



Ministry of
JUSTICE

Claims Management Regulation – Professional Indemnity Insurance

Conclusions

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Claims Management Regulation Professional Indemnity Insurance

Conclusions to a consultation carried out by the Ministry of Justice and Rules.

This information is also available on the Ministry of Justice website at www.justice.gov.uk

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Introduction

This document is the second and final part of the post-consultation report for the consultation paper, Claims Management Regulation – Professional Indemnity Insurance.

It covers:

- conclusions;
- the next steps following this consultation, and,
- the proposed Professional Indemnity Insurance requirement.

Further copies of this report and the consultation paper can be obtained by contacting **Niva Thiruchelvam** at the address below:

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This report is also available on the Department's website at: www.justice.gov.uk

Background

The consultation paper 'Claims Management Regulation – Professional Indemnity Insurance' was published on 23 February 2007. It invited comments on the introduction of compulsory Professional Indemnity (PI) insurance for businesses that provide regulated claims management services and included a draft requirement. The consultation period closed on 25 May 2007.

Part 1 of the Summary of Responses was published on 1 August 2007, together with a report on PI insurance prepared by Andrew Fryer of Willis for the Ministry of Justice. It summarised the responses to the consultation paper and provided initial thoughts.

This report sets out conclusions, next steps, and the proposed PI Insurance requirement.

Conclusion and Next Steps

1. A number of regulators have professional indemnity (PI) insurance requirements. PI insurance is designed to protect businesses from the consequences of a legal action by a third party. Such protection adds modestly to the protection that an individual customer of the business might have by helping a business meet claims against it. PI insurance can also be seen as an additional form of regulation – by requiring businesses to satisfy a third party – an insurer – about the way that a business is run.
2. In respect of claims management regulation, responses to the consultation, summarised in Part 1 of this report in August 2007, indicated that the additional protection afforded to the consumer varied depending on the type of regulated claims management service provided and the sector in which it was offered.
3. The consultation exercise showed that any possible risk to the consumer that a PI requirement might mitigate is restricted to cases where intermediaries represent claimants in the criminal and personal injury sectors. The value of claims is significantly higher in these fields and the service provided has a direct effect on the level of any compensation awarded.
4. Following further research, it is clear that the role of an intermediary in representing clients making claims to the Criminal Injuries Compensation Authority (CICA) is limited as CICA conducts its own investigations into each and every claim, referring to police and hospital reports. The remaining risk in this sector is that of a claim being time barred if it misses the 2-year statutory deadline. However, CICA has a discretionary power that enables it to waive the time limit if it is reasonable and in the interests of justice to do so.
5. The Department undertook further work on representation in PI claims and acknowledges that intermediaries tend to represent clients where claims are straightforward and low-value. The level of PI cover required should reflect this.
6. Meetings were held with several insurers and insurance brokers to gain a full understanding of the market and the practicalities of a requirement for those that represent claimants in the personal injury field. Insurers confirmed that PI insurance could provide a remedy to consumers if a Court found that a claims management business had been negligent when representing a client. Insurers also noted that regulation had improved standards in the industry, suggesting that there would be a competitive market for an insurance product that meets the proposed PI Insurance requirement.

7. Andrew Fryer of Willis has provided an update on his report, published with Part 1 of this document in August 2007, following the meetings. It provides a revised assessment of the market. It can be found at Annex A.
8. The final requirement was formulated taking into account responses to the consultation and the Department's own research on the issue. It can be found at Annex B.
9. In acting on behalf of a claimant in pursuing a claim, intermediaries place themselves in a similar position to Solicitors and, as a result, bear similar risks to Solicitors. The level of PI cover is not identical to that for Solicitors, as the claims handled directly by intermediaries tend to be straightforward and low-value.
10. It should also be noted that intermediaries do not have rights of audience or rights to conduct litigation so the scope for representation is limited.
11. There was some concern raised in the consultation responses about the risk of a claim being time-barred. The liability for time barred claims rests with the intermediary where they represent the claimant, and with a solicitor if they refer business.
12. The requirement to impose professional indemnity insurance to claims management businesses that represent clients in the personal injury sector balances appropriate consumer protection with a proportionate impact on businesses.
13. The requirement is expected to come into force on 1 July 2008, subject to approval by Parliament. This will provide businesses with sufficient time to make suitable enquiries, build a track record within the industry, and obtain the required level of cover by the deadline.
14. The operation of the requirement will be reviewed a year after it comes into force.

