

Directors & Officers Insurance in a plain English nutshell

Alan Chandler, Chartered Insurer
Email alanchandler@uwclub.net
Linkedin Alan Chandler

I have trained more than 2,000 individuals to become ACII qualified

I have trained over 50% of the individuals in the last 8 years that have gone onto achieve the highest ACII pass in the whole of the UK.

I train to a pass rate of more than 96% in all CII qualification levels. Certificate , Diploma and Advanced Diploma.

I deliver the Allianz scholarship and academy programmes in both the UK and Ireland and I have been a Cii examiner.

I have trained students who have won national prizes in almost all ACII subjects including Insurance Law (MO5), Liability (M96), Commercial Property and BI (M93), Personal Lines Insurance (P86), Business and Finance (M92), Underwriting Practice (M80), Advanced Underwriting (960), Claims Practice (M85), Advanced Claims (820), Marketing (945), Advanced Broking (930) and Advanced Risk Management (992).

Alan Chandler's Training Courses Technical Training Courses

These can be run for a day, half day or a lunchtime presentation and the content tailored to meet your needs.

D&O in a plain English nutshell

GDPR/Data Protection a year on

Insurance Distribution Directive

Vulnerable Customers

The perfect storm - Understanding how solvency margins and Ogden are changing your insurance market place

How broker E&O claims are increasing and how these can be mitigated

The missed opportunity – how UK employments trends are changing yet the financial services sector is lagging behind

Bi in plain English

Financial awareness for account executives and handlers

Leadership in insurance

Examination Techniques workshop

Alan Chandler's Training Courses Technical Training Courses

- Commercial property insurance
- Business interruption insurance
- Construction insurance
- Liability insurance (EL, PL and Products)
- Professional Indemnity insurance
- Motor Trade insurance
- Directors and officers insurance
- Motor Fleet insurance
- Engineering insurance
- Package insurance
- Legal Principles of insurance
- Household insurance
- Private Motor insurance
- How liability can arise under the law of tort
- Builders Performance Bonds (1/1/2 hour course)

Training courses for Cii Examinations

At Certificate Level

- IF1 Insurance legal and regulatory
- IF2 General insurance products
- IF3 Insurance underwriting process
- IF4 Insurance claims handling process
- IF5 Motor insurance products
- IF6 Household insurance products
- IF8 Packaged commercial insurances

At Diploma Level

- MO5 Insurance Law
- M92 Insurance Business and Finance
- M93 Commercial property and business interruption insurance
- M96 Liability insurances
- M80 Underwriting practice
- M85 Claims practice
- M86 Personal Lines insurance

At Advanced Diploma Level (ACII)

- 530 Economics and business
- 820 Advanced claims
- 930 Advanced broking
- 945 Marketing insurance products and services
- 960 Advanced underwriting
- 992 Advanced risk management

Basically I can set up an entire training programme to take people from nothing to fully ACII qualified.

LEARNING OBJECTIVES

By the end of this event delegates will:

- Understand the benefits of a D&O and EPL policy and why it should be purchased now
- Be aware of a director's duties at common law and statute and explore how there will be a significant rise in claims
- Be able to explain in plain English how the main areas of cover operate.
- Be able to explain the impact of Limits of Liability, costs and awards on a claims made wording

Wish I had spent £500 on D&O cover!

BEFORE the D&O claim



AFTER the D&O claim



Reasons for growth in D&O cover

The following situations are well known:

- Maxwell Pension Fund.
- Independent/Quinn/Equitable Life
- BP in America.



Increasing Corporate Governance:

- Cadbury, Greenbury, Hampel, Higgs Reports.
- **2006 Companies Act** – highlights Director duties.
- Trustee act 2000

Problem with many insurers is their examples do not help brokers!

Your D&O policy covers extradition cover – like the libor rate distortion



Colin the local motor trader struggling to see what the libor rate has to do with him!



