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Close up

While it is obviously essential that accountants have professional indemnity cover, nobody wants to have to use it.

There are a number of steps you or a firm can take to minimise your exposure to claims from angry clients, and, surprisingly, most are fairly obvious and straightforward. The big issue is identifying the risks and ingraining simple preventative measures into the standard working day. This can be a lot trickier than you might think, because it's not just the senior members of your enterprise that have to think about risk – it's everyone. If your organisation is large, this is no simple task.

You also don't want to pay any more for your professional indemnity cover than absolutely necessary. Why shell out a fortune on a policy that covers risks that, let's face it, you are never likely to come across? On the other hand, getting the

lowest possible quote on a standard, stripped-down policy could leave you exposed if a claim comes in, especially if your practice is expanding into new service areas or taking on clients in new industries or locations. It's at times like these when you look to tailor your cover to add on those essential extras.

If a claim does come in, you need to be ready for it – both employees within the organisation and advisers on the outside. This means ensuring the legal services that come with the cover are right for you.

This briefing will provide you with step-by-step instructions to handling these dilemmas and will also look at what could get you into trouble.

Indemnity may not be a subject you want to spend much time dwelling upon, after all it's not going to make you any money, but unless you take some care it could end up costing you a great deal.

Paul Grant

It's not just the senior members of your enterprise that have to think about risk – it's everyone

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IS YOUR FIRM A 'RISKY BUSINESS'?

When it comes to the reputation of your business, knowing how to handle complaints is vital. A successful outcome is only likely if you and your company are fully equipped to deal with complaints effectively to mitigate the chances of them becoming something more serious. Preparation is the key to preventing complaints and claims. The more time you invest now, the less likely your business will suffer. SBJ Professional is a specialist in professional indemnity (PI) insurance; therefore we can offer specialist advice on how your business can manage its risk.

Engagement Letter

This should clearly set out the scope of the retainer and be signed by the client prior to work commencing. Any changes should be confirmed in writing and signed by the client and stored on file. Ensure that all letters comply with the rules of your regulatory body. Where appropriate consider limiting your liability by agreement with the client.

Manuals

Firms should have manuals setting out the general practices to be undertaken by all staff dependant on the type of work they are doing.

General Procedures

General procedures should be laid out in manuals and should include a requirement that all telephone calls and meetings are recorded. In addition, where significant information and discussion has taken place, then it should be recorded in writing and sent to the client for agreement.

Diary Systems

A diary system should be in place for all files. Dates should be centrally logged so that all staff have easy access and if there are paper files, dates should be noted clearly on the front of each file.

Checklist

A checklist should be designed which is signed off by a Director and/or Senior Partner, and should be attached to each file. This will ensure consistency in the approach and serves as a reminder that all aspects have been covered.

Manage

Firms should ensure that there is adequate staff to cover the firm's workload. Excessive workloads should be avoided as this increases the risk of rushing and mistakes can be made. Staff should be actively managed and this can be undertaken through training, appraisals, development and accessibility to senior people.

It is necessary to ensure continuous communication with the client and monitor any issues. There must be awareness of who the client is and where claims may arise from. An awareness of the client's history, especially with other firms is helpful. It is necessary to ensure that any work undertaken has the appropriate fee level to cover the scale of the instruction. Only take on work that you are skilled in and qualified to undertake.

Refer

Do use colleagues to take a second opinion, especially for areas outside your scope of experience. Specialist advice should be sought where necessary. Documentation should be checked at appropriate levels. (An internal and external audit system should be used so that reviews can be done to ensure everything has been handled correctly).

Documentation

Full and detailed file notes should be kept. This applies to records of advice given and instructions received. Files should be clear and complete so that they are easily



understood. Claims can sometimes take a long time to materialise and if files are well maintained it will be easier to deal with potential claims. It is necessary for letters of engagement or retainers to follow the same format across the board. Terms and conditions should be clear, especially for the client, and any ambiguity should be avoided.

Complaints Procedure

A director or senior partner should be appointed to handle any complaint. Efforts should be made to resolve the complaint within 24 hours. This is best achieved by the use of the telephone or face to face discussions if the complaint is not initially resolved. Obtain full details in writing. Respond quickly in writing fully setting out the complaint procedures and giving timescales as to when a decision will be made. If the timescales could be extended, inform the complainant and give reasons. A final decision letter should be issued as soon as the investigations are complete and a full explanation should be given as to how the decision has been reached and any

relevant documentation enclosed.

Claims and Circumstances

Firms should not handle claims, regardless of how simple or straightforward they are, all matters that may give rise to a claim should be reported to insurers immediately. A notification form should be completed and all relevant documentation and correspondence should be attached. This should include any letters from the claimant / client which should not be responded to without the insurer's prior approval. Any letters to the claimant / client should be drafted and submitted to insurers for approval. No admissions of liability or offers to settle should be made without insurer's prior approval.

The identity of the firm's Professional Indemnity Insurers should not be revealed in any circumstances. Remember any late report of claims / circumstances will be in breach of the policy conditions and insurers may refuse to deal with the notification, especially if there has been any prejudice.

So, are you doing all of the above? If not, take our advice and start now. Once you have completed the preparation, you are doing all you can to reduce risk. Combine this with the strong relationship between you and your broker, your company is in a strong position to face the future.

For further advice or to talk with a specialist professional indemnity broker contact SBJ Professional:

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At your service

The ICAEW and its appointed broker guide you through the three crucial stages of professional indemnity – finding the right provider, avoiding a claim and handling a claim – so that you can get on with managing the finances of your firm

1 Find the right insurer for you

The professional indemnity insurance market has accelerated recently and, consequently, the number of PII providers has increased. Often, general insurance brokers are offering PII without being able to provide the right kind of advice.

