

Employment Practices Insurance

Insurance Protection for Employment Tribunal Costs and Awards

Certificate of Insurance

THE BASIS OF THIS CONTRACT

In return for the payment of the Premium specified in the Schedule and based on any information which the Insured, or anyone acting on their behalf, may have provided to the Coverholder or to the Insurer, the Insured will be indemnified on the terms and conditions contained in this Certificate of Insurance.

The Insured must provide all material information to the Insurer and has a duty to continue to provide any material information that may arise during the Period of Insurance.

This Certificate has been issued by the Coverholder on the authority of the Insurer:

Date Issued: [insert date]

THE SCHEDULE

Certificate Number: A/2005/[client reference number]

Coverholder: Ashfords

Address: Ashford House Grenadier Road Exeter EX1 3LH

Insured: [the Proposer]

Period of Insurance: 12 months from [date]

Limit of Indemnity: £100,000 for any one Claim but limited to £1,000,000 in the aggregate in respect of Claims accepted and consented to by the Insurer during the Period of Insurance.

Excess: [Nil or as per agreement]

Co-insurance: None

Professional Representative: The Coverholder

Premium: £[amount]

IPT: £[amount]

Total Payable: £[amount]

THE THINGS YOU ARE INSURED FOR (“the Insuring Clause”)

The Insured will be indemnified, up to the Limit of Indemnity specified in the Schedule, for:

Awards of Compensation and Professional Expenses incurred after an Employment Tribunal complaint is made against the Insured by an Employee or Worker in respect of an Insured Business Activity, including, with the Insurer's prior consent, the Professional Expenses which may be incurred in bringing an appeal or in responding to and/or defending an appeal made by an Employee or Worker in the Employment Appeals Tribunal or an appeal by way of review in the Employment Tribunal, brought within the Territorial Limits which arises out of or relates to the Employee or Worker's work relationship or prospective work relationship with the Insured provided that such a complaint is filed with the Employment Tribunal and notified to the Insurer during the Period of Insurance and provided such indemnity is not otherwise excluded under this contract

And Provided that:

a) the Insured has at the earliest opportunity fully informed and taken full advice from the Professional Representative in any of the following circumstances:

- (i) before taking any action in relation to an Employee which could lead to dismissal; or
- (ii) the selection of an employee for redundancy; or
- (iii) proposing or effecting (whether or not intentionally) changes to an Employee's terms or conditions of employment; or
- (iv) when the Insured becomes aware of any event or circumstance regarding any form of unlawful discrimination, victimisation or harassment; or
- (v) when the Insured becomes aware of any matter or circumstance which could give rise to a complaint by an Employee of constructive dismissal (which may include but is not limited to situations where: an Employee simply leaves the workplace without giving notice; or an Employee raises a grievance); or
- (vi) when the Insured becomes aware that an Employee is able to make or has made a qualifying disclosure within the meaning of the Public Interest Disclosure Act, 1998; or
- (vii) in any other situations or circumstances where the Insured knows or ought reasonably to know that an Employee or Worker may have a ground of complaint against the Insured arising out of or in connection with his or her employment or working relationship with the insured

and to keep fully informed and continue to take advice from the Professional Representative as matters concerning the circumstance in question progress. If there are any points of the advice in respect of which the Insured is unclear, it is the Insured's obligation immediately to ask the Professional Representative to provide a further explanation;

and

b) the Insurer is satisfied that the Insured acted in accordance with and with due diligence upon the advice of the Professional Representative,

and

c) the Insurer is satisfied that the Insured fully and properly informed the Professional Representative and has acted properly and reasonably at all times in respect of the employment circumstance or issue in question in order to mitigate the risk that the Employee or Worker may make a complaint to an Employment Tribunal

and

d) in the Insurer's reasonable opinion, taking the Professional Representative's view

fully into account, they are satisfied that there are reasonable prospects the Insured will be able to successfully defend or resist the Employment Tribunal complaint or complaints that have been made.

