A SERIES OF ARTICLES THAT PROVIDE THE FUNDAMENTAL PRINCIPLES OF PROFESSIONAL INDEMNITY INSURANCE

article one: Professional Indemnity Insurance – An Overview

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Professional Indemnity Insurance - A Rough Guide

You may be looking to set up your own practice after being employed by others or you may be starting out with your own practice, but among the first things that need to be considered is Professional Indemnity Insurance.

What is it and why do I need it?

You will be offering services to Clients and, there will be an expectation that those services will be provided with reasonable skill and care and will achieve the Client’s objectives. While the majority of your projects are likely to be completed to the satisfaction of all parties, every once in a while a Client will prove to be difficult, problems will be encountered on site or mistakes will be made.

Whatever the case may be, when a project becomes difficult or a client feels aggrieved, there is always a risk that the Client may look to make a claim against you for wasted costs, remedial work or any other losses they believe they have suffered. A claim against a practice can be daunting, especially when the Client is alleging a significant loss, but in these cases you can turn to your Professional Indemnity Insurance. This is a type of insurance specifically designed to cover your practice for claims which arise out of the conduct of your professional business.

However, the cover goes further and will also provide assistance when dealing with circumstances that could give rise to a claim.

Both we at MFL Affinity and your Insurers will provide advice and assistance when dealing with circumstances that could give rise to a claim.

How Much Cover Should I Buy?

A common question relates to the level of cover you should purchase and, as this can vary from £100,000 to £10,000,000 and will determine the cost of the cover, it is an important consideration.

Unfortunately, as there is no hard and fast rule, we would also recommend that you contact us to discuss your requirements in details.

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However, as a starting point, you could consider the following questions:

- What is the value of the Project?
- What is the absolute worst case scenario for a Project and what would this cost to fix?
- What are the Clients asking for as part of your appointment?

This can be a daunting question, but it can have serious ramifications for your practice if you select a level of cover that may not fully cover any potential claims. As a result, it is a subject that needs to be considered carefully.

**How long do I need to maintain cover or a certain level of cover for?**

One of the key differences between Professional Indemnity Insurance and other insurance policies is that it is written on what is called a ‘Claims Made’ basis. What this means is that it is the policy in force at the time the claim is made against you that deals with the claim rather than the cover in place at 2015.

As such, it is important to realise that the need to maintain cover will continue long after any Projects are completed and may even extend beyond your eventual retirement. In view of this, we would also recommend that cover is maintained throughout your career with provisions made to cover any potential liabilities into your retirement.

**When can a claim be made?**

Another factor to be considered when selecting the level of cover and the future renewals of the policy is the period within which a claim can be made against you.

**English Clients**

The starting point when considering the period within which a claim can be made is the Limitation Act 1980 and the Latent Damage Act 1986, which provide that a claim can be brought up to six years after the work was completed or three years after the Client could reasonably be expected to know they had a claim. This is also subject to an absolute time-bar of fifteen years, often referred to as the ‘Long Stop’, which prevents any claims being made after this point.

So, as a starting point, you can be liable for any work for at least 6 years.

**Scottish Clients**

The starting point when considering the period within which a claim can be made is the Prescription & Limitation (Scotland) Act 1973, which effectively provides that a claim can be brought against you up to five years after the Client with ‘reasonable diligence’ could be aware that they have a claim against you. As such, it is possible for claims to be made long after the Project has been completed.

**Northern Irish Clients**

The starting point when considering the period within which a claim can be made is The Limitation (Northern Ireland) Order 1989 which provides that a claim can be brought up to six years after the services have been completed. Following that, a claim can be brought in line with the same timescales provided under English Law.

However, when considering the period of liability, it is also important to remember the terms of any appointments with the Clients as they can also set out clear time limits within which claims can be made or obligations...
to maintain cover for a certain period of time.

By way of an example, any contract signed 'Under Deed' will create a liability period of 12 years and will often state that the agreed limit of indemnity will be maintained for the same period.

In addition, to the implications for your Professional Indemnity Insurance, it is important to note that if you alter the level of cover or fail to maintain it for the agreed period, you may also be in breach of the contract.

There are likely to be a number of other facts that need to be considered when taking out or renewing Professional Indemnity Insurance and we are happy to answer any questions you may have.

If you would like to discuss the issues raised in this article or would like further information please contact Darren or Joe.

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Our Back To Basics series consists of the following articles:

- Professional Indemnity Insurance—rough guide
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- Notifications
- Settlement & Insurers Approval
- Duty to Cooperate
- Disputes & the Control Clause
- Reservation of Rights