

Health, Safety and Your Insurance

What your policies actually cover, what they do not, and why that matters more than most owners think

Most business owners assume that if the worst happens, insurance deals with it. For health and safety, that assumption is wrong in two specific and expensive ways. This document sets out the position accurately, with sources, so you can check it with your own broker.

Scope and limitations — read before use

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1. Your insurance will not pay an HSE fine. Not any of it.

A prosecution for a health and safety offence is a **CRIMINAL** matter, and the penalty is a criminal fine. Under English law it is contrary to public policy to insure against a fine imposed for criminal conduct — the courts will not allow an insurer to remove the deterrent effect of a penalty. No policy you can buy will pay it.

What you might face	Insurable?
The fine itself	NO — cannot be insured
Prosecution costs awarded against you	Generally no
Victim surcharge	No
Compensation to the injured person	Yes, through Employers' Liability — but see section 2
Your own legal defence costs	Often yes, under a legal expenses policy, but check the terms and any exclusion for the offence being proved
Business interruption while a prohibition notice stops you trading	Usually not, because the cause is your own breach

Remember the scale. Fines are set from turnover bands. A business turning over under £2 million faces a starting point of £250,000 for a serious offence, in a range of £150,000 to £450,000. That comes out of the business, not out of a policy.

2. Your Employers' Liability policy protects your employee. It does not protect you.

This is the part almost nobody knows, and it is set out in HSE's own guidance on the Employers' Liability (Compulsory Insurance) Act 1969.

The good news, for your employee

Your insurer **CANNOT** refuse to pay compensation to an injured employee purely because:

- you did not provide reasonable protection for your employees against injury or disease;
- you did not keep specified records, or cannot give the insurer information from them;
- you did something the insurer told you not to do;
- you did not do something the insurer told you to do, such as report the incident; or
- you did not meet a legal requirement connected with protecting your employees.

So the injured person gets paid. That is the entire point of compulsory insurance.

The bad news, for you

HSE's guidance then says this plainly: if your insurer believes that you failed to meet your legal responsibilities for the health and safety of your employees, and that this led to the claim, THE POLICY MAY ENABLE THE INSURER TO SUE YOU TO RECLAIM THE COST OF THE COMPENSATION.

Read that again. The insurer pays your employee, and then comes after your business for the money. A serious injury claim can run well into six figures. Add the uninsurable fine and the costs, and a single incident can finish a small firm.

You must be insured for at least £5 million. Most insurers provide £10 million. That figure is the protection for the claimant — it is not a shield for you if you did not do what you were supposed to do.

3. Your other policies are a different matter again

Cover	Position
Employers' Liability	Compulsory. Cannot be voided against the employee, but the insurer may pursue you to recover what it paid out.
Public Liability	Not compulsory, and NOT protected in the same way. Conditions, warranties and exclusions can allow an insurer to decline a claim.
Any policy at all	Under the Insurance Act 2015 you owe a duty of fair presentation of the risk. If you told your insurer you had procedures, training records and risk assessments and you did not, the remedy can extend to the policy being avoided or the claim reduced.
Contractors' all risks, plant, tools	Standard conditions often require compliance with statutory duties and with manufacturers' instructions.
Directors' and officers'	May respond to defence costs, but not to a fine, and personal liability under section 37 of the Act is a real exposure for directors and managers.

The honest summary: an insurer cannot leave your injured employee unpaid, but almost everything else can be affected by whether you actually did what the law requires and whether you told the truth at renewal.

4. The other side of it — good records can help your premium

Employers' Liability and Public Liability are risk-priced. Underwriters look at the trade, the claims history and how the business is run. Nobody can promise you a discount, and any reduction depends on your insurer and your circumstances. But underwriters and brokers consistently ask for the same evidence, and a business that can produce it presents as a better risk than one that cannot.

What to put in front of your broker at renewal

Evidence	Why it matters to an underwriter
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Written risk assessments, current and specific to your site	Shows the hazards are known and controlled rather than hoped about
Training matrix showing who is trained and authorised for what	Directly addresses the commonest cause of claims
Certificates and written authorisations for machine operators	Evidence of competence, not just attendance
Maintenance, inspection and thorough examination records	Shows equipment failure is being managed
Health surveillance records where required	Long-tail disease claims are what frighten underwriters most
Accident and near miss records with actions closed out	Shows a learning business rather than a lucky one
Toolbox talk and induction records	Evidence the workforce was actually told
A written traffic management plan where vehicles and people mix	Directly relevant to the biggest yard claims
Contractor and agency competence checks	Closes off a common gap in liability

Two practical points. First, ASK. Brokers rarely volunteer that better documentation could improve terms — put the file in front of them and ask what difference it makes. Second, even where the premium does not move, you have made the claim you might one day face far more defensible, and you have removed the insurer's argument for coming after you under section 2 above.

5. What to ask your broker — take this list to them

- Does my Employers' Liability policy contain any term allowing you to recover compensation from me if I am found to have breached health and safety law?
- What exactly did we declare about our health and safety arrangements at the last renewal, and is it still accurate?
- Are there any conditions or warranties in my policies about training, maintenance, inspection, or hot works?
- Would better documented risk assessments, training records and health surveillance improve my terms at renewal?
- Does anything in my cover respond to a prohibition notice stopping me trading?
- What is and is not covered for legal defence costs in a health and safety prosecution?
- Am I insured for the right limit, given what a serious claim in my trade actually costs?

6. Sources

- HSE, Employers' Liability (Compulsory Insurance) Act 1969: a guide for employers (HSE40) — the passages on policy conditions and on the insurer's ability to sue to reclaim compensation, and the £5 million minimum.
- Employers' Liability (Compulsory Insurance) Regulations 1998.
- Sentencing Council, Definitive Guideline: Health and Safety Offences, Corporate Manslaughter and Food Safety Offences — turnover bands and fine ranges.
- Insurance Act 2015 — duty of fair presentation and the remedies for breach.
- The established English law position that fines for criminal conduct are uninsurable on public policy grounds.

This document is general information, not insurance advice or legal advice. Your policies and your circumstances are specific to you. Check the actual wording with your broker or insurer, and take legal advice where the stakes justify it.