But modern day accountants are problem solvers and business advisers with a range of skills and proficiency in many business areas and need a provider that understands the value and risk placed on the advice you give.

When looking for a PII broker, some simple questions can be asked:

- How many years have you been supplying professional indemnity insurance?
- How many clients do you currently service in my profession?
- Are you endorsed or appointed by any governing or regulatory body?

PII specialists will have direct access to the underwriter rating your risk. This is vital in terms of the

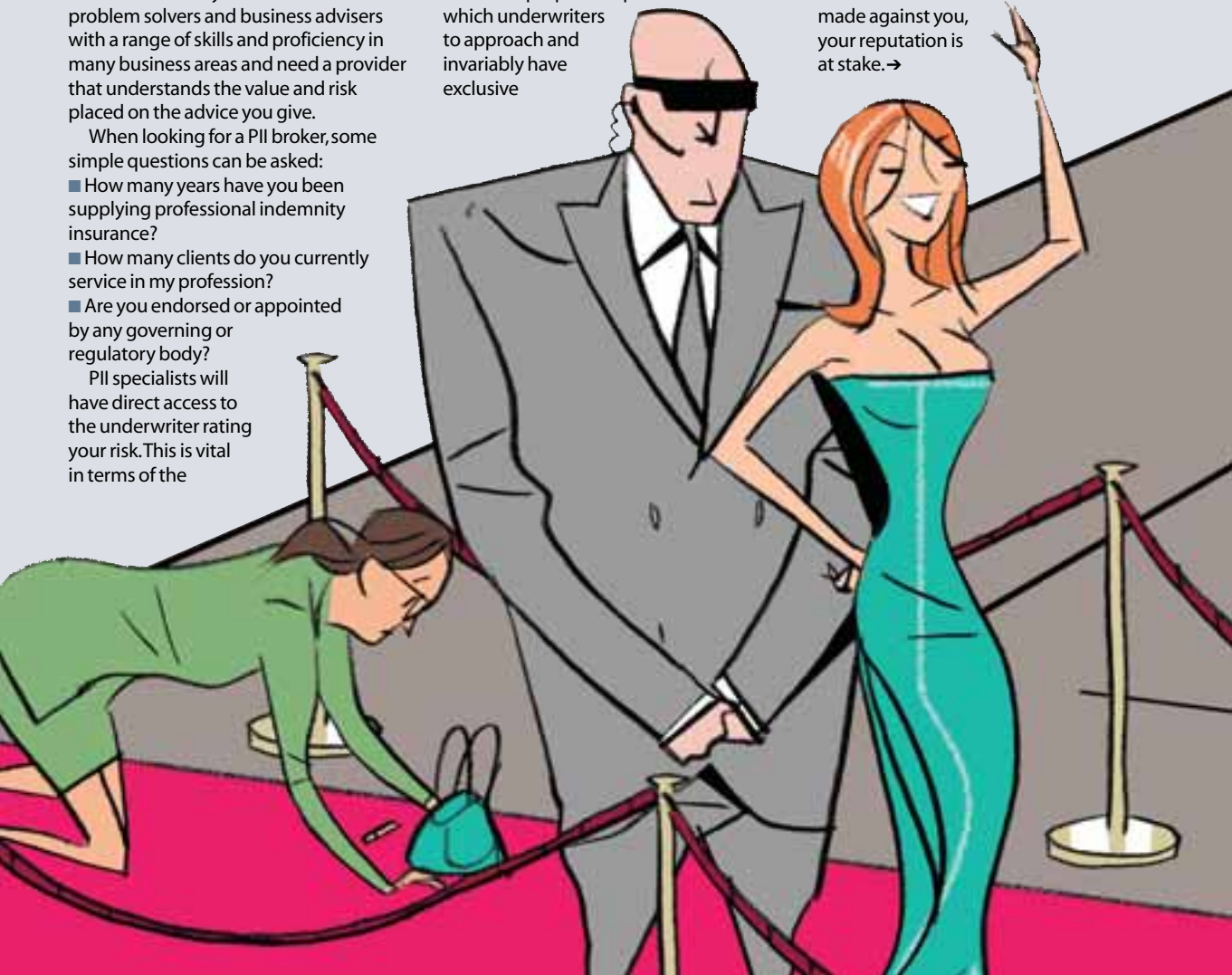
broker being able to negotiate effectively on your behalf; that way the process is more fluid and information is transferred more accurately.

When seeking terms it is advisable to select a specialist to undertake their market exercise in addition to their incumbent service provider, as non specialists may simply flood the market with their proposals. Specialists will know which underwriters to approach and invariably have exclusive

relationships with major underwriters, enhancing their negotiating capabilities.

Today's specialist PII brokers cannot be judged simply on the insurance services they offer, but also on their ability to effectively handle claims. They should effectively manage the entire process, ensuring you are fully informed throughout.

When claims are made against you, your reputation is at stake. →



Your broker should understand this and advise you of measures that can be deployed, ensuring an acceptable resolution to all parties.

Ultimately, the relationship between you and your broker is integral to getting the most from your PII. Specialists will present your firm's case to the markets that will quote you, and the quality of the presentation your broker makes to market is critical.

A specialist will have developed the appropriate proposal form and know the right questions to ask of you, so that the most relevant cover is offered – therefore a fair and accurate premium is quoted.

SBJ Professional is the appointed broker to ICAEW members for professional indemnity insurance.

Professional indemnity claims are thankfully rare, a fact supported by relatively low premiums. With care, common sense and the adoption of good practice the incidence can be further reduced and such an achievement should obviously benefit all – you, the client and the insurers.

Alan Taylor is director of practice member services at the ICAEW



2 Avoiding a claim

Lack of time, being too closely involved with the detail and failure to communicate effectively are the most common reasons for claims arising.

