

DIRECTORS AND OFFICERS LIABILITY UK MARKET

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CONTENTS

03 Overview: The UK Directors and Officers Market

04 What's Driving Change?

05 The Market: A Look at the Present and Future

06 How to Manage Risks and Control Costs

07 How We Can Help You

08 Employment Law Support For Your Business

09 Why You Should Consider Directors & Officers Insurance



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THE UK DIRECTORS AND OFFICERS MARKET



The impact of the unprecedented events of 2020 on the global economy will have significant implications on businesses of all sizes. The immediate effect on the UK and Global Directors & Officers (D&O) Liability market - also referred to as Management Liability - is already being felt, against a backdrop of an already challenging market even before the COVID-19 led events.

Over the past decade, the UK D&O market has remained soft, with ample capacity, relatively low claims and regular new entrants in the market bringing healthy competition and helping keep premiums compressed. Through the latter part of 2018 and into 2019, the UK Professional Indemnity (PI) market suffered a severe contraction in capacity and this impact started to be felt across wider

'Financial Lines' markets, including D&O. Even with these challenges however, D&O markets held up relatively well compared to PI, but with a definite nod to rates hardening through the latter part of 2019.

The events of the last few months driven by the global COVID-19 crisis have certainly challenged the D&O market. Some of the newer capacity has already withdrawn, and established insurers are seeking to restrict their exposures and drive rates up. There are no immediate signs that this will improve and the outlook for the remainder of 2020 looks difficult. Longer term, such rate increases may tempt new insurers back into the market, but there are little signs of this happening at this early stage.

WHAT
IMPACT WILL
COVID-19
HAVE?

SO WHAT'S DRIVING THIS CHANGE?

As previously noted, the Financial Lines market has been struggling for a number of years and whilst PI stands alone, it is typically the same insurers in this market that provide capacity to D&O policies. In trying to correct their financial positions, the need to reduce exposures and carry additional premium in one class inevitably overflows into others, although not to the same degree of course.

Alongside that, there has been a reported deterioration in insurers' historical claims and a general increase in claims matters as the UK becomes more litigious against businesses of all sizes. Traditionally, D&O claims tended to be seen more against larger organisations, but this is certainly no longer the case and that has led to a general change in underwriting approach.

Most significantly of course is the actual, and potential increases in claims notifications led by the COVID-19 pandemic. The inevitable challenges, including business solvency, employment practice matters, potential health and safety challenges and general governance issues has led to a surge in potential claims, causing much concern to insurers.

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WHAT IS THE MARKET DOING?

Against this backdrop, some have simply withdrawn from the market altogether. Those insurers that remain are taking a much closer look at renewals and new business. Across the board, with reduced capacity, most insurers are looking at increasing rates, reducing limits and excluding elements of cover previously available.

The underwriting process is taking much longer and they are requesting additional information before agreeing what cover they can provide, and at what premium.

Some trade sectors are more susceptible to these cover retractions and premium spikes, but every industry will see some changes in their terms – the degree of which will vary by insurers and clients.

WHAT DOES THE FUTURE LOOK LIKE?

Unfortunately, there are no immediate signs of a rapid increase in capacity or fall off of claims matters that would suggest that the market will return to the same levels of those before the COVID-19 crisis any time soon. In fact, there are several other matters on the horizon that will continue to challenge the market in the longer term. The extension to the furlough scheme has been widely welcomed by businesses, but the position is unclear post October 2020. A sudden withdrawal could present challenges for businesses and lead to a potential increase in employment practice matters.

Many businesses have taken advantage of various business interruption and bounce back loans that will need to start being repaid in 2021. This could require recapitalisation of the debts that may not be possible, or present financial challenges to the business that they cannot overcome. This, along with the immediate economic downturn, will challenge potential insolvency claims matters further for some time ahead.

MANAGING YOUR RISKS AND CONTROLLING COSTS

The key to minimising the impact of the market changes is to demonstrate to the market the strong levels of risk management and corporate governance within your business.

There will be inevitable changes in your terms, and there are actions that you should take to minimise these:

- Provide plenty of information on your governance and controls.
- Start early – at least 3 months before renewal.
- Be prepared for premium increases.
- Consider restructuring your programme, but do not just reduce cover to save premium. This could leave your business exposed and unprotected.
- Implement additional risk management controls where you can. An investment here will not only look favourable with insurers, but will also help reduce potential claims against you and the time and cost in defending these.



HOW CAN WE HELP YOU?

Being at the forefront of the UK broking market, Thomas Carroll are well placed to navigate our clients through this challenging market. Our Chartered, award-winning team are available to discuss any issues and are working closely across the insurer market to ensure solutions are available for you.

