

PROFESSIONAL INDEMNITY INSURANCE REGULATIONS AND GUIDANCE

INTRODUCTION

Professional Indemnity Insurance protects a Member's business against compensation sought by a client if a Member is found to have been negligent in some or all of the services that have been provided to a client.

Those Members who hold a practising certificate, which authorises them to engage in Public Practice must hold Professional Indemnity Insurance cover. They must assess the level of cover that is appropriate for their business activities, taking into account clients' specific requirements and also the potential risks associated with specific clients and specific assignments. They should record the reasons for the level and type of cover selected, and inform their clients of this information.

The Practice Assurance Regulations state:

a)...a Member shall be regarded as engaging in Public Practice where he or she provides, or holds, or allows himself or herself to be held out to provide, accountancy services to a person or entity who is not their employer.

b)"Accountancy services" include services requiring or making use of accountancy or related skills, including accounting, auditing, taxation and financial management.

Members are advised that while the Institute recommends rather than requires a minimum level of cover, Members will be required to confirm that they have actively assessed the risks and potential cover needed, and recorded this assessment for review. Members who are exempt from the provisions of CIPFA's Practice Assurance Scheme by virtue of being regulated by another quality or practice assurance process will be deemed to comply with these Regulations if they can show that they comply with any Professional Indemnity Insurance rules of the alternate quality or practice assurance process.

Responsibility of Members

These Professional Indemnity Regulations (the "Regulations") apply to individual Members but in practical terms Professional Indemnity Insurance usually covers their practising entities - whether partnerships, companies or sole practices. For those Members who are in practice together with non-Members, these Regulations are intended to apply to the entire mixed practice. For example, in a mixed partnership, the principle of joint and several liability will make the Member partner jointly liable for the actions of his non-Member partners. Therefore the insurance should cover the whole practice, not just the Member partner.

Members who are responsible for making their own or their firm's Professional Indemnity Insurance arrangements should be sure that those arrangements are adequate in light of the practice's risk profile. Some Members work in firms and the Professional Indemnity Insurance arrangements are handled by someone else on their behalf. This does not affect the responsibility of individual Members to ensure that they are adequately covered.

For the avoidance of doubt, any reference to "firm" in these regulations is a reference to a Member being engaged in Public Practice as a sole practitioner or with others in a partnership or body corporate.

Level of Insurance Cover

The Institute recommends the minimum level of cover to be obtained. When deciding on how to achieve that level of cover, a Member should consider the amount of excess to be borne. This level should only be decided after consideration of both the practices' and Member's resources, including the borrowing capacity of each. Regard should be had to the past incidence of claims and the firm or Member's ability to meet multiple losses.

Inability to Obtain Insurance

If a Member cannot obtain appropriate cover, he must notify the Institute, stating why he has been unable to obtain Professional Indemnity Insurance.

Certificate of Compliance

When completing the Practice Assurance Annual Return, the Institute requires a Member to confirm that his Professional Indemnity Insurance arrangements have been assessed and are appropriate, and that he holds this insurance.

Further Advice

It is possible that the recommended minimum level of cover, while complying with these Regulations, will not be high enough to ensure that all claims made against a Member will be covered. A Member should consider carefully the level of cover which is right for him or his practice bearing in mind that some clients may require specific levels of cover.

An insurance broker instructed by a Member should be able to assist with further specific advice about individual products.

The Institute has requested Parliament Hill on behalf of Trafalgar Risk Management to offer Members appropriate policies, but Members are free to make arrangements with other insurers. For further details of the Parliament Hill products please visit the website at: <http://www.trafalgar.uk.com>.

Queries on the operation of these Regulations should be sent to: practiceassurance@cipfa.org.

1. INTRODUCTION AND INTERPRETATION

1.1 These Regulations are made by the Council of the Chartered Institute of Public Finance and Accountancy. They come into force on 15 December 2007.

1.2 In these Regulations, the following terms will have the following meanings:

- a) "Firm" means a Member engaged in Public Practice as a sole practitioner or with others in a partnership or body corporate.
- b) "Member" means a member of the Institute elected in accordance with Bye-Law 4 and any member elected as a qualified accountant member in accordance with Bye-Laws 5 or 6 who is a Practising Certificate Holder under the Institute's Practice Regulations.
- c) "Practice Assurance Committee" has the meaning ascribed to it under the Institute's Practice Regulations.
- d) "Practice Assurance review meetings" has the meaning ascribed to it under the Institute's Practice Regulations.
- e) "Public Practice" has the meaning ascribed to it under the Institute's Practice Regulations and any associated guidance issued by the Institute Council.
- f) "Practice Regulations" means the regulations made by CIPFA Council pursuant to Bye-Law 25D of the Institute's Bye-Laws.

2. SCOPE

2.1 These Regulations apply in relation to all Members in Public Practice in the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland ('Members') as defined in the Institute's Practice Regulations. For the sake of clarity, these Regulations apply to sole practitioners, and to Members who are partners in practices, or directors of a company. All references to Members should be taken to apply equally to joint practices, or to companies.

Members who hold practising certificates, but who do not engage in Public Practice, do not need to have Professional Indemnity Insurance although there is a requirement upon such Members to make an annual declaration that they are not engaged in Public Practice.

If a Member is in practice in another country then some form of insurance is recommended. This is likely to be determined by local practice, or specific legislation.

2.2 These Regulations apply for a period of two years after the individual Member ceases to hold a practising certificate. All Members with practising certificates should satisfy themselves that they or their firm have suitable arrangements in place to comply with these Regulations and guidance.