But what can be done about these issues? Follow a strictly common sense approach. Before you accept a job, start by considering it fully:

- Do you have enough time to do your part of the work without being stressed?
- Have you access to enough, appropriately competent resource, to do the rest of the work?
- Are you up-to-speed on the technical front?
- What about the client? Will you find that time and commercial pressure come into play?
- Will information be forthcoming?
- Who else may be relying on this exercise? Perhaps, third parties who might claim that you owed a due of care to them.

Engagement terms need to be understood and agreed between the firm and the client. The engagement letter represents the

written contract between the client and the firm and provides an opportunity to clarify any aspect of the work that might form the basis of misunderstanding – a common source of professional liability claims. I remain surprised by how often this fundamental step is missed where the service in question is not an audit.

You may wish to consider limiting your exposure to professional indemnity claims by including appropriate terms within the engagement letter. This is possible for most professional services though audit remains legally barred until the provisions in the Companies Act 2006 are implemented.

Practitioners sometimes find themselves sued by third parties who assert that the firm owed them a non-contractual duty of care, such as a bank when making a lending decision based on the client's audited financial statements. When the firm knows that a third party will have access to the output of its work and will place reliance

on it, then it should consider including an effective disclaimer.

Take a critical look at the work before it goes out of the door.

- Have all relevant professional standards have been applied? Is the service presented in an appropriate form?
- Did anything happen during the course of the work that might provide grounds for someone to claim an alteration in the basis on which the work was done?
- Are related reports in an appropriate format and include appropriate limitations and/or disclaimers?
- Have all aspects been subjected to a rigorous and objective review, ideally by someone not involved in the work?

Many firms have a system of second partner review, to cover these issues, but where firms do not have such resources, other safeguards need to be considered. These could include putting the work to one side for some time after it has been completed, to enable a fresh eye to be cast over, or employing an external accountant for a 'hot review'.

3 Handling a claim

Whenever a claim arises or is threatened make sure you follow the policy terms precisely, or you run the risk of the claim being rejected. Notify your insurer. If appropriate, do this through your broker. Make sure you have your insurer's consent before you respond to the claimant.

It is not uncommon for the insurer to want to keep the firm and the claimant out of direct contact. To breach this may be considered by the insurer to prejudice the

position, and the last thing you want is a disagreement with your insurer.

A second tip is to maintain a contemporaneous log. No matter how good your memory, these matters have a tendency to take longer to sort out than expected. The sequence of events can be important and a log can provide clarity.

Next step must be to research the basis of the claim. Despite your certainty, is there substance to it? As with car insurance never admit blame, but a sensible conversation with your broker can sometimes help restrict the process and

may save you time, worry and heartache.

At this point in the process, it is common to feel out of the communication loop. Things may be taking place, but the pace often seems slow at best. Remember, while for you this is hopefully an exceptional case, this is everyday business for those dealing with the claim.

Have patience, and when you are perhaps told that the insurers have settled, hold back your frustration that they didn't apparently fight the claim or build on that point you identified during your research. In today's market, pragmatism rules.



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The market is ripe for firms wanting professional indemnity cover tailored to their precise needs. But it's not a solution that works for everyone, writes Nicholas Neveling

Personal touch

Buying professional indemnity cover has never been easier for accountants. With the horrors of Enron and WorldCom a distant memory, the risks of IFRS implementation out of the way and the taxman promising to adopt a more moderate approach, the risks facing accountants have reduced dramatically.

The market has responded accordingly. During the past 18 months, the cost of cover has softened dramatically, with rates falling by as much as one fifth. Accountants who used to spend close to 3% of their revenues on professional indemnity are now spending half that amount.

With risk low and the market soft, new players have rushed in to provide professional indemnity cover, creating a competitive industry. This range of choice and low costs mean that, for the first time in many years, accountants have the opportunity to tailor their cover to their exact needs, as opposed to taking out a generic off-the-shelf policy.

Accountants thinking of tailoring their professional indemnity to specific risks should ask themselves the following questions:

1 Why should our firm look for tailored cover?

According to Keith Tracey, leader of the accounting practice at insurers Marsh, a firm should only tailor cover if it is of substantial size or has significant business exposure outside the UK.

'The cover available in the standard professional indemnity policy for a UK-only accounting firm is very broad. Insurers understand what accountants do and what their liabilities are and there is a long business history and a strong body of case law. This contrasts with consulting or IT, so insurers are happy to provide broad cover,' says Tracey.

He advises that, in most cases, smaller UK firms and sole practitioners have little to gain from straying from the standard policy because cover on offer



is so broad and comprehensive.

For larger firms with multinational clients and international exposure, however, the picture is very different. 'Large firms have multinational companies as clients and face different regulatory problems in each of the territories they operate in. This requires cover where the policy wording is extended and adapted to address these risks,' says Simon Brookes, an executive director at Heath Lambert.

Unlike smaller firms, large practices should structure their policies differently and favour an adapted policy that has evolved from the standard offering. Large firms should also consider managing their risk by balancing the cover offered through professional indemnity policies with the use of captives.

Captives are large pools of money held offshore as reserves to be used in the event of litigation. Captives provide firms with the opportunity to manage some of their cover internally and allow them to diversify their cover.

2 When should a small firm consider tailored cover?

Although most UK-based firms of an average size are probably covered by a generic policy, there are times when a small firm should consider taking out more specific insurance.

'If a firm has some business exposure to, say, the US or Canada, then the standard policy available in the UK will not cover this activity. In these cases, it is essential for a firm to tailor its cover,' says Tracey.

Smaller firms should also consider tailored cover if they undertake any consultancy work or have directors or partners who act as non-executives of other businesses. 'If a firm is involved in any business that does not fit specifically within the accounting remit then it should make its insurer aware of this and adapt cover accordingly,' says Tracey.

