



SELECTING THE RIGHT LIMIT OF INDEMNITY

The issue of selecting the correct limit of indemnity for Professional Liability insurance can be a difficult one, particularly when it's the practitioner's livelihood that's at stake if things go wrong.

The past 20 years has seen society in the UK become much less tolerant when things don't go their way - and a greater willingness to find someone – anyone – to blame. This, combined with greater access to on-line information and the abundance of solicitors only too willing to take on speculative cases on a no-win no-fee basis, means that claims against practitioners are on the increase. As well as increasing numbers of claims, the amounts awarded as damages by the courts are also increasing even faster than RPI inflation (what is termed 'claim inflation').

The record in the UK for damages being awarded for injury to a single individual stands at £9.3m, paid out to a 28 year-old investment banker following a motor accident – and that was paid over 10 years ago, in 1998. Professional Liability insurance does not of course cater for motor accidents, but the principle is still relevant – if you negligently injure someone in the course of your practice any damages awarded will reflect the victim's circumstances.

Towergate Professional Risks has seen a corresponding rise in claims costs. In 2009, its insurers paid out £1.2m including costs for a successful claim against one of its clients. Even unsuccessful cases can be expensive; because it is rare for insurers to recover their costs even when they successfully defend the claim. A complaint which lasted 5 years which originated in 2004 cost over £500,000, comprising almost entirely of costs. Practitioners need to consider higher and higher limits of indemnity to ensure that they are keeping pace with the modern world and its impact on how much a complaint that leads to an insurance claim might eventually cost.

Barbara Hart is Towergate Professional Risks' Underwriting Manager. "In 1988 the limit of indemnity we offered started as low as at £250,000 of cover. Just 20 years later the minimum we offer is £1m, and we are currently reviewing whether another increase is now overdue. Similarly, 20 years ago, the maximum limit we offered was £1m; we now offer £5m and for some clients have arranged limits of £10m or even higher".

So what indemnity limit is the right one to select? If things go wrong, the stakes can be high. It's the practitioner's career and reputation that's on the line, not to mention the house, the car, and life savings. The advice would therefore seem to be to buy as much as the practitioner can afford, in return for the peace of mind that comes from knowing that in the event of an insured claim occurring, there is adequate cover in place.



There are of course individual circumstances to consider. The following are a few factors which should have a bearing on how much cover to buy: -

- What claims have been made against your peers that you are aware of, and how did they arise? Can your membership body provide any examples that could potentially happen to you under similar circumstances?
- Listen to the news and read the press. What's happening to court costs? How long are cases lasting? Cases that run any length of time in court can be as expensive as £10,000 per day for Counsel alone – and that's at today's prices (and, of course, the losing side pays both sets of legal costs as well as the damages awarded). What will the cost be in five or six years from now when the case finally comes to court?
- Most complex claims last more than just a few days in court and by the time they eventually commence you may need witnesses or experts who might not even be based in the UK. What is the cost for ensuring you have the support you need for your defence to be as robust as possible?
- Even additional covers which may be regarded as ancillary to the core covers of Professional Indemnity and Public Liability can produce sizeable claims. Towergate's Professional Liability cover also includes Libel & Slander, which so far has produced a claim costing the insurers £133,000, and Breach of Copyright, which has resulted in a claim totaling £107,000.
- Professional Liability insurance includes Public Liability – death of or injury to other people or loss of or damage to their property. If a client's building sustained significant fire damage as a result of the practitioner's actions or inactions – does the limit of indemnity in place reflect the likely cost of the reparation? Public Liability claims tend to be larger in cost.
- Claims by younger people (although probably not children), if successful, will usually have greater awards made to them.

Cost inevitably has a strong influence when selecting indemnity limits although the cost of doubling the limit of indemnity cover from £1m to £2m does not mean that the cost of the premium doubles. The increase usually equates to around 20% more than the premium for £1m. When considering the cost of Professional Liability insurance it can sometimes be useful to compare the cost with your own charges. Is it not worth the equivalent of the cost of one or two hours of your practice to secure peace of mind?

Claims, whilst undoubtedly on the increase, continue to be rare, although the "It'll never happen to me" approach isn't always the wisest approach when there's so much at stake.

The final decision comes down to the individual who's buying the protection. Ultimately, the practitioner needs to have the peace of mind that, if something does go wrong, that they have adequate cover in place to protect their livelihood.