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THE DEPARTMENT FOR CONSTITUTIONAL  
AFFAIRS CONSULTATION PAPER  
ON  
**Claims Management Regulation - Professional  
Indemnity Insurance**

RESPONSE  
OF  
**THE FORUM OF INSURANCE LAWYERS**

For the Attention of:  
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**Organisation:** Forum of Insurance Lawyers

FOIL exists to provide a forum for the exchange of information between lawyers acting predominantly or exclusively for insurance clients (except legal expenses insurers) within firms of solicitors, as barristers or as in-house lawyers for insurers or for self-insurers. FOIL is also an active lobbying body on matters concerning insurance litigation. FOIL has approximately 1700 members from over 100 private practice firms. It is the only organisation that represents solicitors that act for defendants in civil proceedings.

**Response:** prepared on behalf of FOIL by Professional Indemnity Special Interest Group

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# **Claims Management Regulation - Professional Indemnity Insurance**

## **Consultation Document**

### **Response and comments**

This note is prepared in response to the consultation paper issued by the DCA entitled "Claims Management Regulation - Professional Indemnity Insurance" in February 2007. The paper looks at the proposed draft professional indemnity requirements for claims management service providers. The comments set out below are produced following a collation of views of the members of the FOIL Professional Indemnity Special Interest Group. This consultation paper follows on from an earlier paper concerning the question of whether claims management service providers should be subject to any requirement for compulsory professional indemnity insurance.

It is considered by the FOIL Professional Indemnity SIG that the requirement to have PI insurance is essential for claims management service providers.

A number of questions have been asked within the consultation paper and for ease of reference, the response within this document follows the same approach:

#### **Question 1: Is it accepted that those businesses that are only introducers should not be required to have PI insurance?**

- It is accepted. There does not appear to be any good reason for such introducers to be forced to incur the cost of PI insurance. However, we are conscious of the risk that there may be instances in which a business is only an introducer but that the relationship with the client changes. Accordingly, it may be appropriate to ensure that some form of self-certification and checking takes place on a periodic basis to ensure that such providers do not slip through the net.

#### **Question 2: Should businesses that represent clients have PI insurance?**

- Many such providers are fulfilling a role that would previously have been provided by solicitors with the appropriate levels of protection for clients that would historically have accompanied that. We, therefore, consider that it is very important for such insurance to be in place.

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

- The claims management process involves the provision of advice to clients at various stages - and not just when the client is being represented. As such, it is considered that businesses that have contracts with clients but do not represent them should be required to have PI insurance.

**What should the minimum levels of indemnity and excess be?**

- The amount of insurance appropriate in any given circumstance will, of course, depend upon the value of the risks in connection with which the professional is advising. We assume that the suggested minimum cover of £650,000 per claim is the result of informed research. Many of the functions identified in 'The Proposals' (p.6 et seq. of the Consultation Document) are unlikely to involve assumption by (or transference) of risk to the claims management service provider. However, there will be others, even when risk is shared with other professionals such as solicitors or brokers, in which the ultimate risk to the client could be significantly greater than £650,000.
- The size of the claims management service provider's turnover will not necessarily bear any relation to the level of risks that it advises upon. In those circumstances, we are reluctant to support any compulsory scheme that sets such a low minimum limit and would prefer to see a minimum figure of at least £1,000,000.

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

- We see no problem or difficulty in introducing the requirement by the suggested date provided the indemnity rules are sufficiently robust and the insurers have sufficient timing to ensure that appropriate wording is in place.