LEGAL RISK LLP
SOLICITORS

Protecting partner assets: insurance is not enough (Part 1)

'We limit our liability to the amount of our insurance, so we're fine.' This is a fairly common response from professional people when asked how they protect themselves.

This is the first in a short series of articles exploring some of the vulnerabilities in this approach. The focus here is for solicitors in England & Wales, but many of the points will apply to other professionals too, though note that other professions' insurance cover will not generally be as wide as solicitors have.

First, we need to examine the assumption that insurance covers anything which goes wrong. We will look here at three aspects to this, first that liability must arise in the course of practice, secondly the policy exclusions, and thirdly the 'aggregation clause'.

The requirement that liability must arise in the course of practice refers to the delivery of services to clients, as opposed to the liabilities of the firm's own business. Policies generally exclude cover for debts, trading liabilities and funding arrangements (generally referred to as the trading debt exclusion). Taken together, the effect is that insurers will be likely to contend that there is no cover for claims for reimbursement of costs for work which is of no value to the client due to negligence. Claims for disbursement or practice funding will generally be uninsured too.

Two reported cases where claims were held to be uninsured illustrate this in practice: a claim for nearly £600,000 in *Impact Funding Solutions Ltd v AIG Europe Insurance Ltd* [2016] UKSC 57 in the Supreme Court, and a claim for nearly £1.7m in *Doorway Capital Ltd v American International Group UK Ltd* [2022] EWHC 182 (Comm). Other examples where insurers have contended that there is no policy cover have included substantial fee refunds following dishonesty by partners, for example where they have overcharged an estate.

We shall look at other policy exclusions in future articles in this series.

The aggregation clause, broadly, limits cover on similar or related claims to one policy limit. Solicitors have £3m cover if they are in an LLP, limited company or ABS, or £2m for a partnership or sole practitioner. We have acted for many firms which acted for hundreds, or in some cases thousands, of investors on investment schemes such as hotels or flats, which have failed and where the claims exceeded the limit of cover by millions of pounds – in one case, concluded successfully by arbitration, a potential £140m shortfall.

Other examples involve firms which acted on multiple industrial disease claims and made a similar error on large numbers of cases, by failing to include a claim for services which former miners would need due to their vibration white finger (VWF). A single limit of £3m is far from adequate in these circumstances. Firms doing volume business, where a mistake may be replicated across multiple files, should take heed.

Frank Maher is a partner in Legal Risk LLP, solicitors specialising in professional indemnity insurance and professional regulation. The firm acts for law firms in policy coverage disputes and in relation to their mergers and acquisitions.

5 July 2022

Further information

Contact Frank Maher on 0345 330 6791 or email info@legalrisk.co.uk