



BALENS
Specialist Insurance Brokers

TECHNICAL GLOSSARY

For the sake of this document, the insured will be referred to as 'the therapist or client', Balens will be referred to as 'us/we' and the client of the insured will be referred to as 'the patient'

1ST PARTY

The insured (the therapist)

2ND PARTY

The insurance company

3RD PARTY

The client of the insured (the patient)

BREACH OF CONFIDENTIALITY

Where someone (not necessarily a patient) alleges that 'the therapist' has divulged information detrimental in some way or which could cause loss to them.

CHILDREN (and treating them)

Parents must give their consent to children under the age of 16 years being treated and they must be present at all time whilst such therapy is being administered for the policy to be valid.

CLAIMS MADE POLICY**

Most professionals have this type of policy. It covers 'the therapist' when an incident is discovered, not when it is alleged to have taken place. This is the type we mainly offer other than Osteopaths schemes and a few others.

When retiring or ceasing a policy, 'the therapist' needs to ensure that any new carrier will pick up the previous period insured, or that 'the therapist' purchases at a reduced premium some "Run-off" cover (see below).

Cover can be updated and improved each renewal. Any claim made after the update will be dealt with under the wider cover, even though the event may have taken place in a previous year. The statute of limitation (normally 3-6 years from date of discovery of a problem not from the date of giving the treatment) means that 'the therapist' does not need run-ff cover indefinitely. The statute regarding children is 3 yrs from date of majority, and Courts may overturn this statute in respect of children. There is no limitation period regarding mentally disabled patients. For this reason we recommend patient notes are never destroyed or at least kept at least 15 years, if therapists have treated children or the disabled.

CLAIMS OCCURRING POLICY**

A type of policy (usually Public or Civil Liability wording) where a claim is agreed to be triggered by the date the incident was alleged to have taken place. There is no need to keep a policy going after retirement or when changing to another policy. 'The therapist' is locked into that type of wording, and any claim will be based on the cover and amount which was in force at the time of the incident which is alleged to have occurred, however long ago that may be. Retroactive cover is not automatically included but some insurers will allow clients to buy it at usually quite high cost. Gaps between missed periods are not normally picked up by this type of cover. Both types, Claims Made and Occurring have positive and negative aspects.

COMMERCIAL LEGAL PROTECTION

Covers Criminal defence mainly: - Criminal Law Issues. Whereas Indemnity and Liability policies are dealing with Legal Liability and the Law pertaining to negligence. CLP Policies include many extra covers and advice lines according to the package selected.

COMMON LAW DUTIES

The duty of the insured to take reasonable steps to prevent peril and therefore, mitigate a loss.

CRIMINAL PROSECUTION

Alleged Breaches of Criminal Legislation, which may be taken to Court. Defence cover is provided, but not covered for fines.

DIRECTORS AND OFFICERS LIABILITY

This covers the Financial Risks arising from the operation of a Limited Company or Charity, where there are Directors, Trustees or Council Members overseeing the operations of the organisation. They can be held personally responsible for losses arising from Breach of Fiduciary Duty, negligence, Mismanagement or Dishonesty causing financial loss. Can be extended to include Advice, errors and omissions, and may further

extend to include Public Liability, Product Liability, and Contingent Medical Malpractice arising from Injury. The latter could occur where someone connected (e.g. a Member or Teacher) has been negligent and the allegation against that person extends to include the corporate entity.

DISCLOSURE

Information that 'the therapist' or client needs to divulge to us that may affect their policy cover – both what they tell us upfront and what they need to tell us to keep us up to date during the policy term. Any policy issued is based on the information the client puts in the form.

EMPLOYERS LIABILITY

This covers 'the therapist' for injuries sustained by any employees or work experience assistants. This cover is a legal requirement where 'the therapist' employs staff, and the employer's liability certificate needs to be displayed in the workplace.

EXCESS

The amount 'the therapist' is liable for in the event of a claim. There is a nil excess on Malpractice cover, but £50 / £100 excess on Contents cover.

INDEMNIFY

Definition – to protect someone or something against possible damage or loss by paying an indemnity to cover the costs.

INDEMNITY

Definition – protection against possible damage or loss, especially a promise or payment, or the money paid if there is such damage or loss

N.B. The insurance company indemnifies 'the therapist', not the public.

INDEMNITY LIMIT

The amount for any damages awarded against 'the therapist' in Court, or as an out of court settlement figure

INSURABLE INTEREST

'The therapist' and any interested parties. (E.g. a bank or building society may have an interest in a property being insured and their interest would need to be noted on the policy documentation.)