Advice given by the Professional Representative will be recorded and the Insured hereby agrees that the Insurer may obtain and consider copies of such recordings in the event of a Claim and the Insured hereby waives any privilege, which may attach to such information and documentation in favour only of the Insurer. In the event that the Insured makes a Claim under this insurance contract the Insurer may check that advice has been taken from the Professional Representative, the dates upon which advice was obtained, that the advice has been properly followed and that the Insured has acted reasonably and in accordance with the terms and conditions of this contract at all times. In the event that any of these requirements have not been complied with the Insurer's consent to a Claim will not be granted.

THE THINGS YOU ARE NOT INSURED FOR

This insurance shall not provide indemnity for any:

1. Professional Expenses incurred and/or Awards of Compensation paid or for which liability is accepted before the acceptance of and consent to a Claim by the Insurer.
2. Any Employment Tribunal complaint relating to any employment issue, circumstance or event of which the Insured was aware, or ought reasonably have been aware, prior to inception of this insurance contract.
3. Any Employment Tribunal complaint or legal proceedings arising as a consequence of the Insured's failure to act reasonably or to take all reasonable steps to avoid or prevent any such complaint or legal proceedings or where the Insured has not acted in accordance with or with due diligence on the advice of the Professional Representative.
4. Awards of Compensation comprising:
 - Fines
 - Penalties
 - Additional Awards
 - Special Awards
 - Protective Awards
 - Interim Relief (save where incorporated into a final award of compensation)
 - Aggravated Damages
 - Punitive Damages
 - Exemplary Damages
 - Arrears of pay or award of damages awarded under the Equal Pay Act
 - Compensation awarded because of the Insured's failure to:
 - comply with Employment Tribunal Orders for reinstatement or re-engagement
 - pay wages or other monies properly and lawfully due to an Employee or Worker
 - to pay the National Minimum Wage
 - comply with the provisions of the Working Time Directive
 - allow an Employee to be accompanied at a disciplinary or grievance hearing
5. Any Employment Tribunal complaint or legal proceedings where in the opinion of the Insurer or the Professional Representative it is not reasonable or proportionate to consent to a Claim given the sum in dispute.

6. Any Employment Tribunal complaint or legal proceedings where the Insured has not co-operated sufficiently, fully and truthfully with the Insurer or the Professional Representative in order that any such complaint or legal proceedings may be properly defended and/or where the Insured fails to give instructions to the Professional Representative in a timely and prompt manner and/or where the Insured fails to act upon the advice of the Professional Representative and/or where the Insured is responsible for any delay which may prejudice the prospects of success of the defence or settlement of a complaint.
7. Any Employment Tribunal complaint or complaints where, in the Insurer's reasonable opinion (taking full account of the views of the Professional Representative), the defence or resistance of such complaint or complaints does not have a reasonable prospect of being successfully defended or resisted by the Insured either before or at any time during the course of proceedings.
8. Any settlement monies in respect of any settlement agreed between the Insured and an Employee, or prospective or Ex-employee or Worker before a complaint is filed with the Employment Tribunal.
9. Any Employment Tribunal complaint made by an Employee, or prospective or Ex-employee or Worker who is or was not employed or prospectively employed or working in the Insured Business Activity.
10. Any failure by the Insured to comply with the obligations set out in this contract of insurance.

CLAIMS CONDITIONS

In the event that the Insured receives notification that an Employee, or prospective or Ex-employee or Worker has made a complaint to an Employment Tribunal or Employment Appeals Tribunal, the Insured must immediately and without any delay whatsoever notify the Professional Representative and send to the Professional Representative full written details concerning the complaint and/or employment issue in question together with a copy of the Employment Tribunal application.

Initial notification to the Insurer of a Claim must be made by the Insured or the Professional Representative and a claim form must be submitted to the Insurer promptly together with all relevant supporting documentation and any other information requested must also be sent to the Insurer.

The Insured or the Professional Representative must in any event advise the Insurer in writing, as soon as the Insured or the Professional Representative becomes aware of an Employment Tribunal complaint against the Insured.

