



Run-off cover – after a practice finishes

When any professional practice comes to an end it is essential that it continues to have PI cover for claims which might be made, after the practice has ceased, in respect of work carried out previously. This newsletter considers such "run-off" cover and, in particular, how long it should be maintained.

The Cover

Run-off cover is, in all respects, a standard professional indemnity insurance policy. The only difference is that as the insured is no longer practising, any claim under the policy is only going to relate to work carried out before the policy inception. Accordingly, with run-off cover, the likelihood of a claim decreases, as time goes by.

This reducing likelihood of claims is taken into account in the pricing of the cover. A standard 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.

PI Direct/PI Brokerlink is one of the few insurers in the market to provide a special policy for retired professionals. This unique run-off product was launched for surveyors in 1997 and has proved very popular. PI Direct is now established as a leading provider of PI for retiring surveyors. More recently we have also offered this product to accountants, architects and engineers for up to six years with a single premium up front. The PI Direct policy is a single policy so even if there are claims in the early years, the cover continues with no extra premium charged. We also provide run-off cover for insurance brokers, design & construct and miscellaneous professionals on an annual basis.

Only for Six Years?

There is no definitive answer as to the period the cover should be in place but for many professionals, such as surveyors and architects, their professional bodies require them to have run-off cover for a minimum of six years and we suggest that all professionals consider six years after the practice ceases as the absolute minimum period. In practice, this is the most common period of cover for run-off policies.

A significant factor determining the length of run-off cover is the relevant limitation period fixed by law. This is the time limit within which any claimant must commence proceedings against a professional. Clients can sue for negligent advice or other work within six years of it being finished. This is the time limit for a claim for breach of contract. Clients can also sue within six years of suffering damage or loss caused by negligent advice or other work. This is

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the time limit for a claim in tort. Non-clients can also claim in tort if the professional is found to owe them a duty of care.

The delay between a negligent act taking place and the loss or damage being suffered means that a claim in tort can be made several years after the time for making a claim in contract has passed.

Where the agreement between the parties is a Deed, the time for making a claim in contract can be extended to twelve years after it is completed.

The time for making a claim in tort can be extended up to 15 years where claimants can prove there was hidden damage which they did not know about and could not reasonably be expected to have discovered when it occurred.

An important exception to the limitation rules is fraud. There is no limitation period for fraud. Nor is there a limitation period on the obligation of an honest partner to reimburse a client for the actions of a dishonest partner. Therefore a fraud claim can be brought at any time after a practice ceases or even after the death of all of the partners of a professional firm. Having said that, in practice, fraud, even where it has been deliberately concealed, is likely to be discovered within six years.

Another possible situation to take into account is a contribution claim by one professional against another. If a client sues a professional that professional can commence proceedings against another professional seeking a contribution claim up to two years after the proceedings between the client and the professional have finished.

Problems for Claimant after Delay

Whilst a professional might receive proceedings up to (and even over) fifteen years after carrying out work for his client, it has to be remembered that there are practical difficulties for any claimant bringing a claim after such a long period of time. The fundamental principle of any civil claim is that the claimant has to prove that the claim is valid rather than the defendant having to prove that it is not. Generally speaking the passage of time makes it harder for most claims to be proved because:

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

Summary

Ultimately it is for the professional to decide the length of run-off cover which is going to be needed. The vast majority of our run-off policies are for six years or less (where a person may be part-way through this run-off period). Architects and engineers, because they are more likely to have signed Deeds and because their work involves property where there is a likelihood of latent defects, may be more exposed to long term claims than other professionals (such as brokers or accountants). They need to weigh up the cost of run-off cover beyond six years, as against the ongoing risk of claims and the large measure of "sleep easy" which the extra cover can provide.



Please note that this information is not intended to constitute advice or a complete statement of relevant law.

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