Starting Early

We want to engage with you well in advance of your renewal to minimise the impact of market changes on your terms.

Ahead of the Game

By regularly analysing the D&O market to understand the changing market appetite, we will find the insurers that are best placed to offer you support both in the traditional markets and through Lloyd's of London.

Tailored Advice for Your Needs

We will help you identify the additional information that insurers will need outside of the traditional proposal form to get you the best terms.

With your business' best interests in mind, we may offer recommendation on restructuring your programme and will discuss these with you. For example, we might suggest 'layering' smaller limits across a range of insurers or changing your excess/deductible structure.

CONTACT OUR EXPERTS



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RISK MITIGATION: EMPLOYMENT LAW SUPPORT

Part of the reason for the change in approach by insurers is the host of new problems for employers who have been battling to adapt to an ever-changing landscape under the COVID-19 pandemic, especially in relation to HR-related issues.

Avoiding and mitigating these risks is important. Thomas Carroll are offering organisations a Coronavirus HR Support Service in order to help you navigate this current crisis. Our team of specialist Employment Lawyers are on hand to offer legal and practical advice in all areas affected by COVID-19, including:

- Furlough leave (otherwise known as the Government's "80% scheme").
- Closures, redundancies and restructures.
- Layoffs and short-time working.
- Sick Pay: Who and what you should be paying.
- Holidays and the new amendments to the working time regulations.
- Homeworking during Coronavirus.
- Avoiding discrimination claims.
- Medical suspension.
- Time-off for dependents.
- Vulnerable employees or employees who live with other vulnerable persons.



Our Coronavirus HR Support Service is available for a fixed fee of £125.00 plus VAT and will provide you with the following services:

- A 30-minute telephone consultation with a qualified and experienced Employment Lawyer.
- An email following the consultation, summarising our advice.
- Access to our updating service, as and when changes occur.
- Template documents upon request, including Furlough letters to staff, a detailed Coronavirus guide for employers, FAQs for staff, holiday cancellation letters and a homeworking policy specific to Coronavirus.



SCHEDULE A CONSULTATION

In advance of our appointment, we will ask you to answer a few questions and upload any relevant documentation. Although this is not compulsory, doing so will allow us to provide you with more accurate and bespoke advice.

Our team also provide a host of Employment Law & HR consultancy and support services. Please feel free to contact us with any queries.

[CLICK HERE](#)



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DO I NEED D&O INSURANCE?

Whilst being a company Director or officer can be rewarding, you have extra responsibilities to your employees, members of the public, investors and regulators. People mistakenly believe that as a director of a limited company, there is no link between personal liability and corporate actions. However, personal claims or proceedings against directors or officers can arise from any decision made in the workplace and it may not always be possible for the company to reimburse them. As such, the personal assets of individuals are at risk.

WHAT DOES IT COVER?

D&O insurance policies offer liability cover for company managers to protect them from claims which may arise from the decisions and actions taken within the scope of their regular duties. As such, D&O insurance should form part of a company's risk management.

Directors, managers and officers can make mistakes. With personal liability unlimited, D&O insurance provides financial protection against claims for actual or alleged "wrongful acts".

Policies typically cover current, future and past directors and officers of a company and its subsidiaries. Cover would not include fraudulent, criminal or intentional non-compliant acts or cases where directors obtained illegal remuneration or acted for personal profit.



D&O: TYPICAL CLAIMS

The legal definition of a director is relatively clear whereas the legal definition of an officer is vague. This means proceedings can be issued against people in almost any managerial or supervisory position.

Typical claims against directors & officers can be from a range of sources and actions. Common claims typically include:

- Shareholder actions
- Reporting errors
- Inaccurate or inadequate disclosure in company accounts
- Misrepresentation
- Decisions exceeding the individual's authority
- Failure to comply with regulations or laws
- Corporate manslaughter
- Insolvencies and actions lead by liquidators
- Creditor claims
- Claims made by the company itself
- Police and SFO investigations
- Cover can also be extended to include employment practices and HR issues

Historically, D&O insurance claims were viewed as only being likely against large companies, but all directors of businesses of any size are at risk. There is certainly a growing claims culture, with SMEs just as susceptible to actions against them. In the current global crisis, directors may be more exposed than ever to potential claims.

HOW MUCH COVER DO I NEED?

Cover starts from limits of £100,000, with many businesses purchasing multi-million £ cover. The breadth of cover will be driven by the kind of risks you are exposed to and the potential liabilities this could bring. You should purchase as much cover as you can and we are happy to discuss your needs with you.

NEED ADVICE? CONTACT US TODAY



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