

# CHEAPER AVIATION INSURANCE —A GOOD DEAL?

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**C**ompulsory aviation insurance was introduced on 30 April 2005 for all UK registered aircraft. Up until that time General Aviation aircraft operators were not required to have any insurance for their potential liabilities to passengers and third parties in the event of an accident leading to claims for personal injury and/or death.

Although many people could not understand this, expecting that there must be some victims of aircraft accidents who never received proper compensation, this was rarely the case in practice.

The GA fraternity, advised and guided by their aviation brokers (through whom almost all aircraft insurance is placed), invariably took out sensible levels of liability cover. While the standard Lloyd's aviation



**Why we need adequate insurance.** An accident like this one in 2010 potentially had large claims from third parties injured on the ground as well as a passenger in the aircraft. Fortunately the pilot was alone and recovered fully from his injuries, and the occupants of the vehicle were unhurt. (Photo Alan Crouchman.)

(Left) Tim Scorer has held a PPL for more than 40 years and has been an aviation solicitor for more than 35.

## LEGAL ADVICE

insurance (AVN 1C) wording deals separately with third party and passenger liability, the normal arrangement for many years has been that insurance is placed as a Combined Single Limit (CSL) providing one fund to cover both types of liability, third party and passenger.

*(Readers may refer to the glossary opposite for further explanation).*

“GA ops are highly unlikely to collide with an airliner”

### HOW WAS COMPULSORY INSURANCE ENACTED?

In theory, as well as in practice, the potential exposure to these two types of liability is quite different, as statistics prove. In a typical aircraft accident involving death and/or injury, it is the passengers who are most likely to make claims; it is from them that the big - £1 million and above – claims are received. On the other hand, in the very nature of GA

### TABLE A

Case	Injuries	Additional info	Total damages
44 year old claimant	Severe fracture of left foot / ankle; injured left leg	Claimant spent 6 months off work	£57,145.87
21 year old claimant	Lacerations and scarring to face; loss of tooth; injuries to right arm and thumb; fracture to knee.	Claimant did not resume full time work for 3 years	£62,000
28 year old claimant	Broken right leg, with 3.75 inch shortening; lacerations and psychiatric injuries; back pain	Claimant had to undergo numerous operations	£62,996
19 year old claimant	Multiple fractures and lacerations of upper and lower right leg; fracture of third and fifth toes and amputation of the fifth toe; lower back problems	The claimant, a soldier, was medically discharged from the Army	£75,000

### TABLE B

Case	Injuries	Additional info	Total damages
39 year old claimant	Serious face, hip and leg injuries; memory impairment; eventual hip replacement needed	Claimant spent 8 months in hospital and underwent 6 operations; able to return to work as an accountant but forced into early retirement	£1,036,025
33 year old claimant	Head injuries; damage to right arm leading to below elbow amputation; back injury, knee and right hip injuries which affected mobility; impaired vision	Claimant unlikely to find paid employment again	£1,137,219
45 year old claimant	Fracture of lower spine leading to paraplegia; bowel and bladder complications	Unable to work and needs lifetime care.	£2,650,000
40 year old claimant	Fracture of spine; spinal cord injury; several broken bones; head injury; urological and intracerebral issues.	Greatly reduced work capacity.	£3,500,000

operations (where they fly from, the airspace in which they fly and the levels at which they fly, etc.) it is highly unlikely that they will collide with an airliner full of passengers or land on a university campus full of tomorrow's politicians or brilliant aircraft designers, and thereby incur substantial Third Party liability. So the third party exposure is very much less than the passenger exposure.

With this in mind, it was therefore surprising – especially to those of us who regularly deal with claims after GA accidents – that when the compulsory insurance regulations were established, the legislators in the EU appear to have looked at exposures in a very different way, and somewhat detached from the realities. First, and logically, they separated the exposures in the same way as insurance does, and third party liabilities would be covered for a minimum figure based on the aircraft's maximum take-off mass (MTOM). The current third party (August 2013) minimum cover for the type of aircraft LAA members are likely to operate is (in rounded up figures): up to 500kg £0.75m; up to 1,000kg £1.5m; and up to 2,700kg £3m.

But what about the compulsory cover for passengers? Taking a figure from commercial passengers' limits, which prevailed under International Convention before 1999, it was decreed that there should be a minimum cover for each passenger which is currently equivalent to £98,700. Thus, for a typical three passenger seat light aircraft, a total sum of not less than £296,531 must be available for those liabilities. If this sounds disproportionate to the third party cover required, and does not bear much relationship to reality, then many others will no doubt share your view. But the discrepancy, and the inadequacy of passenger cover, is generally dealt with by the Combined Single Limit, resulting in a fund available for both liabilities that is significantly more realistic.

#### WHAT'S THE PROBLEM THEN?

Unfortunately in recent times the value of claims has increased, resulting in increases in insurance premiums. But as already stated, third party cover is relatively cheap to buy, it is lower risk and so attracts lower premiums. Passenger cover is more expensive, because it is higher risk, leading to higher premiums. If you separate the two covers and only take out the required minimum passenger cover, you reduce the insurers' risks, so your insurance bill will be lower.

