

## How professional indemnity insurance will help your business

When starting a business, most entrepreneurs are nervous about the business plan, cash flow, competition, regulation, taxation and shortage of skilled workers to name a few. Mix that with the excitement of launching a new business, it is no surprise that this is a stressful and intense time. The last thing entrepreneurs want to think about are any mishaps or misfortune. Most will acknowledge that there could be a power failure or a malfunction in their equipment and they might even anticipate the odd disgruntled employee and insure themselves against such mishaps. However, many, in particular those in so-called 'new' professions such as media and IT, are still forgetting an important ingredient in their insurance diet – professional indemnity.

### What is professional indemnity (PI) insurance?

Quite simply, PI insurance protects your business against claims made by dissatisfied clients, particularly those who have experienced a financial loss. It covers you for the cost of defending allegations of negligence in the services you have provided, including any advice or consultation you have provided.

For example, a client who is dissatisfied with its Public Relations campaign for not delivering the results the agency predicted could sue its PR agency claiming they gave 'bad' advice which resulted in financial loss, whether they are justified in doing so or not. It is your insurer's job to defend you against the allegation. The cover will normally pay damages awarded against you in court or compensation payments as well as legal defence costs.

In some circumstances your cover can be used to 'fix' the problem if it will avoid a larger claim being made. For example, if a marketing agency fails to spot a 'typo' in the 3,000 corporate brochures it has printed for a client, its insurer may pay to have the whole lot re-printed as quickly as possible. This way, the policyholder is spared the cost and reputation damage while the client may be satisfied and unlikely to sue. Indeed, some insurers may even find a printing house who can turn the job around quickly to meet the original deadline, so that the client need never know.

### The role of PI in your business

Clearly no business wants to – or expects to - run into problems where they could face legal action from their clients, and PI is there to cover you for those unexpected times. Being sued by a client will not only cost money and perhaps embarrassment, but you will be distracted from your business while you deal with paperwork, lawyers and court time, which can lead to loss of new business, profits or declining turnover.

However, worryingly, Hiscox's SME Risk Barometer study<sup>1</sup> found that half of businesses (50%) don't think that PI insurance is relevant for them. When there is so much to compete on, such as convenience, quality, price of your service, PI can help you show your clients that you are a reputable company who have an insurer to call on for help should your error cause them a loss. The cover also gives you the peace of mind, of course, that should allegations be made against your company regarding the quality of your work you will have the best defence team available.

And if you are tendering for government contracts, PI insurance is a must, with many pre-qualification questionnaires including PI (and amount of cover) as a standard requirement. No matter how capable you are for the job, a public sector body is unlikely to even consider your company if it does not have PI insurance. Make sure that you don't lose a contract over something that is so important yet so simple to get.

### How to avoid volatile situations

Even if you have PI cover, it is obviously important to assess your risks as far as possible in advance of every contract or job. Top tips include:

- **Manage expectations at the very beginning.** At the pre-contractual stage, be clear about what you can deliver to avoid problems with the client in the long run.
- **When drafting a contract assume nothing.** Ensure that the contract is unambiguous in terms of both parties' obligations, including the outputs, costings and payments, service levels, delivery schedule and management of project. Also, ensure there is an effective dispute mechanism which both parties can refer to if the project falters.
- **Ensure you provide a joined-up service from negotiating the contract to delivery.** It sounds obvious, but make sure that the individuals negotiating the contract talk to the group responsible for working or managing the programme to ensure there are no ambiguities internally.
- **Involve governance personnel/lawyers at the contract negotiation stage.** In this way, they can check for any errors or omissions before the contract is signed. Also check clauses with a lawyer and ask what the consequences are of anything going wrong.

<sup>1</sup> A survey of 521 SMEs conducted by the Survey Shop between 2 and 10 October 2006.

- **Give yourself enough time to prepare and make sure you are properly briefed by the client.** At the specification stages, build in sufficient time to read and properly understand all of the documents.
- **Keep all lines of communications open at all times.** Keep the client fully informed at all times. Ensure regular meetings, reporting and give them early warning if delays are expected because of unavoidable circumstances. This allows the client to manage expectations at their end and will help nurture your relationship with the client to one of trust.
- **Actively manage the contract whilst the relationship with the client lasts.** It is hard enough getting clients to sign contracts in the first place, but the responsibility does not end there. Ensure someone is responsible for ensuring that the terms and conditions of the contract are being satisfied at all times.

### **What happens when things go wrong?**

If a client is adamant that you have not delivered satisfactorily and they have experienced a financial loss, they can threaten legal action. Costs involved in litigation can mount up astronomically, particularly as people can often be unrealistic in their demand for damages. Mediation is a cheaper and less time consuming process, however it can still be very expensive and a small business' balance sheet might not survive the blow.

Should you be forced to mediate or litigate, PI insurance will cover your costs, and pay any damages awarded against you, helping you bounce back both financially and enable you to focus on clearing any reputational damage.

### **How to spot a good PI policy**

- **Ensure that the policy offered by your insurer or broker is tailored to your specific profession.** Risks not only vary from profession to profession, but also from company to company, so make sure that you have discussed all your needs at length and choose a policy that suits you. Many professions have regulatory requirements with specific clauses or minimum sums insured, so this needs to be looked at carefully.
- **Look out for additional cover included in your PI policy.** Some insurers will provide protection for your reputation as well as your bank balance by:
  - Paying your outstanding fees if a dissatisfied client has reasonable grounds to refuse to pay you and if you press them for payment it will lead to a larger claim
  - Paying to reinstate lost client data or documents in your care
  - Covering you for claims of infringement of intellectual property rights, like copyright or trademark
  - Covering you for claims of libel and slander, e.g. if your client has widely publicised your alleged error
  - Covering you for claims of director or employee dishonesty resulting in a customer losing money

### **How to make a successful claim**

- Make sure that any new contract you take on is compliant with your PI policy. If not, speak to your broker or solicitor.
- Communicate with your insurer as soon as a problem arises. Make sure you fully understand how and when to make a claim under your insurance policies. If you deal with a problem and do not advise your insurer, you may run the risk of invalidating your cover. Similarly, when you do notify your insurer make sure you fully appraise them of the true facts at the time – withholding important information could prejudice your insurers position and may invalidate the policy.
- There are many benefits to involving your insurer at an early stage when problems occur as they may be able to help you reach a quick settlement.

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