In deciding whether these Regulations have been complied with the Practice Assurance Committee will take into account any guidance issued from time to time, by or on behalf of the Institute Council. In the event of any actual or apparent conflict between these Regulations and such guidance, the wording of these Regulations will apply.

3. MONITORING

- 3.1 As part of their Annual Returns, Members are required to confirm their compliance with these Regulations and to provide such information as the Institute may reasonably require.**
- 3.2 The Institute's Practice Assurance Committee may require Members to provide such further information and evidence as it may reasonably need from Members to assess their compliance with these Regulations.**

4. CESSATION OF PRACTICE

- 4.1 A Member who ceases to be engaged in Public Practice must use his best endeavours to ensure that he is covered by arrangements which satisfy these Regulations for at least two years from the date he ceased in Public Practice.**

One important point to bear in mind when considering Professional Indemnity Insurance is that, because there can often be a long delay between an event and a subsequent claim, a Member needs to be covered both at the time of the event and when the claim is made. This means that if a Member plans to close his policy when he closes his business or retires, he needs to arrange "run off" cover for a period of time afterwards. Therefore, a Member who ceases to be engaged in Public Practice in the United Kingdom the Channel Islands, the Isle of Man and the Republic of Ireland should use his best endeavours to ensure that he is covered by arrangements in line with these Regulations for at least two years from the date he ceased in Public Practice. The terms and extent of any cover should be equivalent to that in place prior to cessation of practice.

A Member should maintain this run off cover for at least two years and at the end of that period should carefully consider whether run off cover needs to be continued. This will depend on whether there have been or are expected to be any claims since ceasing practice. The Institute recommends that a Member maintains run off cover for at least six years after ceasing to practise.

5. MEMBERS' OBLIGATIONS IN RESPECT OF PROFESSIONAL INDEMNITY INSURANCE

- 5.1 Members, to whom these Regulations apply, must annually review their practices' provision for Professional Indemnity Insurance and must ensure that they hold cover, which is adequate to address their practices' risk profile.**
- 5.2 Those Members who do not make their own Professional Indemnity Insurance arrangements must ensure that appropriate arrangements, based upon an appropriate risk analysis, are made by their firm.**
- 5.3 Members must keep a record of the annual review specified in Regulation 5.1 or arrangements made under Regulation 5.2 which they must provide to the Institute or its representatives at Practice Assurance review meetings or in response to a request for the same by or on behalf of the Practice Assurance Committee.**
- 5.4 Members who have been granted an exemption from the provisions of the Institute's Practice Assurance scheme under regulation 9 of the Institute's Practice Regulations will be deemed to comply with these Regulations if they comply with any professional indemnity insurance rules of the alternate quality or practice assurance process to which they are subject.**

The above provisions set out a Member's obligations in respect of Professional Indemnity Insurance. The recommended level of cover is dealt with below.

Professional Indemnity Insurance works on a claims-made basis. This means that the insurance will provide cover for claims first made or circumstances arising and notified to the insurers during the term of the current policy. This is irrespective of when the work concerned was carried out. It is therefore important that insurance remains in force to provide protection against any claims which may arise in the future for work done in the past.

A current policy will primarily provide cover for past acts, whether or not cover was in place at the time of the act. Sometimes insurers may put a 'retroactive date' on the policy, limiting the period of cover for past acts. It is recommended that the date should be at least six years before the date of the current policy, or when the practice started if later.

It is most important for a Member to check carefully the wording of his policy in order to understand:

- a) exactly how the insurance works;
- b) what is covered;
- c) on what terms; and
- d) subject to what terms, conditions and exclusions.

The Institute's recommendation is that the minimum limit of indemnity should be £1 million for any one claim and in total.

This means that the insurance must pay a maximum of at least £1 million for a single claim or a number of claims totalling £1 million.

However, if gross fee income is less than £400,000, a lower minimum limit of indemnity for any one claim and in total may be appropriate. The recommended minimum is a sum equal to two and a half times gross fee income, with a minimum of:

- £50,000 for a sole practitioner;
- in any other case £100,000.

Once gross fee income exceeds £400,000, the two and a half times multiplier gives an answer of £1 million which is the amount recommended by the Institute. However, Members should always consider if this is sufficient for their situation.

Gross fee means all income in respect of work carried on in Public Practice, including income for personal appointments in respect of work covered by Professional Indemnity Insurance, income from third parties as commissions or brokerage (whether or not offset against charges to a client) and income received in respect of work sub-contracted to others (this is unless the work is clearly shown as a disbursement in the invoice issued for the relevant work and the client knows that the Member or firm is not taking professional responsibility for the work). However it does not include the recovery of disbursements and expenses which do not form part of the chargeable fee for professional services rendered or value added tax.

Gross fee income should be based on the practice's accounting year which immediately precedes the start of the policy.

The figure of gross fee income should be based on the most recently completed accounting year. If a Member is in his first year of practice, he should give his broker an estimate of his gross fee income. However, if the most recently completed accounts are not for a year or are for a period ending some time previously to the policy renewal date then a Member may need to estimate the gross fee income figure to use. It is advisable not to decrease the amount of cover from that

previously held until a completed set of accounts shows a decrease in gross fee income. This is because although the insurance is on a claims made basis, regardless of when the work was done, claims do arise from previous years and if turnover was greater in the past the possibility of claims may be higher.

The minimum limit of indemnity can include an excess. The Institute recommends that:

- a) for a sole practitioner the excess is not more than £30,000;
- b) for a partnership, the excess is not more than £30,000 multiplied by the number of principals;
- c) for a body corporate, the excess is not more than the greater of:
 - (i) £30,000; or
 - (ii) the total of the amounts accepted by the principals as a legally binding personal obligation (but excluding any amount over £30,000 accepted by any principal).

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