#### LOWER PREMIUMS – HIGHER PERSONAL EXPOSURE

However, is £98,700 per passenger enough and if not, why not? What is a reasonable level of cover for passenger liabilities? An insurance broker may tell you, "Somewhere between the minimum level required by law, and what you can afford". Determining a reasonable level depends on a number of factors: such as the type and status of passengers you may carry; where and how often you fly; the risks of having an accident and; importantly, what assets you have and are prepared to lose, if there is a shortfall in your insurance cover.

If you buy aviation insurance as a CSL, which covers both the high mandatory third party level in conjunction with the less realistic mandatory passenger level, and have one decent-sized fund to cover both liabilities,

### GLOSSARY

**CSL** – a combined single limit of cover for liabilities to both passengers (within the aircraft) and Third parties (outside the aircraft).

**Passenger liability** – that liability you have to each and every passenger in your aircraft if you fail in your "duty of care" to them.

**Third Party liability** – that liability you have to anyone outside the aircraft (whether in another aircraft or on the ground) which in the case of persons on the ground will be a "strict liability" on the "operator" – i.e. there is no defence.

**Exposure** – the potential liabilities you may have in the event of an accident causing personal injury or death to anyone, or damage to property, depending on factors such as their injuries, dependants, status in life, etc.

**Mandatory insurance requirements** – in accordance with the Civil Aviation (Insurance) Regulations 2005, such minimum cover required for TP liabilities, based on MTOM, and for Passenger liabilities based on each seat.

**Sum insured** – the total amount of cover purchased for any given risk – viz: TP, Passenger, aircraft hull.

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### SOME FINAL WORDS OF CAUTION

**Operating an aircraft** through a company will seldom avoid the personal liability of a pilot who was negligent.

Liability insurance provides an indemnity to a pilot/operator against claims by others. It does not provide a direct benefit to the person in the pilot seat.

If you borrow or rent an aircraft, you do need to know whether the operator has bought more than the minimum level for passengers

Conversion rates SDR:GBP change all the time. You need to make sure you keep up with them, although a good broker will have rounded up the minimum limit to cover any reasonable possibility of a change in the exchange rate.

Some owners are buying what they believe to be CSL and only discovering later from the small print that passenger liability is only set at the minimum level. Make sure you ask the question – “Can my TP cover be also used to cover passenger claims?”

you may not have a problem. However, if you are offered what seems to be a very attractive reduction in your premiums, as a result of buying passenger cover which, though fully compliant with the regulations, only gives you £98,700 per passenger, then you really should be asking yourself if that is a sensible thing to be doing. You have to bear in mind that this £98,700 amount also has to cover the costs payable to the claimant's lawyers for handling the claim; in many cases those costs will be equivalent to about one third of the compensation value. Let's look at how this could work in practice from the two tables (*left*).

#### TYPES OF INJURY

**Table A** shows some examples of the types of injury the compensation for which will come within the passenger legal minimum cover, including an additional 1/3 for lawyers' fees. Unfortunately in the real world not many aircraft passenger injury claims are based on such relatively moderate injuries. It is much more likely that the injuries are more serious, especially back injuries from a heavy landing. So in **Table B** there are some examples of recent settlements for the type of injuries more generally likely in light aircraft accidents, again inclusive of an additional amount for Claimants' lawyers' fees.

Remember, without CSL combining both liabilities for a single sum insured, each type of liability, and the cover for it, stands on its own. The greater cover for third party liabilities cannot be used for passenger claims and your assets could be used to make up the shortfall.

If you use the CAA's helpful G-INFO Registry database ([www.caa.co.uk/g-info](http://www.caa.co.uk/g-info)), you will see the minimum insurance levels for any given aircraft expressed as a CSL; this should be regarded as a minimum guideline. Note that the measurement of all cover is expressed across Europe in Special Drawing Rights (SDRs), a universal IMF 'currency value' which is then converted to national currency – Pounds, Euros, or whatever. There's even a useful interactive calculator which will show the CSL amount, along with third party and passenger minima expressed in pounds Sterling.

#### CONCLUSIONS

Insurers are in business to attract business. Brokers are your agents to find you a 'good deal' among the products available. But in the final analysis how much cover you take, whether at or beyond the legal minima, is your choice. It may be better to base your decision not so much on what premium you can afford, but for what amount you think you can afford to be 'self-insured'. That is the important question. You should consider what private resources you have available - and who might be deprived of them if you, as the pilot, have lost your life in the accident, and your family have to meet a claim.

That 'good deal' you thought you had may not be regarded as such either by you or your dependants if it only gives you just £98,700 worth of cover for each passenger and a shortfall has to be paid to a claimant from your own assets. It may also pose a problem for an injured passenger who has a claim and has the uncomfortable choice of accepting less compensation from the limited insurance cover, or suing you or your Estate for the full damages to which he or she is entitled. ■