differ according to any decision taken on the future of the school following a major loss (usually a fire).

In most cases the damage would be repaired and the school continue as previously. In such cases the amount recoverable would be the net cost to the governors of meeting their share of the repair bill after taking into account any grant receivable from the DfES after any policy excess.

If after a fire repairs are not carried out and the school is discontinued altogether, then no grant will be payable by the DfES. The amount recoverable will be based on the difference between the market value of the site and premises as they were before the fire and the market value after the fire (providing this does not exceed the cost of repairs less depreciation).

Cover also extends to include provision for the additional costs of possible improvements to damaged portions of the school required by the statutory authorities after a loss.

## **2. ADDITIONAL EXPENSES**

The CNML policy also includes insurance cover for the costs falling upon governors for the hire of necessary temporary accommodation while insured damage is being repaired or replaced. Cover is provided to meet the governors' net contribution after grant aid normally 10% up to:

Limits: Primary Schools (Infants & Junior)	£50,000
Secondary Schools	£100,000

## **3. GOVERNORS' CONTENTS**

The policy also includes statues, trophies, furniture, fittings, musical instruments, pictures, books, utensils and other contents the property of the governors or for which they are responsible whilst in the school building but limited to £25,000 maximum.

## **4. BUILDING WORKS**

Under the terms of the contracts commonly in use in connection with most minor building works, the governors as the employers will be responsible for the insurance of the existing building, their own contents and the contract works as regards loss or damage by fire, lightning, explosion, aircraft, earthquake, riot, storm, tempest, flood and burst water pipes. CCIA should be advised of the details of all such contracts where the contract price plus professional fees exceeds £10,000, as the governors will be required to take out additional insurance cover.

## **5. LEGAL LIABILITY**

This is an area causing some confusion where there is mistakenly thought to be "double insurance" with both the LA and the Diocese taking out separate insurances for the same risks. That is not the case as both sets of insurances cover specific risks and there is no overlap.

The governing body of a VA school is responsible for the "management" of the school, employs the majority of staff within the school, is responsible as "occupier" of the property and is responsible for the delivery of the curriculum. As such, it faces considerable liability risks if it is negligent in the performance of these duties and that negligence results in a loss being suffered by a third party.

Under the terms of the Education Acts, the LA is responsible for meeting all the costs of "maintaining" the school (except in the case of a VA school for those costs which involve the repair/maintenance of those elements of the fabric, which are the responsibility of the governing body and which attract grant aid.)

In this context the LA's duty to maintain a VA school needs to be read in its correct sense. It is not limited to "property maintenance". For the purposes of the Education Acts, "maintaining" means the LA has to "defray all the expenses" incurred by the governing body. (Except for the elements of the building repair costs which fall to the governing body of a VA school, this duty on the LA to maintain a VA school is exactly the same as the duty they owe to other state schools in the area.)

An action for damages lodged against the governing body of a VA school is but another of the costs to be borne by the LA on the governing body's behalf.

## **LEGAL LIABILITY - continued**

It is for that reason that many LAs will issue a Certificate of Employers Liability Insurance to the governing body of each VA school in their area. The reason this is supplemented by a Certificate of Employers Liability insurance via the Diocese, is to ensure there are no gaps in the protection afforded to the governing bodies of Catholic VA schools.

Firstly, as the “Employer”, the governing body has to be protected by Employers Liability insurance to meet statutory requirements. By issuing a Certificate via the Diocese ensures each governing body meets the statutory requirements regardless of what approach individual LAs might take.

Secondly some LAs argue that their duty to indemnify the governing bodies of VA schools is limited to claims associated with the delivery of the curriculum and any claim of a “non-curricular” nature would not be met by the LA. To the extent that such a position adopted by a LA was sustainable, the insurance arrangements effected via the Diocese would step in to protect the governing body of a Catholic VA school against a claim which had its origin in a non-curricular activity.

It also has to be said that, notwithstanding the clear statutory duty placed on the LA to indemnify the governing bodies of VA schools, there is still the capacity for a LA to fail in meeting and performing that duty. In such a case the Diocesan insurance arrangements would be triggered. The Diocesan policy operates to cover the governing body against any such action and where there is a failure or delay in the LA performing their statutory duty. As such, the Diocesan insurance dovetails with the LA protection, ensuring the governing body of a Catholic VA school never has to face such legal actions, unprotected.

