



The
British
Psychological
Society

Professional Liability Insurance

This policy statement is published by the Professional Practice Board to draw attention to the professional obligation of all Chartered Psychologists to ensure they are covered for third party liability for their actions as psychologists.

It is the responsibility of every Chartered Psychologist to ensure that they have third party liability cover for their work and, where their employers do not provide it, to effect such cover themselves.

Other practising members should also follow this advice.

Even where an employer provides the necessary indemnity, there can be advantages to the individual employed psychologist in having their own personal cover, to look after their own interests.

The Society does not require members to take out professional liability insurance as a prerequisite of registration. Neither does it suggest that there is only one insurance policy that members should consider, although it has endorsed one scheme.

What are the risks?

The grounds on which a psychologist might be sued are many and diverse.

A few examples (some drawn from actual claims on the scheme) may serve to illustrate the diversity of the problems which may lead a psychologist to the courts:

- A participant in a psychological experiment complains of experiencing considerable distress and of developing undue agitation following a social psychology experiment.
- A clinical psychology trainee is attacked and injured by a patient referred by their supervisor.
- A male counselling psychologist is accused of sexual impropriety with a female client. (NB: The scheme policy is unique in covering such allegations but will only meet the costs of a successful defence of an allegation of sexual impropriety.)
- An educational psychologist gives schooling and career advice to a teenage child and the child's parents. The child subsequently complains that, by following the advice, he did not attend university and has substantially damaged his future career (and earning) prospects.
- A company sustains a loss by following the recommendation of a psychologist that they should employ a top executive who subsequently proves to be inadequate.
- On the advice of occupational psychologists a company does not employ a particular candidate. The rejected candidate sues the employer, the psychologists and their firm and complains about the unprofessional conduct of the psychologists to the Society.
- A parent injures their child while carrying out restraint procedures following a talk on child management.

Types of liability

The Society's scheme policy includes the following insurance classes:

- professional indemnity;
- public liability;
- product liability;
- libel and slander.

The professional indemnity area of the cover represents the principal area of exposure for psychologists being concerned with a breach of professional duty or conduct. This breach can arise in diverse ways:

- through injury to a client who follows faulty advice;
- through loss to a company which acts on inadequate advice;
- through loss or damage to a person who has been given informal, yet faulty, advice without a fee being charged.

Liability for death of or injury to persons (other than employees) or for loss of, or damage to, third party property is termed public liability. This liability can arise from the ownership of premises, the defective state of equipment used in consulting rooms or can be something as simple as burning down a client's premises by carelessly discarding a cigarette end. Awards of damages in the UK have exceeded £9 million. A figure of this magnitude emphasises that psychologists should look very carefully at the level of indemnity protection they carry.

Product liability arises where any items are supplied in connection with the business and these items lead to injury, loss or damage. Thus if a psychologist supplies a client with faulty equipment or tapes then the psychologist could be liable for any resultant injury or damage to the client.

There have been several interesting claims on the scheme for libel and slander. In one case, a psychologist prepared a report for a Social Services department which criticised a child's grandparents. The grandparents sued the psychologist. In another instance, a clinical psychologist's client asked for a relaxation tape. The psychologist recorded the tape on the second side of a cassette which already contained the record of conversations between the psychologist and the patient's psychiatrist which were not flattering to the patient. The patient sued the psychologist.

Other areas of potential liability such as breach of confidentiality, breach of copyright and allegations of plagiarism are also covered.

In the past members have experienced problems in trying to purchase the individual covers separately, often at very high minimum premiums. For this reason, the scheme which the Society has endorsed has tried to ensure that as many as possible of the liabilities are covered in one policy at a competitive premium.

Employment status

Psychologists' risks of litigation are determined by two principal factors – by their employment status and by the domain of psychology in which they operate. This means that the risk for a psychologist who is employed is different from the risk of one who is in private practice or, indeed, from one who gives guidance on a voluntary basis. Furthermore, the risks experienced by academic psychologists are different from those experienced by applied psychologists. If an individual psychologist has several modes of employment, liability depends on the role occupied at the time when the negligent act occurred.