Directors are separate legal entities

Macaura v. Northern Assurance 1925

**Saloman v. Saloman & co. Ltd 1897 – boots went bust
Mr S allowed to keep assets as priority creditor**



Conclusion

- Saloman's case established new boundaries that in law a registered company is an entity distinct from its members, even if the person hold all the shares in the company.
- There is no difference in principle between a company consisting of only two shareholders and a company consisting of two hundred members, In each case the company is a ***Separate Legal Entity***.

Why D&O is needed

- All the policies of a limited company will protect the entity but **NOT** the individual directors

D&O in a Nutshell

- Covers directors against personal lawsuits in civil courts – they have unlimited liability at law. This is defence costs **and** any damages awarded.
- Covers directors against any personal criminal defence costs but not any fines or penalties imposed.
- Covers the entity and a very important cover here is employment disputes as these are on the increase.

Why do you think D&O cover is needed?

Remember when things go horribly wrong personally, and you are sitting in a police cell, do you want an insurer paid top expert barrister defending you, or alternatively you can fund it yourself – now you have no house!

Even worse you cannot afford a top barrister so you get Lance aged 23 who introduces himself with the scary words ‘this is my first criminal case!!’ and now you realise why Lance was less expensive!

Wish you spent a couple of hundred pounds on D&O now!!!

Reasons for growth in D&O cover

VERY IMPORTANT FOR SME directors – the rise of criminal actions personally against directors by the HSE

Health and Safety at Work Act 1974:

- Where an offence is proved to have been committed with consent, connivance or negligence attributable to any director, manager, secretary or similar person the individual as well as the company is guilty of the offence and is liable to criminal proceedings.
- Between 2015 and 2016 HSE prosecutions against individual directors TREBLED – they realised they had a new target, during this same period almost no employees were prosecuted, the HSE target clearly is the directors

Aim is to separate the individual director from the herd to avoid the 'we we we' defence



How much should the sum insured be set at?

- A common statement made by brokers is the sum insured should represent the total personal assets of all the directors – NO that is wrong advice!
- This statement ignores any legal costs if the policy is on a cost inclusive basis, and definitely forgets the fact that often the criminal defence costs are the most expensive claims!

How much cover is needed?

- Directors can be sued personally for an **unlimited** amount and a D&O policy covers them against both the **legal costs** and the awards if they lose a civil action (providing the action was accidental not deliberate e.g. fraud).
- Directors can also have individual criminal prosecutions against them, here the policy will pay the defence costs but not any criminal fines

HERE IS A THOUGHT

- If a director fails to take out D&O without consulting the board, or lapses the policy without consulting the board, then they could face a personal lawsuit from the entity or other directors.
- This can happen if at a later date it can be shown that had the D&O cover been in place, an individual director or the entity would have gained some form of protection from the policy.
- Bring this to the attention of the Director who is saying no to you on D&O !

Policy Wording is on a Claims Made Basis

- **D&O** is on a '**Claims Made**' basis – Lets Consider
 - A director suspends a maintenance contract on a machine in 2014 (Insurer A)
 - In 2015 (now with Insurer B) several workers report that the machine is in a dangerous state resulting in one of them complaining of aching shoulder
 - In 2016 (now with Insurer C) the injured machine operator is told by his doctor that the injury to the shoulder has been caused by the faulty spring mechanism in the machine which he operates
 - In 2017 (now with insurer D) there is an action against the director by HSE

WHO GETS THE CLAIM?

THINK – Each renewal is new presentation of risk – did any of the directors know anything about the above incident prior to 2017, were they asked by the purchaser of insurance!

Claims Made Basis

- D&O is underwritten on a **claims made basis** so clients must be ever so careful about lapsing off cover, because when its gone its gone!
- Remember when the entity is struggling financially and thinking about saving money the Directors personal liability is far more at risk!

Entity Employment Practices Cover - Examples

- Unfair dismissal – termination of contract of employment actual or constructive.
- Wrongful failure to promote or deprivation of career opportunity.
- Wrongful discipline or employment related misrepresentation.
- Failure to provide adequate employee practices and procedures.
- Failure to furnish accurate job references.
- Failure to grant tenure or employee evaluation.
- Sexual or workplace or racial or disability harassment of any kind including allegations in the workplace.

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