

## **Professional Indemnity Insurance - from a legal point of view**

If your job requires you to provide professional advice or any other services considered to be of a professional nature (e.g. accountancy, law, advertising or medicine), it is crucial that you are correctly insured.

If you are working in a professional sector you should consider covering yourself against civil liabilities that include contract, tort, breach of statutory duty, breach of intellectual property and breach of fiduciary duty. Although these are the main sources of liability for professionals, other PI extras, such as loss of document cover, can be bundled with your standard insurance package depending on your needs.

### **Types of liability - Contract**

If you have a contractual relationship with your client, this type of professional indemnity insurance could be essential cover for you. The most relevant implied term in general commercial contracts is that the professional has a duty to act 'with reasonable care and skill'. If your client can prove that you have failed to act in this way, and that they have suffered a loss as a result, they may sue you in order to recover damages.

Defences of such claims will often be based on the professional demonstrating that they did act with 'reasonable care and skill'.

### **Types of liability - Tort**

If you do not have a contractual relationship with your client and he/she becomes legally injured then they may well claim compensation from you under tort law. Torts cover intentional and accidental acts.

#### **Tort of negligence**

This depends on the type of breach of 'duty of care' you are responsible for. You may have a legal obligation to adhere to a reasonable standard of care while performing any acts that could cause foreseeable harm your clients.

In order for your client to win a negligence lawsuit claim, they will have to prove that you owed them a duty of care, that there was a breach of that duty, and that it was such breach that caused the injury, damage or financial loss.

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On its website, legal advice firm YouClaim gives a good example of the legal dangers that can be encountered by professionals. It describes an incident involving a 32 year old West Midlands woman who awoke approximately 15 minutes into her operation. The 32 year old was unable to move her limbs or speak during the operation and now suffers from severe depression and has developed a fear of hospitals as a result of medical negligence. She received £28,900 in compensation after taking legal action against the hospital concerned.

Needless to say, negligent incidents such as these make professional indemnity insurance important for the medical sector, as well as for many other professionals.

### **Tort of defamation**

Due to the nature of your profession, it is possible that at some point in your career certain clients may claim that you have made defamatory comments about them. This is particularly important if you work in the publishing, marketing or media industries where your comments are generally more open to scrutiny.

You can be sued for defamation for both defamatory written and spoken comments because if these comments are incorrect they are likely to cause your client financial loss and wrongly damage their professional reputation.

Considering that defamation rewards can be as high as £25,000, this is an extremely important aspect of professional indemnity insurance.

Other examples of Torts include:

- Intentional – Assault, Battery, False Imprisonment
- Property – Trespass
- Economic – Fraud, Conspiracy
- Dignitary – Invasion of Privacy

### **Types of liability - Breach of statutory duty**

This is important cover, especially if you are an accountant, architect, quantity surveyor, or an estate agent. If you are an accountant you will have statutory duties under the UK Company Acts. If you are an architect, quantity surveyor or any other construction-related professional you will also have duties under the Construction Design and Management Regulations.



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If you are an estate agent you need to be careful not to fall foul of the Property Misdescriptions Act. Unlike the UK Company Act and the Construction Design and Management Regulations, if your breach of statutory duty falls under the Property Misdescriptions Act you will have committed a criminal offence.

For example, under the Property Misdescriptions Act, the word 'detached' brought a fine for Russell Beard of Cooper Beard in Bedford when he used the term to describe a local cottage. The cottage was not technically 'detached' as it was attached to an old stable block. He was charged £100 for various other similar errors. Breach of statutory duty cover is therefore particularly crucial for estate agents.

Please note that professional indemnity insurance will not pay criminal fines. However, it will typically provide for any defence costs incurred.

### **PI policy types - specified/unspecified basis**

The criminal defence costs cover provided under professional indemnity insurance may operate in one of two ways:

#### **Specified basis**

The policy specifies the statutes which are covered and will therefore usually pay the defence costs of defending any actions under those statutes regardless of whether there is a professional indemnity claim for compensation to be considered.

#### **Unspecified basis**

The policy covers the defence costs incurred in respect of any statute but only so far as they are related to an outstanding professional indemnity claim. Insurers pay the accused individual the defence costs in order to assist in the defence of the main professional indemnity claim.

Some statutes have not only created the right to impose fines and/or other penalties but have created a right for your client to claim compensation from you. That is, the compensation would be payable to your clients under the Data Protection Acts or the Defective Premises Act.

### **Types of liability - Breach of intellectual property and breach of fiduciary duty**

#### **Breach of intellectual property**



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There is always a possibility that your business can get accused of breaching intellectual property rights. These breaches can include copyright, trademark, patent, plagiarism, music rights and broadcasting rights.

One example of a situation where an intellectual property breach was identified was Microsoft's high-profile legal battle with Manchester-based reseller ITAC earlier this year. Microsoft launched legal proceedings against ITAC for its involvement in parallel importing, and successfully claimed £2.5 million in damages from ITAC for infringing on Microsoft's intellectual property rights. This could be particularly important cover for professionals in the marketing and publishing sector who are producing content on a frequent basis.

### **Breach of Fiduciary Duty**

The fiduciary duty is a legal relationship of confidence and trust between yourself and your clients and other parties if necessary, most commonly a fiduciary, or trustee and a principal or beneficiary. It means that your clients could sue you if they don't perceive you to be acting in their best interest. This is valuable cover in the eventuality that a relationship between you and your client breaks down.

### **Other typical professional indemnity insurance extras**

Professional Indemnity Insurance can be bundled with many additional extras. You will need to review each policy to identify the types most relevant to your needs. These options generally include the following:

- Loss of Documents
- Libel & Slander
- Fidelity
- Intellectual Property

It is important to note that these types of add-ons may differ between insurers, so it is important to check exactly what is on offer before purchasing a professional indemnity insurance policy.

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