Employment and the principle of vicarious liability

The principle of vicarious liability means that when an employee commits a negligent act in the course of employment, then the employer is liable to pay compensation or redress. The litigant also has the option of suing the psychologist, as the employee also remains personally liable for the consequences of their own acts.

The risks to the employed psychologist

When an employer pays damages these may be recovered from the negligent employee. In practice public bodies have a convention that they will not seek to recover from negligent employees and most private firms take the same view. Psychologists employed by government agencies may benefit from Crown Indemnity.

However, the employer's goal may be to limit their damages as far as possible. To this end, they may settle out of court or, indeed, they may defend another employee at the expense of the psychologist. If the psychologist is not represented independently there may be no opportunity to defend their professional reputation, which may be impugned in the courts and in subsequent newspaper articles.

For these reasons, the Society recommends that employed psychologists should seek guidance on these issues before any claim is made.

The risks to psychologists in private practice

Psychologists in private practice need to arrange their own insurance cover for the areas of professional negligence, public liability, product liability and libel and slander. In addition, if they have employees they must, by law, carry employers' liability insurance.

If they trade as a partnership or a limited liability company then the company itself needs to carry cover. The company's cover should indemnify not only the company/partnership but also the directors/partners and employees for their own negligence and also for any liability those parties might have for the acts of one another. The policy should also provide cover for the acts of self-employed consultants. The company (or indeed, an individual psychologist

who employs sub-contractors) is responsible for the acts of consultants carried out in the name of or on behalf of the company. The scheme policy does not provide an indemnity directly to the consultants themselves – as self-employed consultants they should carry their own insurance to protect their own personal liability. However, as noted above, the first port of call for any claimant is almost certain to be the company whether the liability emanates from the acts of an employee or from the acts of a consultant.

A further aspect of private practice relates to academic psychologists.

Three types of ‘private work’ are common:

- (a) where an academic institution is awarded a contract and asks a psychologist to perform additional duties for which a specific fee is payable;
- (b) where an individual psychologist is approached by an outside body to undertake duties outside normal academic duties. The institution charges a fee and remits an agreed proportion to the individual psychologist;
- (c) where an individual psychologist is approached by an outside body and carries out the duties from home, using their own notepaper and not using any facilities belonging to their institution.

Professional indemnity insurance carried by the academic institution will normally only cover private work of the type described in (a) or (b).

Academics engaged in activities similar to those in (c) may be able to obtain cover under the institution’s professional indemnity policy. However, not all institutions carry professional indemnity insurance and only a minority cover all types of private work. Individual psychologists should clarify their own position with their institution.

The risks to the psychologist involved in voluntary activities

Even where services and advice are given on a voluntary basis, a psychologist is still open to litigation on matters relating to professional behaviour. Thus, if voluntary counsellors, trained by a volunteer psychologist, cause harm through the inappropriate use of psychological techniques or if a member of a self-help agoraphobic group falls in front of a bus while carrying out graded exposure exercises which were described by a psychologist, then the psychologist is open to litigation. Even a casual conversation, in which a psychological opinion is sought and acted upon, can lead to litigation.

The Society's approved insurance scheme

The individual members' policy provides cover for:

- legal costs (both the psychologist's own costs and any other side's costs which may be awarded against the psychologist);
- awards of damages;
- the legal costs involved in representing the psychologist at Disciplinary Committee Hearings of the Society in cases of professional misconduct (the Society elected to include this cover as it was deemed vital to ensure that a member was not denied proper representation purely because of lack of funds; the Society willingly accepts the additional costs in which this decision may involve the Society);
- legal advice on any personal, professional conduct or business matter (it is important to stress that this legal advice helpline is provided by a totally separate organisation from that which provides the insurance cover. The premium for this advice helpline is £2 for each insured psychologist. Members will, therefore, appreciate that this facility is not in any way designed to replace the normal legal advice which every business requires at some time. It does, however, have the advantage of being available 365 days a year on a 24-hour-a-day basis.)

