

QoN 010-18 – What is ASIC doing about the professional indemnity insurance market?

Acting Chair Chester suggested that concerns with the state of the PI insurance market was a policy matter and it might be better directed to Treasury. It is a Corporations Act regulation that mandates the requirement for adequate PI insurance, however, it is ASIC's Regulatory Guide 126 that stipulates what constitutes adequacy. It is also ASIC who approve the PI Insurance arrangements for new licensees. ASIC is also likely to be much closer to what is happening in the PI Insurance market. Is ASIC concerned about the current state of the PI Insurance market, and what are you currently doing, or do you intend to do if the problems deteriorate? Is ASIC keeping a close eye on this issue and what do you intend to do if it gets to the point that some advice licensees can no longer obtain professional indemnity insurance?

Answer:

ASIC Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* and Regulatory Guide 210 *Compensation and insurance arrangements for credit licensees* provides guidance on what we expect as a minimum standard for adequate professional indemnity (PI) insurance.

ASIC does not approve PI insurance arrangements, as we do not review individual policies. ASIC asks applicants to respond to specific questions on certain aspects of the PI insurance policy and the responses are assessed against our regulatory guidance. We do this to assess whether licensees have PI insurance that is able to meet the mandatory requirements in the Corporations Regulations 2001 about licensees' compensation arrangements.

ASIC does not have the ability to influence the price or availability of PI insurance. We can attempt to assist licensees facing difficulties with obtaining PI insurance by considering submissions from licensees for alternative compensation arrangements as contemplated under the regulations.

To date, ASIC's data indicates that:

- In FY20, only two out of almost 600 AFS licence applicants withdrew citing an inability to obtain PI insurance. The two applicants that withdrew were not advice licence applicants.
- In Q1 FY21, no applicants have withdrawn citing an inability to obtain PI insurance, and a small number who claimed they were unable to obtain cover were subsequently able to.
- In the 15 months to 30 Sep 2020, 31 of 2,000 (2%) breach reports from AFS licensees related to difficulties in obtaining PI insurance.

ASIC has not received an application seeking approval of alternative compensation arrangements from an advice licensee or licence applicant. ASIC received one application from an advice licensee seeking a no-action position while they attempted to obtain PI insurance. The applicant subsequently confirmed with ASIC that they intended to operate as a Corporate Authorised Representative under another licensee and lodged an application with ASIC to suspend their AFS licence.

ASIC will continue to monitor the availability of PI insurance when assessing applications for licences, breach reports and through stakeholder engagement, including with Treasury and APRA.