
These notes seek to offer a greater understanding of current requirements surrounding the insurance expectations of a Costs Lawyer with a current practising certificate, referred to herein as Costs Lawyers.

What is the current insurance requirement?

Practising Rule 10 was revised on 9 April 2014 to read as follows:

RULE 10: Indemnity insurance

10.1 Costs Lawyers shall ensure that they:

- a) practice with the benefit of professional indemnity insurance of a minimum £100,000 (any one claim) to include loss of documents; and*
- b) on an ongoing basis, assess all financial risk associated with work being undertaken by them and ensure that professional indemnity insurance and loss of documents insurance is in place in excess of the minimum set out in rule 10.1(a) at a level commensurate with that work.*

Why was the insurance rule amended?

The CLSB became aware following significant Civil Procedure Rule changes on 1 April 2013 and subsequent case law that financial risk had increased for those Costs Lawyers undertaking costs budgeting and costs management work.

On 16 October 2013, the CLSB sought an Exemption Direction from the Legal Services Board (LSB) under the provisions of Schedule 4, Part 3, paragraphs 19(2)(c) and (3) of the Legal Services Act 2007 to allow the CLSB to revise its insurance rules with immediate effect. On 4 November 2013, the LSB advised “the exemption notice is not appropriate it does not mean that we would reject a full application should you choose to submit it.”

A full application procedure was therefore initiated, which included a consultation process open between 10 December 2013 and 4 March 2014. On 9 April 2014 the LSB approved the revised rule for immediate implementation.

Costs Lawyer assessment of financial risk

A blanket increase in the minimum level of insurance was not an option as regulatory expectations are now required to be targeted and proportionate.

The revised rule therefore makes it the responsibility of the Costs Lawyer to evaluate each client instruction and ensure a level of insurance is in place commensurate with the financial risk of the work being undertaken, in excess of the minimum £100k (any one claim) to include loss of documents.

Run off insurance

The CLSB is advised that Professional Indemnity Insurance is underwritten on a “claims made” basis meaning that insurance must be in force at the time of the claim and/or notification for it to be covered. Therefore, when an insured ceases to trade, a “run-off” policy is offered.

Insurers recommend this is carried normally for periods of 6 or 12 years, the required period is usually stated in insured’s contract. If it has never been stipulated in any insurance contract then it should be bought until the client feels there is effectively no risk of issues that will occur from past work.

END