

The REAL facts about public liability insurance

'It can cost £20,000 to prove that someone making a claim is lying'

Can You Afford NOT to Have Public Liability Insurance?

Suing for compensation is becoming a national hobby. But individuals are as much at risk as companies and riding schools. Even the legal costs of successfully defending a claim against you can be enormous.

A claim, for instance, which results in damages of £1,000 being awarded could well incur legal costs of between £15,000 and £20,000, all of which have to be paid by the individual or company judged to be liable. It can cost £20,000 to prove that someone making a claim is lying!

Public liability claims over the last decade have shot from the "unusual" category into the "almost daily" with damages being awarded so high that many insurers have withdrawn from the equestrian market.

It has left individual premiums and those for businesses like riding schools facing a substantial hike, but even that goes no way towards "balancing" the market to reinstate reasonable margins. "Anyone who thinks that Brokers and insurers are buying Porsches out of the profits should think again," says Mr Fehler.

While the overall cost of liability claims is going through the roof, the number of insurers willing to take the risks is decreasing, leaving those that remain to contemplate a steadily increasing number of claims and a disproportionate rise in damages and legal costs.

The cost of claims is judged by the "reserve" put on each individual case - the amount which an expert assesses it will cost to fight or settle. And with some reserves running into millions of pounds, it is not surprising that even insurance giants are becoming nervous and

beginning to balk at taking more business.

The Problem

Much of the problem arises from the ambiguity of the 1971 Animals Act, "ambulance chasing" members of the legal profession willing to take on cases on a "no win, no fee" basis and encouraging individuals to take up frivolous claims, coupled with the now notorious *Mirvahedy V. Henley* Law Lords in 2001.

This ruling, in essence, said that because it is in a horse's nature to roam, to shy at strange objects or to behave the way it does, the owner becomes totally liable. He or she even retains liability for any subsequent incidents or accidents if someone else deliberately lets horses out of a field or stable.

It casts into doubt even the tradition that a horse is allowed one chance when it comes to misbehaving on the road or causing an accident. Until *Mirvahedy V. Henley* came along, a claim against an owner after, for instance, an incident on the road stood little chance unless it could be proved that the horse had a history of unreliability.

All this is against a background of some amateurism in the equestrian business world. Businesses, particularly riding schools are sometimes reluctant to face up to the situation and, for instance, make realistic staff appraisals and produce detailed risks assessments of their premises and the way they run their day to day business.

"You cannot expect an insurer to willingly undertake a risk, at whatever the cost, if a potential client does not demonstrate a willingness to reduce those risks initially," says Mr Fehler. "To a lesser extent, individual riders and owners have a similar responsibility, although *Mirvahedy V. Henley* does make



that difficult at times."

There is a very real risk, he says, that unless the industry as a whole takes steps to face up to the situation, insurers will refuse to accept the responsibility for this type of cover - and it is a condition of the license they need to trade that they have it.

Reducing the Risks

Legislation similar to that being enacted in some American states would help. They have recognised the individual traits of animals and will not condone court action arising from an incident or accident caused by them unless negligence can be proved. In essence, they are recognising that anything to do with horses raises the probability of an accident, and some of them just can't be avoided.

But the action that will really make a difference is that everyone, and in particular riding schools and livery yards make a determined effort to close every door that could lead to a claim.

"It is no good taking the view 'it won't happen to me' because it could and very likely will," says South Essex Equine Marketing Manager Nicolina MacKenzie. "Some of the claims now being filed are totally ludicrous, but they still have to be defended and in some cases, settled.

"Riding schools in particular have to pay more attention to the experience, qualifications and references of their staff and instructors; they have to be more aware of the behaviour of their horses and they have to examine very closely the day to day running of their business, in particular those areas where clients are involved.

"They have to do all this on a regular basis, and document that it has been done. That is what a risk assessment is all about and what a potential insurer is interested in."

As South Essex Director David Buckton says: "We all know that having anything to do with horses carries an inherent possibility of an accident, but we now have to prove that the risk is being reduced as much as possible.

"That applies as much to an individual as to a business. No one wants to live in a 'nanny society' but if taking precautions can be the difference between selling your house to settle a claim awarded against you or taking every care and attention, I know what I'd do."

Where to, Now?

South Essex are one of the very few Brokers still able to place public liability cover directly with insurers. We are working with the insurers and hope to put in place a scheme which will allow clients to earn a discount of anything up to 10 per cent for maintaining and documenting efficient risk assessments. The company will also offer any help and advice it can to clients.

"The bottom line is that we all have to look at ourselves and how we do business," says Mr Fehler. "Public liability insurance has become an important part of our lives. We have to realise that it is not going to be cheap. We need to do everything we can to make sure it stays available to us and insurers will continue with the risk, otherwise many of us will suffer financially and some will go out of business."



South Essex House, South Ockendon, Essex RM15 5BE.

Telephone: (01708) 850000 • Facsimile: (01708) 851520 • Website: www.seib.co.uk • E-Mail: enquiries@seib.co.uk