

# The Essential Guide to Directors Liability Insurance



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## Introduction

**This guide has been designed to provide an overview of Directors Liability Insurance and to help you make an informed decision about the potential risks you personally face as a director and your need for insurance protection.**

Whilst every business is different they all face a similar litigation and regulatory landscape. One that is only likely to become more onerous in the coming years.

As a company director you face potentially unlimited personal liabilities and consideration as to how you insulate your personal wealth from these is vital.

### Topics Covered

- What is Directors Liability Insurance?
- Who buys it and why?
- What type of policies are available?
- What does the policy cover?
- What does it cost?
- Common Myths
- Claims Examples



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## What is Directors Liability Insurance?

**Most company's Articles of Association undertake to protect their directors, should they be investigated or sued, for the way in which they ran the company's affairs. Directors Liability Insurance provides the company with the financial support to do this.**

Without insurance protection a company is left to fund a director's defence from its own resources. If the company is unable to do this then the director is left to pick up the cost from personal resources.

Directors Liability Insurance is a legal defence insurance policy that provides a company with the financial assistance to fund the defence of its directors and some managers.

It can also provide some cover for the company itself if it is named in certain types of litigation or investigation.



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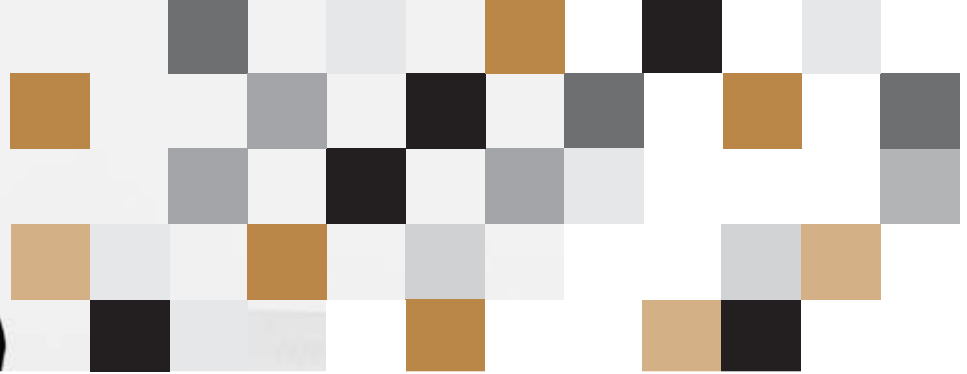
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## Who buys it and why?

**Nearly all Plc companies buy Directors Liability Insurance protection because it helps them recruit the best board members and it safeguards shareholder value. It is an accepted element of good corporate governance.**

Insurance industry research tells us that as company size reduces so does the take up for this form of insurance. This is something of an inverted approach because small companies are less likely to be able to fund their director's defence costs in the event of legal action or investigation.

Running a business is complex and regulations are constantly evolving. It is difficult to keep pace with changes. Even decisions made with the best intentions can come under scrutiny and litigation is on the increase.

Moreover, any legal action or investigation needs to be responded to and proving innocence can be a very costly business. The bulk of claims costs are incurred in legal defence fees, which without the insurance backing, would need to be borne by the company or the director.



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## What types of policy are available?

### There are two forms of cover available: Corporate and Individual.

**Corporate cover** is a group policy in the name of the organisation that protects all directors and certain other employees. Directors do not need to be named. Qualifying subsidiaries and associated companies can also be included within the same policy to streamline cover and control costs. Corporate cover acts as a **first line of defence** in that it sits in front of the company's assets to fund the directors' defence and meet the costs of awards, damages and settlements.

**Individual cover** is a personal policy in the name of the director that protects only them (and potentially their spouse or estate). Each company or organisation for which cover is required is named on the policy and cover can be arranged for multiple directorship positions on a single policy.

Individual cover acts as a **last line of defence** because it can only be called upon after corporate assistance (including any insurance) has been exhausted. This means that the company must be unable, or possibly unwilling, to defend the director.

**We recommend that corporate cover should be the first layer of protection arranged. Individual cover can act as a top-up to provide the ultimate in peace of mind.**

There are circumstances where corporate cover is unavailable so the value of individual cover is accentuated. However, it will still only come in to play once corporate assistance has been exhausted.



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## What does the policy cover?

**Directors Liability Insurance cover provides the funds to defend proceedings (including extradition proceedings) and investigations.**

It also meets the costs of awards, damages and settlements incurred.

An action or investigation must allege some form of wrongful or criminal act or omissions by a director in their role.

The policy also protects directors by paying legal representation fees for formal investigative inquiries into their conduct by governmental and regulatory bodies. Some things such as fines are not covered by the policy.

