

## Appendix 3 – Liability Insurance

### **LIABILITY INSURANCE APPLICABLE TO CONTRACTORS SUPPLYING SERVICES/WORKS TO CUMBERLAND COUNCIL**

#### **TYPES OF LIABILITY INSURANCE**

When individuals, partnerships, companies and other organisations are being appointed to undertake work on behalf of Cumberland Council then it is important to ensure that the contractor / service provider in question has its own liability insurance in force at the right level.

A contractor / service provider with liability insurance in force gives the Council an avenue to claim compensation from their insurer if they were negligent in some way (usually where someone is accidentally injured or property has been damaged).

Liability insurance takes many forms. The main types are:

- Public Liability Insurance
- Employer's Liability Insurance
- Products Liability Insurance
- Professional Negligence (also known as Professional Indemnity Insurance)
- Motor Liability Insurance (arising from use of vehicles on the public road)

For more information about the first four forms of insurance, please see Appendix A – Common Types of Liability Insurance

The nature of the work/service to be undertaken will determine which types of liability insurance are required.

#### **INDEMNITY LIMITS**

Under each of the above types of liability insurance cover is usually restricted by a limit (often referred to as the limit of liability or limit of indemnity). This limit of liability/indemnity is the maximum amount that the insurance will cover.

This limit can be expressed either as the limit per event or the limit in aggregate, depending on the terms of the cover.

E.g.1: Employer's Liability insurance with limit of indemnity of £10 million per event will pay up to this amount per claim regardless of how many claims occur in the period of insurance.

E.g.2: Products Liability insurance with an aggregate limit of indemnity of £5 million limit will pay no more than this amount for a claim or series of claims during the period of insurance.

The following indemnity limits are recommended minimums that should be requested however higher limits should be considered depending upon the nature of the work, regardless of the contract price.

#### **LOW VALUE ADMINISTRATIVE CONTRACTS LESS THAN £100,000 IN VALUE**

If the contract is of a low value and is entirely of an administrative nature lower limits could be accepted as follows:

Public Liability Insurance: £2 million per event with no aggregate limit  
Employer's Liability Insurance: £5 million per event.

### **NON ADMINISTRATIVE CONTRACTS OR CONTRACTS OVER £ 100,000 IN VALUE**

The generally recommended minimum indemnity limits are as follows:

Public Liability Insurance: £5 million per event - no aggregate limit.  
Employer's Liability Insurance: £10 million per event.  
Products Liability Insurance\*: £5 million per event and in aggregate.

\*if appropriate to the nature of the contract

### **CONTRACTS INVOLVING WORK OF A HAZARDOUS NATURE**

If work of a hazardous nature is being undertaken then higher limits for Public Liability insurance should be considered, regardless of the contract value, as follows:

Public Liability Insurance: £10 million per event - no aggregate limit.

Examples of hazardous work include where hot work is involved, electrical or mechanical work, pile driving, removing or weakening of support, ground reclamation, underground services or demolition, work on bridges etc.

Eg: A contractor with Public Liability insurance with a limit of indemnity of £2 million accidentally sets fire to a building using a blow torch where the building is worth £5 million clearly isn't in the Council's interest!

### **MOTOR VEHICLES INDEMNITY LIMITS**

Where a company is using motor vehicles to carry out the service the following limits should be requested:

Bodily injury to third parties: Unlimited  
Third party property damage: £5 million.

### **PROFESSIONAL INDEMNITY INSURANCE WHERE APPROPRIATE AND SETTING INDEMNITY LIMITS**

As stated in Appendix 1, Professional Indemnity insurance would only be required if the company was providing professional advice, design or specification as part of its services to Cumberland Council where errors or omission could lead to losses to the Cumberland Council.

In setting a limit of indemnity managers should undertake a basic risk assessment in each case, asking what could go wrong should the company fail to meet their professional obligations and then build an insurance requirement around the potential outcome.

Whilst doing this it should be kept in mind that the Council is relying on the professional competence of the company to deliver agreed services:

- if they fail to deliver, either completely or in part, the Council would incur financial loss in making alternative arrangements and/or re-letting the contract. PI cover therefore, provides a degree of comfort against 'mismanagement' by the service provider.
- there are also specific operational risks where negligent acts, errors or omissions on the service provider's part could give rise to civil liability claims which do not involve third party bodily injury or property damage e.g. failure to identify, incorrect or inadequate assessments, providing

erroneous advice etc.

The limit of indemnity under Professional Indemnity insurance is usually expressed as an aggregate limit in each period of insurance.

### **DURATION OF PROFESSIONAL INDEMNITY INSURANCE**

Due to the way claims are met under the insurance. The Professional Indemnity insurance should be maintained for a set period after the completion of the contract and this condition needs to be built into the contract.

