

TOP UP INSURANCE CLAIMS MADE COVER

The 'claims made' nature of professional indemnity insurance means it is important to maintain that level of cover whilst a claim can still be brought in relation to that work.

Professional Indemnity Insurance - so that provided by Bar Mutual, and your Top up policy - is written on what is known as a 'claims made' basis. This means that it is the policy in force at the time that a claim is notified that would come into effect - not the policy in place when the work was carried out or when any alleged negligence may have taken place. The event that gave rise to the claim could have happened at any time, as long as the claim was made during the policy period, and reported to the insurer accordingly. For example, a claim first brought against you in 2024 for work carried out in 2019 would be covered under the 2024 policy and at the level of cover held in 2024.

This type of insurance therefore effectively places an obligation on you to maintain a certain level of cover for the duration of any likely limitation period in order to remain protected at that level. Therefore when taking out additional cover for a particular case - it is important to consider the ongoing future cost of continuing to purchase the cover for a number of years, or fully understanding the risk of subsequently reducing your level of cover.

Whilst some negligence claims may arise quickly after the conclusion of a case, in many cases it can take a number of years for a claim to materialise. Often members of the bar are not involved in the initial claim but are later involved in recourse actions. This can have the effect of the claim first arising against the barrister long after the relevant advice was given.

It is also important to remember when making any commitments or contractual agreements with instructing firms or lay clients in relation to a certain level of cover, that this obligation would likely continue for any relevant limitation period.

The Chair of Bar Mutual in her 2024 Interim Report confirms: "The level of cover purchased will need to be sufficient to meet claims notified during the currency of the policy year and, critically, it will also need to be adequate to cover claims that may arise from work done in earlier years. I urge all Members to ensure that the limit of cover they purchase is sufficient to meet current and past potential claims."

The corollary aspect to this is also the need to notify insurers promptly should a matter or circumstance arise.. Notification requirements encompass not only claims but also circumstances.

Whilst a 'claim' is easier to define, a circumstance refers to a situation that "may", "might", "could" or is "likely to" result in a claim under the cover. This could include an indication of intent to make a claim against you, a criticism of you (or a related party with whom you may be jointly responsible) that could lead to losses for a third party, or concerns about the effectiveness of your performance in the context of your professional activities.

Whilst ultimately specific to the incident, generally if a circumstance eventually evolves into a claim even after the policy period has ended, the claim will be considered to have been made when the circumstance was notified and covered under the policy in effect at that time. Once a circumstance is notified, it would not be possible to purchase Top up cover for the first time covering that incident, or increase the level of cover applicable to that matter.

In summary, it is important to consider the claims made nature of Professional Indemnity Insurance when first selecting an appropriate limit of cover, and then again when renewing in subsequent years - fully understanding the potential exposure of either not renewing your Top up insurance or reducing the level of cover purchased.

If you would like to discuss the content of this paper further please contact us on 020 7183 4925 or by email at barristers@tlorisk.com