3 Does tailored cover cost more for a firm?

If a firm does need to specialise cover, there are cost implications. 'Tailoring professional indemnity is exactly the same as tailoring insurance for your home. It depends what you want. If you need to insure a Leonardo Da Vinci painting in your home, you will pay more. If you need cover for business in an unfamiliar area, you will pay more,' says Brookes.

4 When should we approach agents for specialised cover?

If a firm does need specialist cover, now is the time to take some out. With rates low and competition for custom high, there are opportunities to take out specialised cover at a lower cost than normal.

'In a soft market, the scope is there to add on extra cover and tailor a policy with minimal cost impact. If and when the market hardens it will be much harder to do this,' says Brookes.



GETTING THE BEST DEAL

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Easy life

By implementing simple measures into your workflow, you can keep your firm out of the business headlines and save yourself a headache, writes Alex Hawkes

In a firm's ideal world, claims against it would not exist. Clients would be happy, employees would not make mistakes and lawyers would be untroubled by the distress calls of managing partners wondering how they are going to protect this year's profits from being eaten up by a mammoth claim.

Sadly, the ideal world does not exist, but there are ways in which you can try to move towards it, to limit your risk and thus your professional indemnity premiums. Want a clear claims history to show off to your insurer? Manage your risks effectively, and you could have just that.

STEPS TO REDUCING RISK

1 Choosing your clients

On choosing your clients, Page says: 'Look for clients who are good long-term clients, pay your bills and give you a proper instruction to do your job properly. It's important that they don't just want an opinion to be used as a guarantee for their own inadequacies.'

When considering the key points of risk management, Joanna Page of law firm Allen & Overy, says that, well, 'you probably know all of them already.'

She reels off a few: choose your clients carefully (obviously), have a good engagement letter (something that is blindingly obvious to accountants more than most these days), train people well, double check everything and have a strong complaint handling process.

Do you need a risk manager to tell you those things? Will Glassey from solicitors Mayer, Brown, Rowe and Maw, thinks you do. 'A lot of it is common sense: making people stop and think about the possibility for claims.'

'If you said to most professionals, "be careful not to send emails in a hurry late at night", they would say it's obvious, but getting people to focus on those points in

regular risk management briefings is a good discipline,' he says.

That is a key principle of risk management; it may seem obvious, but you may also still have to drum it home.

Risky business

So what of the less obvious points? The ones that you might not have thought of but could still change.

One practice used by many top firms is committees to deal with difficult issues.

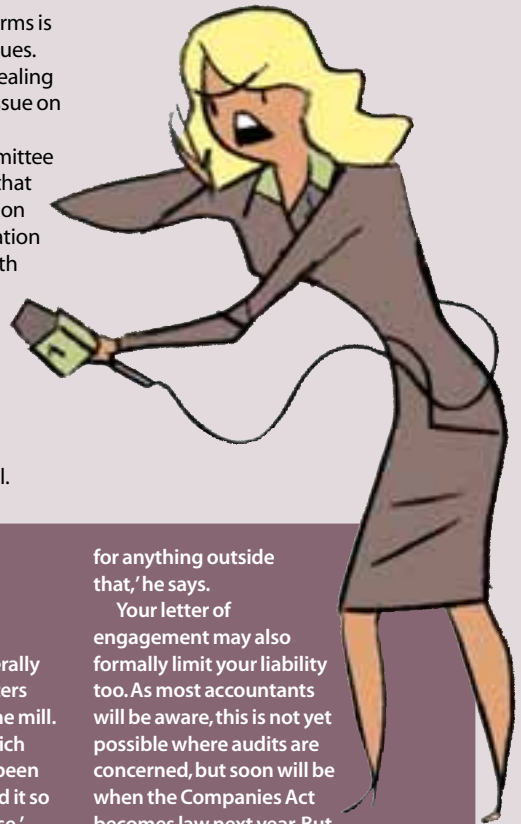
'A lot of firms have committees dealing with difficult issues. If you have an issue on how you interpret an accounting standard you probably have a committee that will have the in-house view so that you always have got the same view on difficult topics. If you end up in litigation you don't want to be confronted with divergent views,' says Rickard.

Glassey has some other tips. 'Laying the paper trail is important, documenting meetings and telephone discussions and making sure advice is recorded in writing wherever possible.'

'Beware also the dangers of email.'

Beware the apparent informality of email. Everybody is reasonably familiar with that as an idea, but it is always worth reiterating, particularly where the firm's accountants are issued with mobile email kit.

'Diary management and deadlines are also important. Many of the claims that we see arise from simple administrative →



2 The engagement letter

Almost all advisers insist that probably the key point is the engagement letter.

Page says: 'Accountants are generally very good at their engagement letters because they have been through the mill. You have to have a slick process which identifies what the job is you have been asked to do, and puts a circle around it so it doesn't morph into something else.'

Jo Rickard of law firm Shearman & Stirling agrees. 'You are setting up exactly the ambit of the job you are taking on and the bits you are clearly not going to take. You are making it clear that in the time available the accountancy firm is being asked to look at A, B, and C and can't be held responsible

for anything outside that,' he says.

Your letter of engagement may also formally limit your liability too. As most accountants will be aware, this is not yet possible where audits are concerned, but soon will be when the Companies Act becomes law next year. But for non-audit work, this could mean some kind of multiple of fees, or a proportionate principle, rather than just being held joint and severally liable for anything that went wrong. Where liability is concerned, there is frankly not very much you can get past accountants, the masters in that respect.