#### **Construction Services**

For contracts associated construction (e.g. architect, building surveyors, etc) the contract should stipulate that the insurance cover should be renewed for 12 years after completion of the service.

#### **Non-construction Services**

For non-construction services the contract should stipulate that the insurance cover should be renewed for 6 years after completion of the service.

### **OTHER FACTORS TO CONSIDER**

Indemnity limits should be based on the potential risk and not the value of the contract. A relatively small contract could potentially result in a large loss.

An indemnity needs to be provided to the Council either specifically or via a general Indemnity to Principals' clause in the policy document.

Some contractors insurance may have large deductible (excess) and consideration has to be given to how claims under the deductible will be funded. Is the contractor able to afford to finance claims below the deductible?

Care needs to be taken to ensure that contractor's insurance policy applies to the full range of services being delivered to the Council and that there no exclusion clauses or other policy conditions or restrictions which could render cover inoperative.

Please refer to the Council's Insurance officer in the event of doubt.

Martin Harrison  
Principal Finance Officer – Insurance  
December 2011

## **APPENDIX A - COMMON TYPES OF LIABILITY INSURANCE**

### **Employers Liability (EL) Insurance**

This type of insurance indemnifies a company against compensation claims from its own employees who are injured during the course of their employment with the company.

E.g. An employee injures their back whilst lifting heavy items at work.

This insurance is compulsory by law, under the Employers Liability Compulsory Insurance Act, to any business which employs staff however there are a few exemptions.

### **Public Liability (PL) Insurance**

This type of insurance indemnifies the policyholder against compensation claims from members of the public (or other third parties) who are accidentally injured or whose property is accidentally damaged from their activities

E.g.1 - A visitor slips and injures themselves on a wet floor which was in the process of being cleaned by contractors.

E.g.2. - A painter/decorator contractor accidentally sets fire to a client's premises whilst using a blow torch.

### **Products Liability Insurance**

This type of insurance indemnifies the policyholder against compensation claims from anyone who is injured from a product that they have manufactured, distributed, supplied or sold.

E.g. A retailer sells a defective ladder that someone uses and is injured as a result of the defect.

This type of insurance is sometimes included within Public Liability insurance.

### **Professional Negligence Insurance (also know as Professional Indemnity Insurance)**

This form of insurance indemnifies the policyholder against compensation claims from third parties (individuals, companies, etc.) who have incurred some form of financial loss as a result of acting upon an error or omission in advice, design or specification that they have provided.

E.g. An error in plans drawn up by an architect which lead to a defect in a building that costs additional expenditure in order to rectify.

All contractors will say they provide a professional service, however, not all will be expected to have Professional Negligence Insurance. Generally, only entities that provide advice, design or specification for a fee such as Architects, Surveyors, Consultants, etc. would require this type of insurance.

## **Appendix 4 - Manager's checklist if not using an approved provider**

The Council currently has a contract with Randstad to provide EPW's. By going through Randstad the Council's get:

- Competitive rates
- No introductory fees (some can be as much as 30% of the starting salary)

Managers will send Randstad details of the post they are trying to fill and a brief description of the skills they are looking for. Under the contract regulations Randstad must be given a minimum of **48 hours** to send through appropriate candidates. **If candidates are not suitable managers will have to give reasons why they are not suitable to Randstad so they can feedback to candidates.**

If managers are approached directly by individuals looking for work they should be told that they should sign up with Randstad. They can then be included in the next appropriate candidate pool.

**As Ranstad are the contracted supplier, all hiring managers MUST go through Randstad first. If Randstad are unable to supply CVs, you need to contact Nicola Bell in CPCM before approaching 'off contract' suppliers.**

If a manager then decides to approach non-contract organisations it is the **managers responsibility** to:-

1. Follow the correct procurement processes. Contact procurement if necessary.
2. Negotiate prices – in line with EPW contract amounts. The amount paid to the agency should not be more than permanent post holder’s salary plus 30%. Accommodation and home to Cumbria travel will not be paid. Normal business mileage will be paid at the COUNCIL rates.
3. Negotiate so that finders fees are not payable if a permanent contract is offered to the individual.
4. Send the contract with the agency to legal services so that it can be checked.
5. Ensure individuals details have been checked as per the lists below.
6. Ensure individuals have read and signed the code of conduct.
7. Ensure the appropriate induction and training has been carried out.
8. Raise a ticket using the HR Admin team portal to provide details for iTrent and e-proc. Ensure that a purchase order has been raised for the engagement.