The principles outlined above would also apply in respect of potential legal expenses which might be incurred by the governing body of a VA School involved in an “Employment” dispute, or a dispute involving “admissions or exclusions”. Again there is a duty on the LA to provide support to the governing body of a VA School where such disputes arise. However the Diocesan insurance scheme via CNML will operate to provide the governing body with a safety net in the event there is a failure or delay on the part of the LA.

## **6. LEGAL LIABILITY IN PARTICULAR INSTANCES**

- A. The LA provides legal liability insurance for the curricular activities of the school. This insurance extends to activities away from the school premises, including overseas journeys.
- B. Cover is provided in the Diocesan policy for all Parent Teacher Association activities during the year. A personal indemnity is also in place for all PTA officers whilst they are engaged in the usual activities of the PTA.
- C. Schools may be used for many kinds of activities. Use may be made of the building by organisations (youth clubs, guides or scouts for example) who carry their own cover, or by private hirers for wedding receptions or children’s parties. Each organisation or individual organiser of a private function will require Public Liability cover. If written Conditions of Hire are used to protect trustees and governors it is recommended that they should advise the hirers that special insurance arrangements will be required because hiring agreements can impose greater liability on the hirers than those of a normal occupier of premises. Hall hirers public liability insurance is provided to schools which will protect all private uninsured hirers.

## **LEGAL LIABILITY IN PARTICULAR INSTANCES - continued**

- D. Parishes are insured for their legal liability risks under the terms of the CNML scheme. This insurance covers all official parish activities anywhere in the United Kingdom so use of an VA school for a church event is included.

### **7. LOCAL MANAGEMENT OF SCHOOLS**

As a result of LMS most LAs have delegated the cost of repairs and replacements of school contents and those losses to school premises which fall to be the responsibility of the LA. In the past these had been funded by the LA. The result is that schools now have to pay for repairs and replacements out of their delegated budgets. This left the possibility of schools exceeding their budgets to fund repairs due for example to theft, storm and malicious damage.

In response to this many Local Authority insurers have devised a Balance of Risks policy to enable schools to buy back into a LA sponsored insurance scheme to cover such losses which might otherwise exhaust the amounts contained in the school's delegated budget. In practice subject to the LA scheme being properly structured, VA Schools are advised to use these buy-back insurance facilities for the non-Diocesan risks from their LA. **[amended]**

### **8. SCHOOL GOVERNORS' INDEMNITY**

Governors of VA schools may have concerns as to their exposure to potential legal actions where they face an allegation of "professional negligence" over the way in which they have conducted the affairs of the school.

A number of protective measures are in place to protect governors in such cases. Firstly there is an extension under the CNML insurance scheme which would respond to protect governors against threatened "professional negligence" actions. This insurance also extends to protect against actions for alleged libel and/or slander committed in good faith by a governor or a school employee. The limit under this extension of the CNML scheme is £1m any one claim, and in total any one year.

However it needs to be stressed that this section of cover under the CNML scheme should rarely, if ever, be required to be called upon. The financial responsibilities for such actions would fall to be met by the LA under the general duty placed by Statute on the LA, for the LA to meet all the costs associated with "maintaining" the school.

Added to that where governors have a particular professional skill, and volunteer to provide their professional skills for the benefit of the school and no fee is paid for the provision of those professional services, it is most unlikely that a professional "duty of care" would be created. Without such a duty of care in existence there can be no breach of duty, which breach would be necessary before a legal liability in negligence could exist. Given the above it needs to be said there are dangers from the school's perspective, where governors are used in for example, building contracts, to provide professional services which would ordinarily be carried out by a professional practice in return for a fee. Where the governor provides professional services for no fee and a financial loss is suffered by the school by reason of the "negligence" of that governor, the school would have no right of redress against any party for breach of professional duty.

If a professional practice had been engaged and a fee paid, then should such a loss arise the school would have a right of action against the negligent professional.

## 9. SCHOOL GOVERNORS' INDEMNITY - continued

That professional could be pursued by the school for their losses and in all probability the professional would have Professional Liability insurance in place to satisfy any such liability as might arise. It is for this reason that there is an expectation on the part of DfES that, whenever grant aid is provided to a VA school for building works, the school engages appropriate professionals, with the professionals having adequate Professional Indemnity insurance in force.