3 Training and recruitment

While dealing with risk through training and recruitment may be obvious, what may be less easy to pin down is how best to manage that. Glassey says: 'It's important to make it a "top-to-bottom process" All professionals within the firm need to have risk management training, not just senior managers. You need regular updates and briefings to staff and briefings to new joiners.'

mistakes, or misunderstandings or miscommunication of deadlines. Maybe the accountant doesn't understand the commercial or regulatory deadline the client is working to, and one way to address that is to record back to the client what your understanding of their requirements is.'

Absent trouble

Problems can arise from management of holidays, correspondence going missing, or not being dealt with or not being understood properly during absences and holidays, he says.

One thing to avoid, says Rickard, is

writing memos trying to justify yourself when a claim comes in. 'When you are notified of a claim, don't write a long memo saying what you have done. Don't put anything in writing. It can be used against you. But there's a tendency for people when questioned or attacked to justify themselves.'

Glassey says accountants should also be kept within their areas of expertise. Don't let an auditor give a piece of tax advice that a tax adviser should do, or vice versa. That may lead to problems.

Ultimately, implementing such processes will lead to a reduction in premiums. Perhaps not immediately, Rickard says. 'Insurers look purely at claims history, how many claims you have got and how you deal with those.'

So it may take a while to feed through, rather than just saying to the insurer – 'here are our processes, lower our premiums.'

And more than that, good risk management improves the service to the client, according to Glassey.

'Sound risk management practices are generally consistent with quality control. Things that firms need to do to avoid claims generally also help to improve quality for a client,' he says.

4 Double checking

'Use the "Four Eyes" principle, that things are signed off by a second partner, and mechanisms used to double check quality of work,' says Page. Simple mathematical errors, Glassey says, can be a fertile source for claims against firms.

5 Complaint handling procedures

Page argues: 'Obviously all accountants will have complaint handling procedures to report internally and to deal with things. There's a professional obligation to do that and it is an important way of managing risk. Typically, something will have to be reported to the partner

responsible on the matter and a complaint handling partner too. It's tremendously important to get the problem solved early. Having a culture of being open about problems is important. Complaints that get out of control are often the ones someone sits on. It festers.'

CHECKLIST

- Choose your clients carefully
- Write a good engagement letter
- Ensure holidays are well managed and all administrative systems work well. Might a letter go missing?
- Keep professionals within their areas of expertise
- Have a good complaints handling procedure
- Train your staff regularly
- Have an open culture of reporting complaints





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Firms have found themselves in a more litigious environment, with companies willing to sue if their accountants fall short of their expectations, writes Penny Sukhraj

Against the ropes

There is little doubt that capping auditor liability is going to massively reduce the chances of a Big Four firm – and any others – failing in the event of another corporate Enron-like collapse.

And with problems in long-standing areas of risk now taken care of, firms have begun to take advantage of the opportunities offered by the market to widen their services by including business advisory and corporate finance.

However, these areas of very lucrative growth have not come without an equally large amount of risk, says Patrick Strange.

Strange, an AON executive director responsible for the larger end of professional services business including accountants, says this is especially true as more clients look to their accountants to assume different roles.

'The consequence of this scenario is increased risk. The accounting profession is very competitive and has recently been engaged in several mergers.

Firms are competing for limited business, even between smaller firms and the Big Four.

'There is this pressure to chase business, but the ability to absorb the business is dependent on the teams of people the firms recruit. The higher risk factor lies in their laying out investment in recruiting people who are not as good as they say they are,' says Strange.

But the level of competition in business extends beyond obtaining the best people in the field, into the ability to diversify and offer a range of services to meet business needs.

Strange says this adds another risk dynamic, especially as the new diversified services are not traditionally part of the accountant's remit.

'In order to be more successful – and

this is not about low-balling – firms have to be diversified in the services they provide. However, the diversity of the client could also involve quite a high level of risk exposure. Diversity could be influenced by the geographic location in which the client operates. The firm has to determine whether it has the resources to deal with this.

'In the case of multi-nationals, the question that would arise is who the ultimate owner of the client is, what their aspirations are and, therefore, what expectations they have of the firm.

Roles that include basic auditing of stock and tangible goods have always been part of the accountant's responsibility, and still are across manufacturing industries.

But this role has also been affected in markets such as the UK, where businesses have less to do with tangible commodity and more to do with services and data.

'New risks have arisen from the way in which clients are devising their own business schemes. Instead of the traditional manufacturing industry, firms now have electronic data that has to be reviewed and advised upon. In a way, this places greater demands on the accountant in so far as their assessment role goes, as it comes with the risk of tampering, more so than tangible stock,' he says.

Tax will continue to be an area of high claim levels, with the more complex tax

environment fuelled by an anti-avoidance regime. Strange says people are now more aggressive in their expectations of saving in tax. Even large corporations will go to the lengths of suing their accountants if they have missed

a tax-saving deadline.

Managing director at Alexander Forbes, Mark Bracher, says that tax continues to be one of the areas in which the most claims are received 'because of the complexity of the tax system and the pressure

that comes with keeping up to date

with current and new tax legislation. Basic claims still emanate from areas in which returns are not sent in on time to those such as inappropriate tax planning advice, through to trusts,' he says.

Firms are also now asked to provide advice on industry-specific regulation.

And if this is not provided adequately, it could open up a potential floodgate of litigation.

'Firms themselves operate within a very heavy regulatory environment and need to ensure they keep themselves on top of these at all times,' says Strange. 'Clients, however, are turning to the firms more frequently, expecting them to address their industry-specific client needs.

'This could mean anything from complying with rules within a specific sector, to meeting regulatory requirements within a particular geographical region.

'We've seen few claims in business recovery and liquidator insolvency cases. I think claim trends will depend on the state of the economy and the kind of professional teams a company has on board,' says Strange.

