

# coverstory

The newsletter of Hammond Professional Indemnity Consultants

Focus on run-off | one



## The facts on run-off

When any professional practice comes to an end, it is essential that it continues to benefit from professional indemnity cover for claims which may be made after the practice has ceased trading, in respect of work carried out previously. This newsletter is designed to help your business consider the issues surrounding run-off cover and looks closely at the question of how long it should be maintained.

Run-off cover is actually a standard professional indemnity insurance policy, the only difference of any note being that as the insured is no longer practising, any claim will relate to work carried out before the policy was accepted or endorsed to provide run-off.

A rule of thumb is that the cost of the first year of run-off may be 100% of the premium applicable to the last year of practice, the second year is 75%, the third 50% and the fourth, fifth and sixth years 25% each, totalling 300% for the six years. The likelihood that claims made under run-off cover will decrease with time is also taken into account.

Claims, or an insurer's attitude to the specific risk or the relevant marketplace, can increase costs, but it is only at the point of run-off renewal that the precise cost of cover will be known - and this can be a problem, as most insurers will only consider providing run-off if they were the insurers beforehand.

Some insurers have minimum premiums for policies in run-off, so taking

out a policy with an appropriate insurer prior to a requirement for run-off is sensible.

In deciding the length of cover, it is worth noting that many professionals including for example, architects and surveyors, are required by their professional bodies to cover six years as a minimum.

A significant factor in determining the length of cover is the relevant limitation period fixed by law - the time limit within which any claimant must commence proceedings against a professional. Clients can sue for negligent acts within six years of the work being finished - the time limit for a claim under breach of contract.

Clients can also sue within six years of suffering damage or loss caused by negligent advice or other work - the time limit for a claim under tort law. Non-clients can also claim in tort if the professional in question is found to owe them a duty of care. The delay between a negligent act taking place and the loss or damage suffered, means that a claim in tort can be made several years after the deadline for contract-based claims.

If the agreement between the parties is a deed, the deadline for making a claim in contract can be extended to 12 years after it is completed, while the time limit for making a claim in tort can be extended by up to 15 years where claimants can prove there was hidden damage which was unknown to them and which they could not reasonably be expected to have discovered at the time.

### Single premium run-off

Hammond Professional Indemnity Consultants now offer a facility for accountants, surveyors and a number of other professionals to purchase their run-off cover for a period of 72 months (six years) with a one-off single premium. This is an excellent way to avoid the uncertainty of unknown premiums every year and allows the finalisation of cover in advance at a fixed, one-off price.



# What to look **out** for



Over 65% of professionals insured through Hammond PI are clients of 10 years standing or more. For more information, call on 0121 788 3444.

Many professionals are not aware that fraud is an important exception to the time limits on professional indemnity claims. There is **no** time limit on making a fraud-based claim and nor is there a limitation on the obligation of an honest partner to reimburse a client for the actions of a dishonest one. A fraud claim can be brought at any time after a practice ceases - or even after the death of one of the partners of a professional firm, though in reality, cases of fraud are most often detected within six years.

It is also important to consider the possibility of a contribution claim by one professional against another. For example, a professional sued by a client may decide to make a contribution claim against another professional, and this may take place up to two years after the proceedings which prompted the original claim have concluded.

Whilst a professional might become involved in proceedings up to 15 years after carrying out work for a client (and sometimes even later), claims made after such a long period of time inevitably give rise to practical difficulties for the claimant. The fundamental principle of any civil claim is that the claimant must prove a valid claim, rather than the defendant proving it is invalid.

As time passes it is often more difficult to prove claims, because:

- the time period may bring other contributing causes of damage into play, particularly on construction related claims
- the claimant may have difficulty locating witnesses
- the memory of any witnesses called may be less reliable after many years have passed
- relevant documents may have been lost or destroyed

In order to protect your business from the potential problems associated with run-off claims, ensure that you identify any areas which might lead to claims in the future, and talk over the options with a specialist professional indemnity consultant at an early stage.

## Get out what you put in

The presentation of your business to insurers is key. Experience shows that legible, coherent and concise proposal forms often result in more focused and relevant policies - at lower prices.

Give a clear picture of your business. The clearer this picture, the more comfortable insurers will feel about taking on a risk. Therefore, a well written and tidy document will create a good impression, particularly as professional indemnity insurance covers errors and omissions and acts of negligence.

It is also a good idea to include any business brochures or documents distributed to customers, especially if they contain a description of your business or services. CVs for partners and directors should also be included, outlining their relevant experience and qualifications.



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