Failure to notify a Claim to the Insurer or to the Professional Representative during the Period of Insurance will lead to the Claim being rejected.

Professional Expenses and Awards of Compensation will only be covered under this insurance with the Insurer's prior written consent. Consent will be granted promptly provided that the Insurer is satisfied that the Insured has acted fully in accordance with the terms and conditions of this insurance.

Before granting consent, the Insurer must be satisfied that the Insured took advice (where deemed appropriate by the Insurer) from the Professional Representative in respect of the employment issue in question and has followed the advice with due diligence, that it is reasonable and proportionate to incur Professional Expenses in the circumstances and that the Insured has otherwise acted in accordance with the terms and conditions of this contract of insurance.

The Insurer must also be satisfied that there are reasonable prospects of the Insured successfully defending or resisting the Employment Tribunal complaint or complaints made against the Insured. The Insurer will take the Professional Representative's opinion into account when determining prospects of success and the Insurer reserves the right to refer the matter to legal counsel for further consideration.

A Claim will only be accepted and consented to by the Insurer if it is made after the Insured receives notification that an Employment Tribunal complaint has been made against the Insured, that such complaint is made to an Employment Tribunal and the circumstances relating to it arose during the Period of Insurance.

When consent is given the Insurer will also state the amount of Professional Expenses that the Insurer has consented to incur. If this amount is exceeded without the Insurer's prior written consent any such additional amount may not be covered under this insurance.

In the event the Insured proceeds to defend or resist any Employment Tribunal complaint to which the Insurer has not consented because the Insurer is not satisfied that the Insured will successfully defend or resist the complaint but the Insured is subsequently successful in such defence or resistance, the Insurer reserves the right in its sole discretion to indemnify the Insured as if Insurer's consent had been given subject to the terms and conditions of this insurance contract.

The Insurer's consent will be withdrawn and indemnity denied in the event of facts becoming known which would mean that a particular Claim would not have been accepted and consented to under the terms and conditions of this insurance. If the Insured or the Professional Representative acting on the Insured's behalf makes a fraudulent or false claim or request for payment, this insurance contract shall become void, any premiums shall be forfeited and any monies paid out under this contract of Insurance shall be recoverable from the Insured by the Insurer as a debt.

This insurance has been provided to the Insured by the Insurer based upon the Insured's agreement to use the Professional Representative. The Professional Representative and the Insured must provide the Insurer with any information, documentation and co-operation that the Insurer requires whether or not it is privileged.

The Insured must at all times use its best endeavours and take reasonable steps to minimise the cost and effect of any Claim under this insurance. The Insurer will not indemnify any element of a Claim where those elements have been incurred as a result of the unreasonable or negligent actions by the Insured or the failure by the Insured to follow requests made of the Insured. Insurers will not consent to any Claim where the Insured has not co-operated fully and truthfully with the Insurer or the Professional Representative and/or where the Insured fails to give instructions to the Professional Representative in a timely manner, or fails to act upon instructions or is responsible for any delay which the Insurer may reasonably consider would prejudice the prospects of success in the defence or settlement of a Claim.

The Insured or the Professional Representative on behalf of the insured must inform the Insurer in writing as soon as an offer to settle a claim or legal proceedings is received or prior to any offer of settlement being made. In any settlement proposals the Insured must have regard to the proportionality of Professional Expenses incurred or likely to be incurred in respect of the Employment Tribunal complaint in question and the prospect of recovery thereof.

Under no circumstances must the Insured enter into any agreement to settle without the Insurer's prior consent which will not be unreasonably withheld. If the Insured rejects an offer of settlement, which the Insurer or the Professional Representative deems to be reasonable, no further indemnity will be provided in respect of the Employment Tribunal complaint in question beyond that which would have been provided had the offer been accepted.

The Insurer will normally pay the Professional Representative's bills for Professional Expenses direct to the Professional Representative within 30 days of the date of the invoice, provided the Insurer is satisfied that the charges are reasonable and have been properly incurred. If requested by the Insurer, the Insured must have the bill of costs submitted for assessment or request a remuneration certificate. The Insurer will only make such a request if it reasonably considers that the invoice in question has been incorrectly or unreasonably calculated.