Large corporations will go to the lengths of suing their accountants if they have missed a tax-saving deadline

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<i>Fee income</i>	<i>Excess</i>	<i>Premiums</i>											
£0-£20,000	£250	£230	£270	£310	£350	£400	£430	£460	£490	£520	£550	£630	£730
£20,001-30,000	£250	£250	£290	£330	£370	£420	£470	£490	£520	£550	£570	£660	£750
£30,001-40,000	£375		£320	£350	£385	£430	£480	£500	£550	£600	£650	£700	£760
£40,001-50,000	£500			£370	£405	£460	£490	£520	£560	£610	£660	£710	£770
£50,001-60,000	£500			£390	£425	£480	£510	£540	£580	£630	£680	£720	£780
£60,001-70,000	£500				£450	£500	£530	£560	£590	£640	£700	£750	£800
£100,001-150,000	£1,000						£650	£670	£690	£720	£760	£820	£900
£250,001-300,000	£2,500										£900	£1100	£1300
£350,001-450,000	£2,500											£1500	£1800

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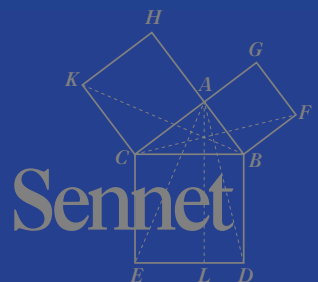
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Outside influence

Providing advice to businesses is just as risky as the choices the businesses make themselves, writes Kevin Reed

The accountancy profession prides itself on the quality of its advice provision and breadth of services. Unfortunately, for every type of advice there is risk attached.

Traditionally, the main areas of advice that have led accountants to face litigation have been in tax and audit. 'For the sheer number of claims, it has been tax [as the most popular], while for size of claim it has been audit,' explains Jane Howard, a partner at Reynolds Porter Chamberlain and specialist at defending claims against accountants.

Regulatory shifts also have a big impact on where insurance cover is likely to be required, and changes to audit engagement could see audit liability, which has traditionally been the biggest area of risk in accountancy, capped.

Although the taxman is much more aggressive in dealing with the provision of tax avoidance schemes, and schemes must now be disclosed to HM Revenue & Customs, this is expected to reduce the number of aggressive schemes to a point where very few tax advisers risk punting such schemes to clients.

'Firms are more cautious about tax

Networks and associations

Accounting firms usually operate within networks and the links between the firms can be problematic. The closer firms are linked, the more likely it is that litigation in one locality could put the other firms into a position where they could face liabilities as well.

These issues affected the Big Four accounting firms to such an extent that they are now uninsurable for audit liability. 'When a firm gets into trouble abroad, will the UK operation [linked by a network] get dragged into foreign litigation?' questions Barlow's Simon Konsta. 'Make sure you're certain of quality control and competence of the firm in that region. Be comfortable



that association reduces the nature of the relationship and is properly documented, so one is not part of a broader partnership.'

Networks can be your best clients, but conflict of interest issues must not occur when new rules are introduced next year. 'If you share a logo, then you may have to carry out a conflict check,' says Howard.

scheme promotions. There should be fewer "whizzy" schemes going forward, so perhaps there'll be fewer claims as well,' says Howard.

As the business world and global economy changes, so do the types of service provided by firms, and also the geographical points of call. The growing Chinese economy, for example, provides great opportunity and risks. 'It's an issue of client acceptance, whether to take on a client: expansion is always risky,' says Howard.

Simon Konsta, a partner in Barlow Lyde & Gilbert's professional liability and

commercial litigation team, warns that the emerging markets are a potential problem for firms, as accountants face dealing with different cultural approaches to reporting and ethics. 'You have to be extremely careful on assurance and capital raising services,' he says.

The economy is solid, but some would say there is potential for a slowdown. With the incredible amount of debt finance, and new owners of businesses looking for a quick return – particularly those from private equity – advisers could take the blame for badly performing businesses.

This creates a number of potential pitfalls. Advisers providing corporate finance and due diligence services could face claims if an acquired business 'wasn't what was expected' by the new owners, warns Howard.

Despite the minefield that advisers must enter to provide services, both Howard and Konsta see a much more savvy profession in the future, better at risk management, putting together engagement letters and, for auditors, entering into liability arrangements.

'[Managing] contractual terms, [quality of] firms' in-house legal teams, they are much better focused on risk management and bad clients are being weeded out – the firms continue to get stronger,' says Konsta.

Claims culture

While advisers are much better at managing their risk than in the past, the claims culture has filtered across the pond from the US and there are signs that some models encourage claims where they may not have occurred in the past.

Litigation funding, conditional fee arrangements (CFAs) and legal costs insurance create a climate that encourages clients to go for speculative claims against accountants, believes Konsta.

Litigation funding involves third parties bankrolling legal action, in return for a share of the potential damages. While with



CFAs, lawyers will accept a certain fee on condition of the outcome of a claim.

'Claimants can insure to cover costs. It all has the potential to be oppressive against accountants and distort the economics of litigation,' says Barlow's Simon Konsta.

When it counts!

As trusted advisors to the profession, the lawyers at Robin Simon LLP work hand-in-hand with you to discreetly and expertly manage issues as they arise in your day to day practice. Our aim is to help you work through your daily concerns before they escalate into claims with the potential to damage your business relationships. Where necessary we will work as part of a team of experts to ensure you receive pragmatic and practical advice.

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Professional indemnity insurance covers your costs should the dreaded day come when you are sued by a client, writes David Jetuah. It's not as improbable as you think...

Writ large

No accountant looks forward to the prospect of being dragged through the courts by a vengeful client, but it's a feature of life that can't be ignored. As the debate surrounding limited liability rages, the issue has become even more pressing, especially as aggrieved companies are being given greater access to huge pools of money to bankroll claims.