LEGAL & DEFENCE COSTS

The amount to pay for the legal advice and support throughout the process. This can be a large amount and some policies include this within the Indemnity limit, thus reducing the amount of total cover. We normally give unlimited cover.

MATERIAL NON-DISCLOSURE

This raises the question 'Is there anything we have not been informed of that may affect Underwriter's decision to accept the risk?'

MEDICAL MALPRACTICE

This is where 'the therapist' has not performed with a reasonable degree of skill and care, resulting in possible injury or loss to 'the patient.'

NO CLAIMS DECLARATION

A very important declaration by 'the client', confirming that they have become aware of no claims or suits or any circumstances which could reasonably lead to a claim being made against them or action initiated against them, since the time of signing their proposal form or renewal declaration form. **Cannot proceed without it.**

PRODUCTS LIABILITY

This covers 'the therapist' for any defect in goods (e.g. Medicines, supplements or health aids) sold, supplied or demonstrated to 'the patient' which may cause injury or damage. Even if 'the therapist' did not manufacture the item concerned and innocently passed it on, under EEC directive, the Consumer Protections Act etc., 'the client' will still be initially held liable. i.e... The last person to pass on a product can be held liable.

Some of our policies have a £5,000 limit selling to non-clients. We can do higher amounts under our more specialist covers for Health Products if required, but will need a separate form and full details for this.

PROFESSIONAL INDEMNITY

This is a commonly misunderstood term, and refers to a cover which indemnifies (i.e. protects) 'the therapist' against any allegations of loss arising from the conduct of his / her occupation, whether treating or not. This can cover financial loss due to inadequate or incorrect advice, consultancy work etc., and applies where injury has not been caused. Breaches of Duty of Care come under the Law of Negligence or "Tort". Our wide definition of cover is not restricted to treatment only. Covers claims made against 'the therapist' as a result of their conduct of occupation.

PUBLIC LIABILITY

This covers liability at law for causing injury to other people (not necessarily clients / patients) for damage to their property, provided that no treatment or advice was the reason for the incident.

RETROACTIVE COVER

Cover for period of work prior to the current policy term.

RUN-OFF COVER

Lapsing policies need to be advised to have run-off cover in order to answer any claims made relating to work previously carried out.

(Free Unlimited run-off cover in event of Death, Permanent Disability or Permanent Retirement is available with some of our schemes.)

Before policy term	During policy term	After policy term
<i>Retroactive cover bought with current policy covers this period of work</i>	<i>Work carried out during policy term is of course covered by policy</i>	<i>"The client" requires run-off cover for claims made after the term of the policy. The statute of limitation for (normally 3-6 years in respect of adults) means that they do not need run-off cover indefinitely</i>

N.B. The limit of indemnity can be increased or decreased on claims made policies in run-off

The following example shows how this would work for an event occurring in 1979 when the complaint is not made until 1990

1970	1979	1980	1990
			Complaint made,
		Policy ends (run-off	relating to 1979
Policy starts LOI £1m	Event takes place	purchased with LOI	treatment (LOI £5m
		£5m)	available to answer
			claim)

**Whilst Claims Occurring can be more convenient and potentially less confusing, disposing of the need to make decisions in the future if discontinuing, it does have a significant weakness. On an occurrence wording, you are locked into the indemnity limit and cover at the time of the treatment. With claims made, the sum insured can be increased year on year or as circumstances dictate, so that potentially undiscovered claims would end up in the future with a potentially higher provision for the catastrophe claim.

Having been to a recent seminar put on by a specialist firm of Medical Negligence Solicitors, and seen the very latest figures on Court awards for Medical Negligence Injury Claims, Here are some chilling facts!

1. Highest UK Bodily injury awards (tend to be infrequent catastrophic disablement claims at the top end)- in 1985 was £500,000, In 2002 was £12,000,000 reducing to about £7m in 2006 this is exponential growth when viewed on a chart
2. Date of Loss to Date of settlement shows that the time lag can be anything from 4 years to 26 years
3. UK has the highest Awards in Europe, doubling those of the nearest country, Switzerland
4. UK is second equal with Canada in the world behind the US
5. Cost of carers are now linked to Average Earnings index not inflation thus adding hundreds of thousands of pounds to a long disablement scenario
6. There are moves afoot to consider ways to cap legal costs, costs for pain and anguish, bring in more mediation- however these may be slow to implement

Whilst these figures apply to Conventional Medicine, they show the current landscape and climate of spiraling cost awards.