The Insured and the Professional Representative must take all reasonable steps where appropriate to recover Professional Expenses or other costs from opposing and/or any third parties. Any such recovery must immediately be paid to the Insurer. The Insured must not waive any right to make recovery of Professional Expenses or other costs from opposing and/or other third parties without the Insurer's consent.

The Insurer reserves the right to terminate Cover in respect of a Claim if in the reasonable opinion of the Insurer the prospects of the Insured successfully defending the Claim cease to be reasonable. In that event the Insurer will indemnify the Insured for those costs incurred up to the date on which Cover is terminated.

GENERAL CONDITIONS

1. Condition Precedent

The due observance of and compliance with the terms, provisions, exclusions and conditions of this Certificate insofar as they relate to anything to be done or complied with by the Insured, the Coverholder or the Professional Representative, shall be conditions precedent to any liability of this insurance to make any payment under this Certificate.

2. Cancellation

The Insurer or the Insured may cancel this insurance by giving 30 days written notice to the Coverholder. The premium shall be adjusted on the basis of the Insurer receiving or retaining pro-rata premium save that there will be no refund of premium if the Insured, the Coverholder or the Professional Representative has notified a Claim during the Period of Insurance.

3. Disputes

In the event of any dispute between the Insured and the Insurer which cannot be resolved with the assistance of the Coverholder then both parties shall agree to the appointment of a suitably qualified arbitrator to decide the matter in accordance with the **Arbitration Act 1996**. If there is no agreement on an arbitrator an appropriately qualified person shall be appointed by the President of the Chartered Institute of Arbitrators. The arbitrator shall have the power to apportion costs. The Insured's costs in preparation for and representation at meetings with the arbitrator shall not be recoverable under this Certificate.

4. Appeals and Rights of Subrogation

In the event of Insurers becoming liable to make any payment under this Certificate:

- a) Insurers shall be subrogated to all the Insured's rights or causes of action related to or arising out of any legal action against any other party and the Insured will provide the Insurer with all assistance which may be required to pursue these rights, and

- b) Insurers shall have the right to require the Insured to pursue an appeal against any decision of the Employment Tribunal and the Insured will provide the Insurer with all assistance that may be required. If the Insured unreasonably fails to provide such assistance then the Insurer shall be entitled to make a recovery against the Insured of any monies paid by the Insurer under this contract of insurance.

5. Contracts (Rights of Third Parties) Act 1999

Any person or entity who is not a party to this contract at the inception of this insurance has no right under the **Contracts (Rights of Third Parties) Act 1999** and as amended, to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available other than by virtue of the Act.

6. Ownership of the Insured

If the ownership of the Insured changes so that it can be controlled by a party or entity that was not a party disclosed in the original Application Form provided to the Insurer then the Insured must immediately advise the Insurer of any such change. The Insurer may cancel or amend the terms of this insurance if such change is deemed by the Insurer to be material.

7. Insolvency of the Insured

If the Insured becomes insolvent during the course of any claim or legal proceedings to which the Insurer has consented under this contract of insurance, then the Insurer shall reserve the right to withdraw consent. The Insured shall be deemed to be insolvent upon the appointment of an office holder within the meaning given by Section 233(1) or 372(1) of the Insolvency Act 1986 or where the Insured enters into any voluntary arrangement with his creditors.

8. Jurisdiction and Applicable Law

The interpretation or application of this insurance, or any of the terms, conditions and exclusions, will be subject to the laws of England and the exclusive jurisdiction of the courts of England and Wales.

9. Disclosure of the existence of this Certificate

The Insured must not reveal the existence of this insurance unless the Insurer provides written consent to do so or unless ordered to do so by a Tribunal or Court.

10. Insured's records

In the case of a corporate Insured, records and books of account must be kept in accordance with the Company Acts.

COMMUNICATIONS

All notices and communications to the Insured shall be deemed to have been received if posted to the Insured or the Professional Representative at their notified addresses.

