

Professional and personal obligations in PI cover under scrutiny

Court of Appeal decision in Impact concerning the nature of the contractual liabilities professional firms might assume has bearing on insurers of litigation solicitors

Barrington was a firm of UK solicitors, operating as a limited liability company and insured by AIG. Impact provided loans to clients of Barrington to finance disbursements incurred by clients pursuing personal injury claims. When the clients failed to repay these loans, Impact successfully sued Barrington for the debts, pursuant to a disbursements funding master agreement (DFMA) between Barrington and Impact. When Barrington went into liquidation, Impact sued AIG under the Third Parties (Rights Against Insurers) Act 1930.

AIG denied cover, relying on the debts and trading liabilities exclusion (sub-clause 6.6(b) of the solicitors' minimum terms and conditions of cover), which excludes claims for "any breach by any insured of the terms of any contract or arrangement for the supply to, or use by, any insured of goods or services in the course of the insured firm's practice".

In *Impact Funding Solutions Ltd v Barrington Support Services Ltd*, the High Court upheld AIG's declinature, on the basis Impact was providing a service to Barrington by making the loans, enabling Barrington to enter into profitable engagements with clients. Impact appealed on the basis the service was provided to Barrington's clients, as opposed to Barrington.

The Court of Appeal held the exclusion to require a distinction between the liabilities of a solicitor "in respect of those aspects of his practice which affect him or her personally" and those "assumed in respect of his professional duties to his client".

The loans provided to Barrington's clients were, the court said, of the latter character, being "an inherent part of a set of interlocking agreements all intended to enable the solicitor to earn a professional livelihood". The insured firm's obligation under the DFMA were "assumed as an essential part of [their] duty to [their client]". The exclusion did not, therefore, apply.

The breadth of the so-called "trading debts" exclusion is interesting enough. However, the wider questions addressed by the Court of Appeal concerning the nature of the contractual liabilities professional firms might assume have attracted widespread interest from professional indemnity insurers. What, for example, is the correct character of fee obligations assumed contractually by litigation solicitors to barristers and to experts? Are those liabilities "assumed as an essential part of the duty to the client" and therefore also insured by professional indemnity insurers?

The case has piqued the interest of the Supreme Court, which has given AIG permission to appeal.

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