

2026 Spring Bulletin for CIOT/ATT Members

The Use of Liability Caps

When providing services to your client, there are a number of steps you can take to reduce the impact that claims can have on the Practice even before we consider the use of liability caps. For instance the need for clear and concise engagement letters in terms of the services to be provided, the ability to agree any additional services/fees beyond that initial engagement, or oversight of your team whether that be diary management, home working, parameters around authority, etc.

Whilst most steps will relate to good practice, it is also worth considering if it is possible to include liability caps in your terms of engagement.

Although it is far from certain that a client will be prepared to accept them, you may be aware that the use of liability caps is in fact raised by the CIOT/ATT (see their own guidance on engagement letters) and indeed could prove beneficial when negotiating your Professional Indemnity insurance (PII) renewal.

What is a Liability Cap and what level should it be?

Put simply, a liability cap is a contractual limit agreed with the client that limits the possible extent of any claim against you. From a risk management perspective, this is extremely useful as it provides a clear indication as to the full extent of any potential exposure the Practice may face when a claim is made.

Whilst this limit will usually work in your favour, it is also easy to see why liability caps may not necessarily be something that a client will view in a similar light. As for what level a liability cap should be set at, that's a more complicated question.

From a legal perspective, a liability cap is likely to be considered acceptable if it is "reasonable". Unfortunately, there is little guidance as to how this should be interpreted but there are various factors to be considered such as:

- Client type
- The nature of the work being undertaken
- The value of the work undertaken (financial/tax values involved)
- Proportion to fees
- The purpose of the instruction

This is not an exhaustive list but highlights the major factors.

It is important to note that if the court deems the liability cap to be unreasonable, then they will disregard it when dealing with a claim. However, they are less likely, although still possible, to take this course of action when dealing with commercial clients, given the expectation that they will have been in a position to obtain their own legal advice.

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Liability Caps and your Professional Indemnity Insurance

From an Insurer's perspective, a cap on any potential liability is always going to be a welcome risk management tool and may impact how they consider your Practice when dealing with the renewal of your insurance arrangements.

However, it is worth noting that a whilst a liability cap may be in place in the contract, this does not impact on the limit of indemnity provided under your PII policy.

For example, if you maintain a limit of £5,000,000, but have a cap of £1,000,000 in your terms of engagement. If the court does not accept the £1,000,000 cap, you are still covered up to the limit of £5,000,000.

The Practical Reality

Whilst professional bodies suggest the use of liability caps, and Insurers will wholeheartedly accept their presence, the reality of the situation is that their inclusion in your appointment may be a rare occurrence.

When preparing your own terms and conditions, it is perfectly acceptable to include provisions limiting your liability, subject to such limit being reasonable.

However, it may be the case that large corporate clients will resist a liability cap as an attempt to limit the amount that they can recover in terms of their losses from you.

Whilst it is always worth arguing for their inclusion if you can do so, a more pragmatic approach may be required when considering whether to accept the instruction and taking commercial considerations into account.

For example, an alternative option may be including differing levels of monetary caps, dependent upon the services being provided and/or the afore-mentioned examples. This would possibly mean issuing separate terms of engagement ensuring your liability is then regarded as fair and reasonable.

We would suggest you seek suitable legal advice when looking to draft a suitable addition to your terms of business.

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