

CURRENT GUIDANCE

Guidance on Insurance and Limitation of Liability

1. Advice is sometimes sought from members of the Bar dealing with substantial claims about the extent to which they can limit their liability in negligence.
2. This is a complex question and one that involves not simply the Bar's Code of Conduct, but also the substantive law.

The Code of Conduct and the Law

3. Barristers are subject to the general law. There are circumstances at law in which barristers may limit or exclude their liability. However, the question of when and how they may do so, and how such exclusions or limitations can be made effective, raises complex legal issues upon which the BSB cannot advise. In particular, barristers considering excluding or limiting liability should consider carefully the ramifications of the Unfair Contract Terms Act 1977 and other legislation and case law.
4. There is nothing in the Code of Conduct to prevent barristers limiting their liability in ways which are permitted at law. If a barrister is found by the court to have limited liability in a way which is in breach of the Unfair Contract Terms Act, that might amount to professional misconduct.
5. rC30.3 provides an exemption from the "cab rank" rule if "the potential liability for professional negligence in respect of the particular matter could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for you to accept".

Generally

6. All barristers in independent practice should regularly review the amount of their professional indemnity insurance cover, taking into account the type of work which they undertake and the likely liability for negligence. They should be aware that claims can arise many years after the work was undertaken and that they would be prudent to maintain adequate insurance cover for that time since cover operates on a "claims made" basis and as such it is the policy and the limits in force at the time a claim is made that are relevant, not the policy and limits in force when the work was undertaken. They should also bear in mind the need to arrange run-off cover if they cease practice. If in doubt, it would be prudent to seek advice from the BMIF.

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