Not only does professional indemnity insurance protect your business against compensation sought by a client if you have made mistakes or been negligent in some or all of your services, it crucially provides cover for the legal costs.

'I already know that, you may say, but getting the right legal advice is key, especially in terms of pre-emptive moves to do all you can to avoid a claim.

The fallout from a claim just being lodged against you by a prominent company, let alone the eventual repercussions, can be severely damaging in reputational terms, so your legal representation must be fully aware of the business climate in which you and your clients inhabit.

These may seem obvious points, but there are key questions you should ask any prospective legal representation to ensure they are up to scratch if things do go wrong (see box overleaf).

One of the most high-profile cases being dragged through the courts at the moment involves mid-tier player Moore Stephens. The firm is currently on the wrong end of a £90m negligence suit over its role as auditor to Stone & Rolls, a collapsed British company linked to a

Croatian businessman Zvonko Stojevic that is being bankrolled by litigation funding. The claim against Moore Stephens is being funded by IM Litigation Funding, a UK company.

To date, it is the largest claim in the UK involving independent litigation funders.

Peter Ellingham, a partner at City law firm Kennedys, says: 'This case illustrates the growing trend of seeking to blame auditors for the results of fraud within companies.

In that context, litigation funding is a concern to auditors and their professional indemnity insurers.'

Future moves

The future for accountants may become a lot more hairy as the legal firms' involvement in the case is taken up a few notches. Insurers are clearly not going to welcome the current situation because they are usually responsible for funding the defence of such claims, but a new form of the

controversial funding could make the situation even more acute.

Sector experts are keeping an eye on the growth of a different litigation funding mechanism, under which the law firms involved in the case assume a degree of risk in the outcome of a trial.

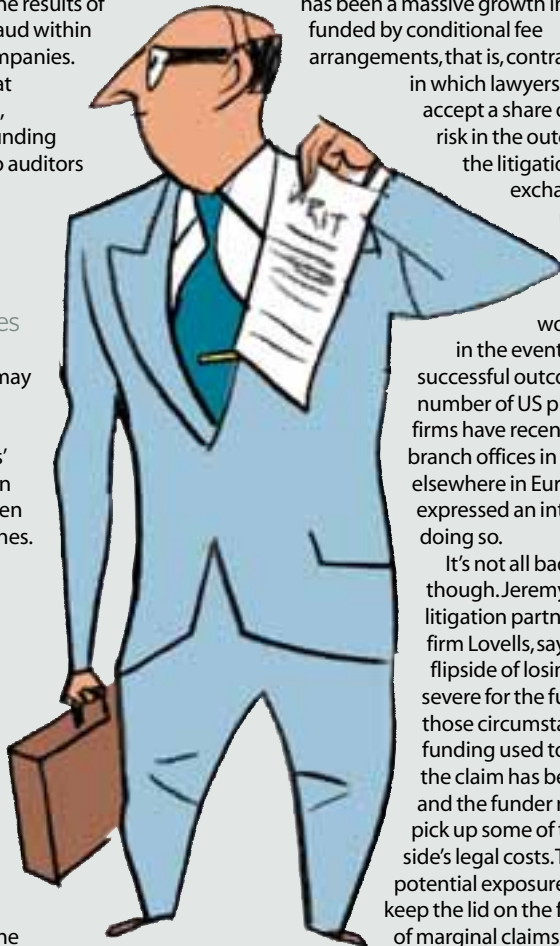
The concept of a 'plaintiffs' bar' is an established feature of the US system of justice. It allows lawyers to share with their clients in the proceeds of litigation. At the moment, these arrangements are not yet permissible in the UK, but Stateside there has been a massive growth in litigation funded by conditional fee

arrangements, that is, contracts in which lawyers accept a share of the risk in the outcome of the litigation in exchange for an uplift on the fees they would earn

in the event of a successful outcome. A number of US plaintiff law firms have recently set up branch offices in the UK and elsewhere in Europe or have expressed an interest in doing so.

It's not all bad news, though. Jeremy Cole, litigation partner at law firm Lovells, says: 'The flipside of losing can be severe for the funder. In those circumstances, the funding used to bring the claim has been lost and the funder may well pick up some of the other side's legal costs. This potential exposure could keep the lid on the funding of marginal claims.' →

The fallout from a claim just being lodged against you by a prominent company can be severely damaging



KEY QUESTIONS YOU SHOULD ASK A PROSPECTIVE LAWYER

1. Are they happy to take you on as a client and comfortable with the work you want them to do?
2. Are they qualified to act for you? Do they have a practising certificate issued by the Law Society?
3. What hourly rate will they be charging?
4. Do they think what you are looking to achieve is realistic? If so, will they outline the steps they think you need to take to achieve it?
5. Will they explain things in clear plain language and not confuse you with legal jargon?
6. Will they provide you with real practical solutions and not just a legal commentary on your case?
7. Will they agree methods and frequency of keeping in contact, using face-to-face meetings, telephone, letters or email?
8. Can they provide you with a client-care letter that sets out their terms of business and complaints procedure?
9. Can they outline what other services the firm may be able to provide as your business develops?



Useful tips

One important aspect 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, you need to be covered both at the time of the event and when the claim is made. Also, if you plan to change insurers, you will either need to arrange run-off cover or get agreement from your new insurer to accept new claims for prior incidents.

Everyone automatically focuses on the aggrieved client, but if the worst comes to the worst and you lose the case, what can you do if you're not happy with the service that your legal eagles have provided?

First, you should write directly to the person who handles complaints in your solicitor's business. This person should have been named in the client-care letter your legal team provided when they started working for you. Outline exactly what the problem is and ask them to confirm who will deal with it and how quickly they will do so. If your complaint is about your bill, you should do this quickly as time limits apply if you need to take the complaint to the next level.

