

General FAQs and Guidelines:

What is the Limit of Indemnity (sum insured)?

This is the maximum amount you would be covered for in the event of a claim.

What Limit should I buy?

You need to consider the profile of your Practice, the Clients you engage with and the Markets/Fields in which you operate, for example;

- How many professionals and technically qualified people are in your Firm and what “peer reviews” processes do you have in place?
- What types of Placements do you undertake? E.g. are they:-
 - Perms or Temps,
 - Highly Skilled or Standard,
 - Foreign placements or Local,
 - High or Mid-earners,
 - What’s the worst that could go wrong if you made a mistake?
- What sort of Clients do you have e.g.; are they Private, Corporate, Foreign or of a litigious nature?

Retroactive Date

What is the Retroactive Date?

This provides cover for Services rendered, Claims or Circumstances that occurred prior to the Inception date of the policy.

If you are a new/first-time policyholder your cover commences on the inception date of the policy unless you buy “retro-active” indemnity.

If you are renewing an existing policy then your new policy will provide the same retroactive date as the expiring policy notwithstanding that you may be changing Insurers.

Claims Made

A PI Policy (as well as D&O and Malpractice) provides cover on a “CLAIMS MADE” basis.

What does “CLAIMS MADE” mean?

The policy provides cover for “claims made” (and reported to insurers) during the period of the insurance policy only.

A claim or circumstances that the insured was aware of before the policy period would not be covered. Similarly a claim after the policy period has expired would not be covered.

It is therefore of the utmost importance to report matters to insurers as soon as you become aware of them. This could be in the form of a summons, allegations of negligence, threats of legal action or even just verbal criticism.

Even if you renew your policy any known matters must be reported prior to the renewal. If you intend changing insurers this is even more important.

Once a claim or circumstance has been reported then insurers are obliged to protect the insured even though the policy period might expire and not be renewed.

What is the definition “Negligence” or “Negligent Act”?

The commonest definition is “when a person has departed from the conduct expected of a reasonably prudent person acting under similar circumstances” - he may then be accused of Negligence or guilty of a Negligent Act

In law this is termed “Delict”.

The hypothetical “reasonable person” provides an objective by which the conduct of others can be judged.

The law considers a variety of factors in determining whether the person has acted as the hypothetical reasonable person would have acted in a similar situation. These factors include:-

- The knowledge, experience and perception of the person,
- The activity the person is engaged in,
- The special skills required. If a person engages in an activity requiring special skills, education and training, the standard against which his conduct will be measured is the conduct of a reasonably skilled, competent and experienced person who is a qualified member of the group engaging in that activity – often an authorised group (by statute of law) such as Lawyers, Doctors, Engineers, Architects, Financial Services Providers and Accountants.

What to do in the event of a claim, accusations from a Customer or another Party or you become aware of potentially damaging circumstances?

1. Do not make any statements or admission of liability or blame.
2. Contact PIFRS immediately you are able. We will assist you.
3. Do not enter into any correspondence regarding the accusations or allegations – refer the matter to PIFRS. We will deal with it.
4. Try to stay on reasonable terms with the Plaintiff – avoid “road rage”.
5. Do not make reference (to the Plaintiff or anyone else) to the fact that you have “insurance”.

Eligibility for Membership of the PI Scheme

APSO have stipulated certain criteria for Membership of the Scheme and the policy benefits. Only Members of good standing with APSO may obtain the special rates.

Claims examples:

When you are insuring a house or car, it is easy to understand the potential claims which could occur. However when dealing with complex cover such as professional indemnity it can be more challenging to visualise some of the significant risks faced by Recruitment Consultants and Headhunters. Our eight claims examples should help bring things to life.

#1 Unsuitable Candidate claims

Even with the tightest of briefs and terms of business, client disputes can still occur when things go wrong and they incur cost because the candidate was deemed unsuitable after starting employment.

PI Insurance claims are more prevalent in this area when dealing with temporary placements as there is more onus on the recruitment consultant to vet and manage suitability, but equally we have seen significant examples for permanent placements whereby a headhunter has made verbal or written comments around suitability which are later challenged.

#2 Candidate Misrepresentation

Not too dissimilar to unsuitability, misrepresentation claims are more cut and dried. Typically challenges will revolve around missing qualifications or skills which were claimed prior to placement and can no longer be proved or do not exist. In some circumstances this may result in the candidate no longer being able to carry out the role, as such, the employer may withhold their fee and look to the recruitment agency to reimburse their costs.

#3 Temporary Staff Claims / Vicarious Liability Claims

Vicarious Liability provides cover in situations whereby you could be held liable for the actions of others, i.e. being held responsible for the actions of staff which you have placed.

For example, you place a temporary IT contractor into a data warehousing business, during their first morning they are found to be negligent when a significant client data file is lost and now needs to be recovered at considerable expense. The employer holds you responsible as they feel the candidate did not have the correct skills for the role and that you are vicariously liable for their loss.

#4 Breach of Duty of Care

The law dictates that, as a professional recruiter or headhunter, you owe your clients an enhanced duty of care. Where your advice or services does not meet client expectations and a physical or financial loss is incurred they may try to make a claim against your recruitment consultants professional indemnity insurance.

The key to avoiding such losses is to be very clear at the outset as to the basis of your relationship with the client and what their expectations are. This may sound simple, but writing a solid brief for your team could be the best way of keeping yourself out-of-court and avoiding legal challenges.

For example, an eager Headhunter promises his client that he has a host of potential hires for a role and also confirms a salary expectation. On the basis of the advice, the client takes on a new contract with a fixed completion date and budgets for the suggested salary range. Subsequently, he cannot find a suitable candidate and when one does surface, the salary payable is double the original estimate. The client is looking for the firm to fill the shortfall in salary as well as any contractual penalties for the contract, resulting in a PI Insurance claim.

#5 Intellectual Property / Breach of Copyright

In today's digital world it is easy to accidentally use an image or logo without permission. Whether it be a photo for an online brochure or a new member of staff "borrowing" a job template from a previous employer, IP breaches can be costly, but are becoming all too common.

#6 Loss of Data / Documents

It's seems almost weekly that a company is in the news for loss of client data. This can be as simple as leaving a laptop in a wine bar containing a list of candidates, to an online data breach. It is vital that security protection is top of mind at all times and appropriate risk assessments are carried out.

#7 Drivers Negligence

If you are involved in placement or recruitment of driving professionals, then you are probably aware of the enhanced risk should they incur a motor claim and are found to be negligent. By nature of the title, you are providing a "professional" driver, therefore, should they drive a high-sided truck into a filling station or reverse into a bollard, you could be held liable.

#8 Breach of Confidence

Whilst one Headhunter client described it as stupidity cover, PI claims for breach of confidence are also relatively frequent. Professional confidence is vital for any recruitment consultant, nevertheless, it is easy for a breach to occur in a busy environment. Whether it be an emailed CV to the current employer by mistake or being overheard discussing opportunities with a colleague in a coffee shop, such instances can, and frequently do, result in expensive professional indemnity losses.

Next Steps

As Stephen Covey said, "*seek first to understand, then be understood*", whilst some recruitment consultants PI insurance claims can be avoided by simple process checks, the most important lesson is to ensure that both you, are your client, really understand the services being provided by each contract and placement. This should minimise the possibility of surprise claims, whereby you believe you have done a fantastic job, only to find that your client is seeking financial recompense and will not pay your fee!

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