

Public liability register – is it (finally) on the way?

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< Previous

[IDD – application of the ‘duck test’](#)

Next >

[Drafting policy limits – precision is key](#)

The Ministry of Justice (MOJ) has announced that it will be examining the feasibility of a public liability insurance policy register, similar to the ELTO register for employers’ liability policies. This follows an inquiry by the IICSA recommending that steps should be taken to help child sexual abuse survivors track down the insurers of institutions that may be liable for historic abuse.

The problem arises as public liability policies in the UK are invariably written on an occurrence basis. In most cases that does not cause any issues as events giving rise to injuries are usually known about fairly quickly after the event. However, in the case of abuse and various other ‘long tail’ exposures, the injury may not come to light until many years (in some cases decades) after the event. Where the entity responsible for the injury has ceased business, it can be difficult for victims to locate a party to sue which is able to satisfy any judgment.

Whilst the benefits of a public database are clear, such a database would come at a cost. According to analysis by the Association of British Insurers (ABI), a public liability register would be likely to cost ‘much higher’ than the £2.2 million yearly cost of ELTO.

In addition to the financial cost, the ABI highlighted concerns that the register may not satisfy the victims for whom it would be designed to protect:

‘There is a risk that without further, careful analysis of the nature of the problem of tracing public liability insurance, significant work is undertaken on an initiative that does not meet the expectations of victims and survivors or address the challenges that they may face’.

Unlike employers’ liability, public liability policies are not mandatory and are less heavily regulated, meaning there could be a ‘patchiness of cover’ in records. Paired with a set-up time taking a ‘great deal longer’ than the ELTO, a public liability register could be seen as practically challenging in efficiently aiding victims.

As a result, a public liability register ‘would provide no assistance in the significant portion of cases where an organisation responsible for abuse acquired no or limited PL insurance’, according to the ABI.

The FCA has therefore collected data from consumer organisations, including survivor groups, on the usefulness and scope of a public liability register. However, having received limited responses Richard Sutcliffe stated, in a letter to IICSA,

‘In light of this, we are currently reviewing our options and considering what our next steps should be and will provide you with a further update in due course’.

Although it is unclear how a public liability register could be adopted considering the financial consequences and practical uncertainties, insurance industry stakeholders have demonstrated a willingness to engage with the MOJ on a potential register:

‘We identified areas that need further consideration, such as whether and how a register could provide a comprehensive

overview of organisations' insurance cover when public liability insurance is not and never has been compulsory, and we remain ready to work with government and other stakeholders as and when required' said an ABI spokesperson.

Whilst it is not yet certain that a public liability register will ever come into being, this is a topic that will not go away. Insurers should keep a close eye on developments and be prepared to respond to any consultation if they want their views to be taken into account.

Contents

<u>The Word, December 2022</u>	→
<u>(Another) case on insurers' duty to defend</u>	→
<u>'Big Game Hunting' – the new face of cyber extortion?</u>	→
<u>Comply with policy terms – or pay the price</u>	→
<u>IDD – application of the 'duck test'</u>	→
<u>Public liability register – is it (finally) on the way?</u>	→
<u>Drafting policy limits – precision is key</u>	→
<u>Official statistics demonstrate a new wave of age discrimination claims</u>	→

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