## 10. CLAIM PROCEDURES

### 11.1 Property Claims

The "Division of Liabilities" set out above will determine the route that will need to be followed by a VA school in seeking compensation for property losses.

If the loss involves damage to buildings up to £2,000, contents or a building on playing fields and/or its contents, the LA will need to be involved and their procedures followed.  
**[amended]**

For damage to buildings, furniture, fixtures and fittings exceeding £2,000, or any damage to "unadopted" buildings and/or their contents - the school should contact their building professionals in the first instance. Then the school or their building professionals should contact the Diocesan Finance Office for a claim form and advice on procedures. The building professionals will involve CCIA to access the cover available under the CNML insurance policy, and process any application for grant aid available from DfES.

### 11.2 Liability Claims

A liability claim against a VA school claiming for injury or illness, or damage to a third party's property will almost invariably fall to be the responsibility of the LA. When any such claim for compensation is intimated, and certainly when any proceedings are threatened, the school should contact their LA's legal department without delay, and follow the LA's procedures thereafter.

Given the nature of these actions it is also important that the school notifies the Diocesan Catholic Schools Service and keeps them informed on progress. If problems arise in the LA's acceptance or conduct of any liability claim against a VA School, the CCIA should be advised immediately. The CCIA will step in and ensure the LA perform their required statutory duties.

### 11.3 Property Claims Excesses

The Diocesan property insurance is subject to certain excesses as set out below.

The "Minimum Repair Claim" figures show the effect of grant aid. Where 90% is recoverable by way of grant aid, the table shows the value the claim needs to exceed in total before the diocesan insurance with CNML is called into play. Where grant aid is not applicable only the "excess" figure is deducted:

	<b>Excess</b>	<b>Minimum Repair Claim</b>
Fire, Lightning, Aircraft, Explosion,	nil	£2,000 (nil for unadopted buildings/contents)
Subsidence	£5,000 - £20,000	£50,000
Other Property Claims	£300	£3,000

## **Property Claims Excesses – continued**

Note: Under the Diocesan insurance arrangements with CNML, all subsidence claims are subject to an excess calculated on a “minimum-maximum” formula, based on an excess set at 20% of the total loss subject to a minimum excess of £5,000 and a maximum excess of £20,000.

### **11.4 Liability Claims Excesses**

Where the Diocesan liability insurance programme needs to be called upon by a VA school, and no indemnity is available from the LA, no excess is applied to any such liability claim.

## **11. PREMIUMS**

The responsibility for paying insurance premiums in relation to VA schools rests with the governors. This applies to premiums payable under both the Diocesan arrangements and the LA schemes of insurance for other risks. However there is a duty on the LA to ensure the governing bodies of VA schools are provided with sufficient funds in their delegated budgets to pay these premiums, including the premiums payable to the Diocese.

The premiums charged to VA schools under the Diocesan arrangements are based on two factors. Firstly the number of pupils, and secondly (where applicable) the reinstatement values of any unadopted buildings and contents. Schools should advise the Catholic Schools Service of changes in their pupil numbers (and reinstatement values of any unadopted property) by June of each year to enable the Diocesan records to be updated in advance of the renewal of Diocesan insurances in September.

## **12. CONTACTS**

1. For advice and guidance on any insurance related issue involving schools contact:

The Catholic Church Insurance Association  
Oakley House  
Mill Street  
Aylesbury  
Bucks. HP20 1BN

Tel. 01296 422030  
Fax. 01296 428049  
e.mail: [enquiries@ccia.org.uk](mailto:enquiries@ccia.org.uk)

2. For property claims and advice or guidance on all insurance matters contact:

Diocesan Finance Office  
Bishop's House  
The Upper Drive  
Hove, East Sussex

Tel: 01273 859705/506387  
Fax: 01273 859713  
email: [finance@dabnet.org](mailto:finance@dabnet.org)

### **13. CONTACTS** - continued

3. For liability or third party claims or accidents/fatalities:
  - a. First contact your LA Legal/Education Department
  - b. Then notify the Catholic Schools Service:

Catholic Schools Service (DABCEC)  
4 Southgate Drive  
Crawley  
West Sussex  
RH11 6RP

Tel: 01293 511130  
Fax: 01293 616945  
email: [schools@dabnet.org](mailto:schools@dabnet.org)