**To be completed by the Manager:-**

Worker Name			
Worker Checks	Checked by Manager Detail Provided		
CV			
Copy of Registration Form (signed & dated by Candidate)			
Has the candidate previously worked for the council? Did they take VR/CR? If the did then please check that they can be engaged with the Senior Manager – HR/OD			
Has the candidate declared any criminal convictions			
National Insurance Number			
Proof of National Insurance Number – NI card or official document showing number			
Proof of Eligibility to Work in the UK			
Visa Type (if applicable)			
Visa Expiry Date (if applicable)			
Proof of Identity			
Proof of Address			
Copy of (verified) Qualification (if applicable)			
Copy of Professional registration (if applicable)			
Personal/ Business interests. Individual to read and sign the code of conduct. See below			
Insurances documentation checked			

References	Enclosed
2 per candidate For Care / Nursing Roles – Proof of 5 years references	

Enhanced DBS Check – for Care / Teaching posts	Details		
DBS Level Required:- Please check the post requirements on iTrent. Please tick one box only	Adults	Children's	Both
Standard			
Enhanced			
Enhanced with barred list check			
'Employer' (Name of agency requesting the check)			
Disclosure Number			
Date of Issue			
Does the DBS provide any disclosures?			

Nursing Pin	Enclosed / Details
NMC Pin Number	N/A
Proof of NMC Online Check *	Yes / No
Expiry Date	N/A

IR35 – Intermediaries Tax Assessment	Enclosed / Details
<p><b>All engagements must be individually assessed for the IR status.</b></p> <ul style="list-style-type: none"> <li>• Please access the HMRC website and answer the questions.</li> <li>• <b>Check employment status for tax - GOV.UK (<a href="https://www.gov.uk">www.gov.uk</a>)</b> <a href="https://www.gov.uk/guidance/check-employment-status-for-tax">https://www.gov.uk/guidance/check-employment-status-for-tax</a></li> <li>• Please retain a copy of the results and attach it to the HR Admin team portal ticket.</li> <li>• Complete a copy of the Status Determination Statement (appendix7) and attach it to the HR Admin team portal ticket.</li> </ul>	
Date of assessment	
IR35 status assessment result	IR35 applies / IR35 does not apply *

Training records	Training	Expiry date
Induction		
ICT security training		
Manual Handling		
First Aid		
Medication		
Infection Control		
Food Hygiene		

Nutrition		
Safeguarding		
Record Keeping & Confidentiality		
Health & Safety		
Fire Awareness		

## Personal or business interests – Code of Conduct

To be read and signed by all EPW's

The Council has a code of conduct which all EPW's must comply with whilst engaged by the Council:-

- You must not use any confidential information obtained in the course of your work for personal gain or benefit; nor should you pass it on to others who might use it in such a way.
- All relationships of a business or personal nature with external contractors, potential contractors or suppliers must be declared to the appropriate manager. Orders and contracts must be awarded on merit, by fair competition and in accordance with the **Contracts Procedure Rules**, and no special favour should be shown to businesses run by, for example, friends, partners or relatives.
- You should not allow duties you undertake as an EPW and private interests to conflict. EPW's should not take up any outside employment or appointment which conflicts with the Council's interests whilst engaged by the Council.

I confirm that I will comply with the council's code of conduct for EPW's

Signed		Date	
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## Appendix 5 - IR35 Status determination statement

Date: 2021  
Our reference:

Dear [ ]

### Status determination for IR35 purposes

For the purposes of [your ongoing role as [details of individual's role] / the project you are working on for us from [date] until [date] ], we made the following determination of your status on [date].

We have assessed that, for tax purposes, your engagement with us falls "outside IR35". In other words, we have decided that you are an independent, self-employed contractor and we will pay your fees in full, without deducting tax and national insurance contributions (NICs) from payments made to you.

[OR

We have assessed that, for tax purposes, your engagement with us falls "inside IR35". In other words, we have decided that you would have employee status if engaged directly by us, meaning that we are responsible for deducting tax and national insurance contributions (NICs) from payments we make to you and paying these deductions to HM Revenue & Customs (HMRC).]

### Reasons for this status determination

We reached this determination using HM Revenue & Customs' (HMRC's) online CEST tool at [www.gov.uk/guidance/check-employment-status-for-tax](https://www.gov.uk/guidance/check-employment-status-for-tax).

A copy of [the report](#) that we generated via the CEST tool is attached for your records. HMRC has said that it "will stand by this result as long as it reflects the actual or expected working practices".

### If you disagree with this status determination

You can appeal against our status determination at any time, as long as we receive the representations for your appeal before the final payment is made in relation to your engagement. Your written appeal should set out clearly the reasons why you disagree with our determination, which could include why you believe that:

- our original conclusion is incorrect for the whole period of your engagement; or
- the contractual terms and/or working practices have changed over time.

If you wish to appeal, please do so in writing to Senior Manager, HR/OD at the above address.

We will consider your appeal and contact you if we have any queries, or need clarification, about your representations. We will respond within 45 days of receipt of your appeal.

### Queries or concerns

If you have any queries or concerns, please do not hesitate to contact Kate Yardley, Senior Advisor – Pay and Reward, HR/OD at the above address.

Yours sincerely

Manager