

DEPARTMENT FOR CONSTITUTIONAL AFFAIRS (DCA)

**CLAIMS MANAGEMENT REGULATION –
PROFESSIONAL INDEMNITY INSURANCE**

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

MAY 2007

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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Introduction

APIL welcomes the DCA's consultation on professional indemnity insurance for claims management businesses. Professional indemnity insurance is imperative if the interests of injured people who approach claims management businesses are to be sufficiently protected.

APIL therefore believes that all claims management businesses should be required to have professional indemnity insurance.

1. Is it accepted that those businesses that are only introducers should not be required to have PI insurance?

It is not accepted that businesses that are only introducers should not be required to have professional indemnity (PI) insurance.

In the consultation paper, it says "It is difficult to envisage the circumstances in which a person could claim against such an introducer and if they did how PI insurance might be relevant". APIL disagrees with this statement.

In our earlier responses to consultations about the regulation of claims management companies, we gave an example of circumstances which may easily give rise to a claim for professional negligence against an introducer: an introducer may simply neglect to refer a client's claim within the time period necessary. The consequences of this neglect may mean that between the introducer taking details of the claim and making the referral, the time period within which the client is able to make a claim to the court may have expired.

Whilst the court does have discretion to dis-apply limitation periods in cases of alleged negligence, there can be no certainty that this discretion will be used if a claim is not brought within the limitation period because of the negligence of an introducer. Furthermore, the court does not have this discretion in cases where personal injury has occurred as a result of an intentional assault.

An introducer's failure to refer a case within the necessary time period may therefore result in a client's inability to bring a claim.

There are other potential consequences to an introducer's failure to make a referral in a timely manner: witnesses may move away, evidence may be destroyed, and memories may fade. All these things may compromise a client's claim.

As introducers are capable of making mistakes which can have a detrimental and critical affect on the client's claim, it is entirely appropriate that they should be required to have professional indemnity insurance.

2. Should businesses that represent clients have PI insurance?

We recognise that, as noted in the consultation paper, few claims management businesses currently represent clients in personal injury cases. Despite this, it is APIL's view that businesses that represent clients clearly have the ability to harm a client's claim and limit recovery of compensation. It is therefore critical that they should be required to have professional indemnity insurance.

3. Should businesses that have contracts with clients but do not represent them have PI insurance?

APIL believes that claims management businesses which have contracts with clients, but do not represent them, should be required to have professional indemnity insurance.

The reasons we give in relation to introducers requiring professional indemnity insurance, in answer to question one, also apply to the claims management companies which have contracts with clients. These businesses often arrange after the event insurance and loan finance for the client, as well as making a referral to a solicitor.

These claims management businesses therefore have more scope to be negligent and therefore have a claim made against them, than businesses which only act as introducers. The claims manager may, for example, fail to arrange adequate after the event insurance for the client, leaving the client exposed to paying the defendant's cost if the case fails.

The consultation paper says that businesses which have a contract with clients but do not represent them mainly work in the field of personal injury claims. Most individuals approaching claims management companies after being injured as a result of somebody else's negligence will not be familiar with personal injury law. This means they may not be able or willing to challenge what they are told about their potential claim. It is therefore important that injured people can be sure that the advice they are being given by their claims manager is correct and, crucially, that there is backup in the form of insurance if it is not.

4. What should the minimum levels of indemnity and excess be?

Levels of indemnity for a single case need to be sufficient to cover the loss a client may suffer if his claim fails.

APIL would therefore submit that a £650,000 individual limit is not sufficient. A collective limit of £1m also falls woefully short of what is required as this does not even allow for two individual claims to be made at the individual limit.

APIL also has concerns about linking the minimum indemnity required with the turnover of the claims management companies. A garage, for example, might only introduce 26 claims a quarter to a solicitor and be a regulated claims management business, but with a relatively small turnover. This however will have no bearing on the value of the cases which the garage refers to a solicitor. Road traffic accidents, the most likely precursor to a garage making a personal injury referral, can result in injuries as diverse in nature from whiplash, to catastrophic injuries and death.

With regard to excess, APIL submits that this needs to be affordable in the event that a business fails.

5. Should the requirement be introduced from 1 January 2008 or at an earlier date?

The sooner the requirement is introduced, the more injured people will benefit. Whilst there are no requirements for professional indemnity insurance, people who are relying on claims management companies are left without protection if things go wrong. The introduction of a requirement for claims management companies to have adequate professional indemnity insurance is therefore urgently required in order to ensure proper protection for users of claims management services.