Actions and investigations can come from a variety of sources. The most common being:

- Shareholders & other Stakeholders
- Customers & Suppliers
- Creditors & Financiers
- Employees
- Regulators Eg. HSE, OFT, HMRC, FSA, Trading Standards



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## What does it cost?

**Corporate policies providing £1m of cover start from as little as £530 per annum. This is for an established business showing a profit or positive net worth.**

All types of organisations including LLP's, charities and not for profit can be catered for. The most important underwriting factors that will affect the availability of cover and the price are:

- The company's age and recent financial health
- The company's business activities
- The geographical locations in which the company has assets.

In addition to providing cover for the directors, the policy can be extended to provide cover for the entity itself. We are seeing a growing number of regulatory actions in areas such as corporate manslaughter, data security and anti-bribery.

Cover can also be extended to encompass other management liability exposures, such as employment practices, company pensions and other employee benefit plans, crime, employee kidnap and extortion.

To obtain a quotation please contact us on **0800 015 1533** or email your company registration number to **quantum@quantumplc.com**

**Individual policies** start from **less than £30 per month** for £1m of cover. Full details can be found and cover can be applied for here **www.quantumplc.com/idli**



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## Common Myths

### Do you recognise any of these?

**I have limited liability!... No you don't!** Just because the company is Limited it doesn't mean that your liability is. There is no limit on the liability you can incur for things such as negligence. It's not just the awards and damages too, legal defence costs can run in to hundreds of thousands of pounds. It can cost a great deal of money to prove your innocence! Who will meet those costs?

### The company will defend me!... Are you sure?

Having an undertaking in the company's Articles of Association or a clause in your Director's Service Agreement (or both) is prudent but what if the company doesn't have the resources to fund your defence when the summons arrives. You could easily face the bill yourself.

**We're only a small company!... So what!** A company's size bears no relation to the kind of problems you can encounter. Moreover, a small company is much more likely to struggle to meet the costs of your defence. Who will meet the costs if the company cannot?

**I don't work for the company any more!... It doesn't matter!** Just because you no longer work at the company doesn't mean you are no longer responsible for the way it was run when you were there. Actions can take several years to materialise so resigning is no defence. Also, how likely is the company to utilise it's own resources to defend you once you have left?



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## Common Myths

### **As a Non-Executive I can't be found liable!...**

**Maybe!** There have now been several cases that have ruled a non-exec was behaving as a de-facto director. If you are named in an action then it will need defending and who will bear the cost of that?

### **We don't need cover because we're a Charity or Trust!... Wrong!**

The organisation type has no relevance. Directors, Officers and Trustees of all forms of entity carry onerous duties and can be sued or investigated in to the way in which the organisation was managed. Do you really want the Charity or Trust using it's limited resources to mount a legal defence?

### **Our legal expenses insurance policy will cover us!...**

**Only if it thinks it can win!** Nearly all legal expenses insurance policies contain what is known as a 'prospects clause'. This means that they will only respond if the insurer feels they have an 'odds-on' chance of winning. What if they don't?

**Insurance cover is expensive!... Not necessarily!** A corporate policy which would protect all directors and many senior employees on an 'umbrella' basis starts at £530 a year for £1m of defence and awards cover. Getting a quotation is easy, the paperwork is minimal and immediate cover is available.



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## Claims Examples

**Below are a small number of actions where the defence and awards costs were covered by a Directors Liability Policy.**

**Health & Safety:** A driver has a serious accident whilst using a mobile phone in his company vehicle. The operations manager was held responsible for not ensuring his employees were following the proper procedures for mobile phone use.

**Mergers & Acquisitions:** Following takeover the acquired company's shareholders commenced legal action against the former directors alleging they were misled about the terms of the acquisition.

**Wrongful Trading:** A creditor pursued three company directors alleging that they continued to take materials on credit knowing full well that the company could no longer meet its obligations and receivership was imminent.

**Negligence:** A Financial Director was asked by the board to exercise a break clause on a property surplus to requirements. He failed to action this instruction leaving the property on rent for a further five years at a cost of £400,000.



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**Health & Safety:** Breaches of Health and Safety procedures resulted in an employee death. Several directors were prosecuted for unlawful killing by gross negligence.

**Trading Standards:** The directors of a manufacturing company were pursued for stamping safety glass that had not passed the necessary testing procedure.

**Health & Safety:** A fleet manager was prosecuted by the Crown Prosecution Service following injury caused by an accident involving a known un-roadworthy vehicle.

**Negligence:** A director failed to arrange death in service cover resulting in a corporate loss of £50,000.

**Employment Practices:** An employee takes action against a supervisor for harassment following receipt of Emails containing pornographic images. The directors were alleged to have not managed the supervisor effectively.



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