If you cannot reach agreement through your lawyer's internal complaints procedure, you can take your complaint

to the Law Society's Consumer Complaints Service (CSS). This is an independent body that will try to arbitrate between you and your solicitor. It can also award compensation if appropriate. You can find details on how to take a complaint further on the Law Society website (www.lawsociety.org.uk).

The progress of the complaint depends on whether it involves court action that has already taken place or is forthcoming. Even if a complaint has not been resolved, you may need to pay at least part of your solicitor's bill. Check with the CCS helpline for more detailed advice. If the CCS cannot resolve the complaint to your satisfaction,

you may be able to complain to the Office of the Legal Services Ombudsman (OLSO) about the CCS.

The OLSO is unlikely to examine your original complaint – it usually only looks at how it has been handled by the CCS. Do they understand the nature of your business? If not, it's often helpful to provide them with a written summary.

If a claim goes all the way, you must hope that your lawyers will be able to see you through the storm, but in this case the journey is almost as important as the destination.

If the worst comes to the worst and you lose the case, what can you do if you're not happy with the service?

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Or visit www.firstcity.com for further information.

Down to business

So you've decided to apply for professional indemnity insurance, what happens next?

Risk profile

An insurer will take the following management and business factors into careful consideration when assessing the level of risk that a firm poses:

- Adviser/support staff ratio
- Tail (volume of past business)
- Self-employed staff
- Qualifications/experience of staff
- Compliance
- Specialist support
- Control systems/monitoring
- Business structure
- Research
- Regulatory visits disciplinary record
- Client/adviser ratio
- Claims records/complaints log

Critical issues for getting cover:

- Know who you are dealing with and who they represent.
- Check if your broker deals directly with the PII market, or through another broker and how much it will cost you.
- Find out what service the broker is offering, for example will they provide advice?
- Find out which insurers can be accessed.
- Check if they are specialists in your sector.



How to make a good application

A good quality application to insurers is important.

Make sure that you provide clear and comprehensive information.

Ensure that you have made full disclosure of all material facts as failure to do so could invalidate the policy in the event of a claim.

If you need further help, consider firms who offer services such as risk management and risk assessment which will help you to present your proposal.

Where appropriate, consider supplementing the proposal with other pertinent information on 'risk management' issues, such as:

- Compliance systems eg frequency of file checking
- Management control, eg show the degree of supervision of advisers
- Training and competence, eg evidence of assessments of competence and qualifications
- Client acquisition, eg client satisfaction surveys

Further information from the FSA

Small firms website:

http://www.fsa.gov.uk/pages/Doing/small_firms

Using the FSA Handbook: an overview for small firms:

<http://fsahandbook.info/FSA/html/handbook/SIFA>

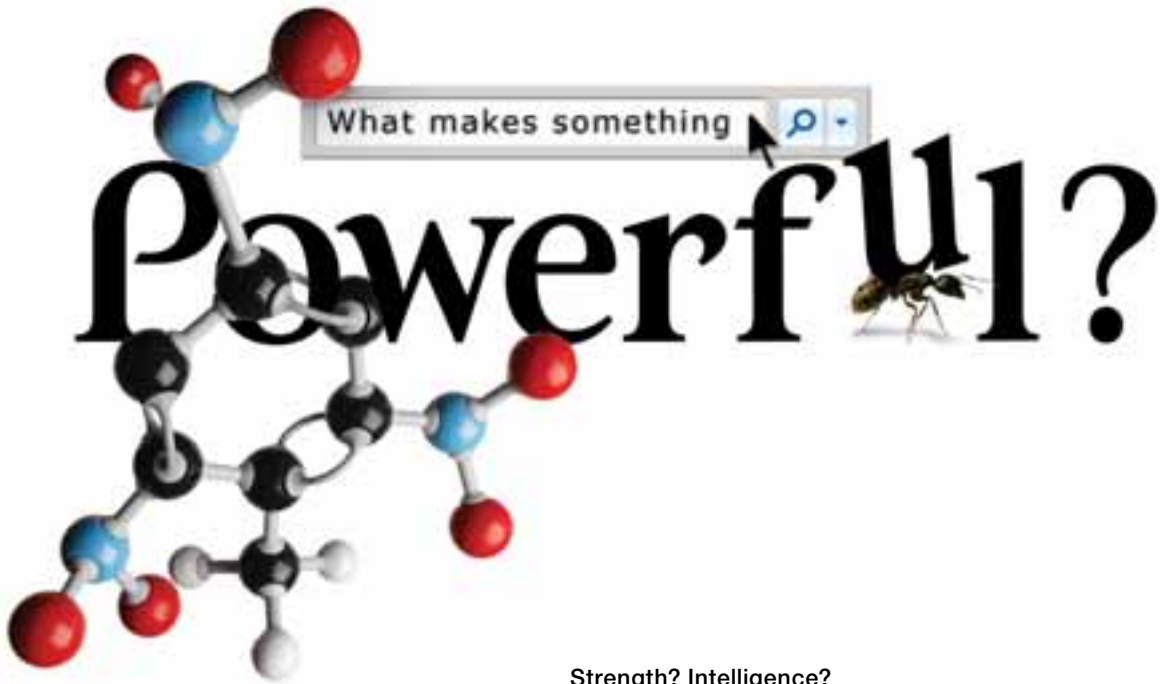
Small mortgage and insurance intermediaries – (general rules):

<http://fsahandbook.info/FSA/html/handbook/MIGI>

Small mortgage and insurance intermediaries – mortgage intermediaries (additional rules):

<http://fsahandbook.info/FSA/html/handbook/MOGI>

For further information: www.fsa.gov.uk/smallfirms



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