Annex A – Update prepared by Andrew Fryer of Willis

Claims Management Regulation

Insurer Meetings – September 2007

Introduction

We recommended to The Ministry of Justice that a number of key insurers should be approached individually to brief them on the Compensation Act and to discuss their views with regard to the potential requirement for Professional Indemnity Insurance to be made compulsory

Purpose of Insurer meetings

To brief insurers on the Compensation Act 2006

To gauge insurers interest in providing Professional Indemnity Insurance (PII) for claims management companies

To ensure that such information is provided to insurers in a consistent manner and any specific questions answered

Summary

The Ministry of Justice provided insurers with background material on claims management regulation in preparation for the meetings. This provided a synopsis of the Compensation Act, the regulatory framework, scope of regulation, regulatory rules and Professional Indemnity Insurance (PII).

The meetings with insurers achieved the three key purposes, outlined above.

One insurer expressed interest in potentially insuring claims management companies, subject to adequate underwriting information for individual firms.

Prior to the meeting another insurer had been the least interested in underwriting claims management companies. In fact, the initial reaction was negative. The reason for this was their perception of claims management companies generally and The Accident Group (TAG) issues specifically. After reading the background papers provided and further elaboration at the meeting, their view was that the “door was open for more discussion” although they still needed to be persuaded.

Another insurer advised that in principle they would be interested in writing PII for a number of claims management companies.

An Underwriter was concerned about TAG issues and the competence levels within the claims management companies.

In summary, all expressed concerns about TAG issues and highlighted their particular interest in the level of controls the regulator has in both approving and monitoring claims management companies. All insurers we met commented that the suggested PII requirements were not unrealistically high when taking into account the various factors such as, qualifications, experience, type of work and the potential size of this business to insurers.

We recommend that as many PII insurers as possible are met individually in order to maximise the likelihood of the market responding positively when compulsory PII is decided upon.

Annex B – Summary of Professional Indemnity Insurance requirement

Application

1. This requirement will apply to a business that is authorised under the Compensation Act 2006 and that represents clients in the personal injury sector.
2. This requirement will come into effect on 1 July 2008, subject to parliamentary approval.

Requirement to hold professional indemnity insurance

3. A business shall take out and maintain professional indemnity insurance from –
 - (a) an insurance undertaking authorised to transact professional indemnity insurance in the EEA; or
 - (b) a person of equivalent status in:
 - i. a Zone A country; or
 - ii. the Channel Islands, Gibraltar, Bermuda or the Isle of Man.
4. The contract of professional indemnity insurance must incorporate terms which make provision for –
 - (a) cover in respect of claims for which a business may be liable as a result of the conduct of itself and its employees;
 - (b) a minimum level of indemnity for a single claim of £250,000, and in aggregate, £500,000;
 - (c) an excess which is not more than £10,000;
 - (d) appropriate cover in respect of legal defence costs; and
 - (e) continuous cover in respect of claims arising from work carried out from the date on which this requirement comes into effect or the date of authorisation if later.
5. Where an insurance intermediary, as an independent financial adviser or insurance broker, holds professional indemnity insurance that meets the requirements of the Financial Services Authority, and where regulated claims

management activities are covered by that insurance, then it shall be deemed to satisfy the claims management regulation professional indemnity insurance requirement.

Requirement to provide information

6. A business shall on request by the Regulator confirm that it holds professional indemnity insurance in accordance with the requirement above and/or provide evidence that it does so.

Definitions

7. For the purposes of paragraph 3, a Zone A country is –
 - (a) any EEA State;
 - (b) all other countries which are full members of the OECD; and
 - (c) those countries which have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's general arrangements to borrow (GAB), save that any country falling within (a), (b) or (c) which reschedules its external sovereign debt is precluded from Zone A for a period of five years.
8. For the purposes of paragraph 1, representation of a client means the making of allegations, submissions (by way of argument and/or evidence) or other representations, on a client's behalf, to an insurer or other body or organisation in relation to a claim.

Note

Businesses should also note that they do not have rights to conduct litigation nor rights of audience. This means that businesses cannot provide any litigation services nor can they represent the claimant at a hearing without express permission from the Judge hearing the case and attendance by the claimant at the hearing.

Consultation Co-ordinator contact details

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact the Ministry of Justice Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622 or email him at consultation@justice.gsi.gov.uk

Alternatively, you may wish to write to the address below:

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Consultation Co-ordinator
Ministry of Justice
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 12.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