If a member becomes aware of an incident which they think might give rise to a claim against them, they must notify the scheme brokers formally so that the insurers can be notified. Advice taken from the legal helpline does not constitute such a notification, as advice given by the legal helpline is totally confidential from the insurers and the brokers.

The insurance policy is designed to be reactive rather than proactive. It is designed to respond to claims for damages made against the psychologist. It is not a legal expenses policy and is, therefore, not designed to allow the psychologist to take action against other persons. The most usual instance of a proactive claim would be where the psychologist thinks that he/she has been defamed; the insurance is not designed to provide funds for psychologists to take action to clear their name.

Those members who work from home must advise their household buildings and contents insurers of that fact; furthermore it is most unlikely that members' business equipment will be covered by their household contents policy (even where the insurer is aware that the member is conducting a business from home).

Firms and companies

The members' scheme is designed for individual members only. Members who trade as partnerships or who are directors of limited liability companies need a 'firms' policy which gives additional cover and is more expensive. However, the scheme brokers can obtain cover for firms at realistic levels of premium.

Scheme insurance brokers

Professional liability insurance can be obtained from either:

Towergate

Tel: 0113 294 4000

E-mail: leeds@towergate.co.uk

www.towergate.co.uk

OR

Howden

Tel: 0113 251 5011

E-mail: professionals@howdenins.co.uk

www.howdenins.co.uk/professionals

Summary

The Society expects Chartered Psychologists to ensure that they either carry insurance or have a promise of indemnity from their employer, or both.

However, this is not yet a condition of registration.

The Society also recommends that other practising psychologists should consider carrying such cover and reminds employed psychologists of the need to ensure that cover is in force to protect them personally for any liability they might have whilst acting on their employer's business.

The British Psychological Society was founded in 1901 and incorporated by Royal Charter in 1965. Its principle object is to promote the advancement and diffusion of a knowledge of psychology pure and applied and especially to promote the efficiency and usefulness of Members of the Society by setting up a high standard of professional education and knowledge.

The Society has more than 42,000 members and:

- has branches in England, Northern Ireland, Scotland and Wales;
- accredits around 800 undergraduate degrees;
- accredits over 150 postgraduate professional training courses;
- confers Fellowships for distinguished achievements;
- confers Chartered status for professionally qualified psychologists;
- awards grants to support research and scholarship;
- publishes 10 scientific journals and also jointly publishes *Evidence Based Mental Health* with the British Medical Association and the Royal College of Psychiatrists;
- publishes books in partnership with Blackwells;
- publishes *The Psychologist* each month;
- supports the recruitment of psychologists through the *Appointments Memorandum* and www.appmemo.co.uk;
- provides a free 'Research Digest' by e-mail;
- publishes newsletters for its constituent groups;
- maintains a website (www.bps.org.uk);
- has international links with psychological societies and associations throughout the world;
- provides a service for the news media and the public;
- has an Ethics Committee and provides service to the Professional Conduct Board;
- maintains a Register of more than 12,000 Chartered Psychologists;
- prepares policy statements and responses to government consultations;
- holds conferences, workshops, continuing professional development and training events;
- recognises distinguished contributions to psychological science and practice through individual awards and honours;
- maintains a Register of Psychologists Specialising in Psychotherapy.

The Society continues to work to enhance:

- recruitment – the target is 50,000 members by 2006;
- services – the Society has offices in England, Northern Ireland, Scotland and Wales;
- public understanding of psychology – addressed by regular media activity and outreach events;
- influence on public policy – through the work of its Boards and Parliamentary Officer;
- membership activities – to fully utilise the strengths and diversity of the Society membership.

The British Psychological Society

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