All notices and communications to the Insurers shall be deemed to have been received if posted to the Employment Claims Department at the Insurer's address shown below.

THE DEFINITION OF WORDS USED IN THIS CONTRACT

Awards of Compensation

Basic Awards, Compensatory Awards and awards of compensation made against the Insured by an Employment Tribunal or monies in settlement thereof provided the Insurer's prior written consent and approval has been obtained to make such settlement whether or not within the context of ACAS conciliation proceedings provided that any such settlement must be recorded by way of an ACAS cot 3 agreement or by way of a compromise agreement within the meaning of section 203 of the Employment Rights Act 1996. This insurance contract shall not provide indemnity for:

- Fines
- Penalties
- Additional Awards
- Special Awards
- Protective Awards
- Interim Relief (save where incorporated into a final award of compensation)
- Aggravated Damages
- Punitive Damages
- Exemplary Damages
- Arrears of pay or award of damages awarded under the Equal Pay Act
- Compensation awarded because of the Insured's failure to:
 - comply with Employment Tribunal Orders for reinstatement or re-engagement
 - pay wages or other monies properly and lawfully due to an Employee or Worker
 - to pay the National Minimum Wage
 - comply with the provisions of the Working Time Directive
 - allow an Employee to be accompanied at a disciplinary or grievance hearing

Claim

A request by the Insured made under the terms of this Insurance for indemnity of Professional Expenses and/or Awards of Compensation. Any Employment Tribunal complaint or series of such complaints arising out of the same events, causes, circumstances or employment issues shall be regarded as one Claim for the purposes of the Limit of Indemnity and any Excess which may be applicable.

Coverholder

The legal entity named in the Schedule who arranges this insurance on the Insured's behalf.

Employee

A person under an apprenticeship or contract of service with the Insured or a person who is undergoing training under any approved training scheme with the Insured or an ex employee or a prospective employee.

Excess

The amount specified in the Schedule, if any, that must be borne first by the Insured in respect of any Claim at their own risk. The Insurer's liability shall only be in excess of this amount.

Insured

The company (and any subsidiaries declared in the Application Form), firm, partnership, association or individual named in the Schedule and insured under this contract of insurance.

Insurers may, if requested by the Insured, also provide indemnity under this Insurance to benefit any partner, director or employee of the Insured provided such partner, director or employee agrees to observe all the terms and conditions of this Insurance and provided that the Claim arises directly from the Insured Business Activity and the Insured is a party to the same Employment Tribunal complaint in respect of which indemnity is sought.

Insured Business Activity

The Insured's business activity or activities disclosed to the Insurer in the Proposal and Referral Form prior to the inception of this insurance contract.

Insurer

Temple Legal Protection Limited, a specialist underwriting agency with authority to underwrite and manage this insurance on behalf of the Europ Assistance Insurance Limited.

Limit of Indemnity

The limit referred to in the Schedule, which shall be the maximum liability under this Certificate in respect of:

1. any Claim to which the Insurer grants consent
2. the aggregate limit for all Claims consented to by the Insurer during the Period of Insurance.

Professional Expenses

Any fees, expenses and other disbursements reasonably incurred by the Professional Representative and any costs incurred by other parties insofar as the Insured is held liable in Employment Tribunal proceedings to pay such costs or becomes liable to pay such costs under a settlement made with another party with Insurers consent in connection with any Claim falling within the Insuring Clause and not exceeding the Limit of Indemnity.

Professional Representative

The Solicitor or other appropriately qualified person or firm specified in the Schedule that has been appointed by the Insured and approved by the Insurer at the inception of this policy to act for the Insured in accordance with the terms of this Certificate.

Territorial Limits

Unless specified to the contrary shall be the United Kingdom but excluding the Isle of Man and the Channel Islands.

Worker

An individual, other than an Employee, who applies to work, works under or worked under a contract of employment or any other contract whereby the individual undertakes to perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual, as defined in Section 230 (3) Employment Rights Act 1996 and as amended.

IMPORTANT NOTES
PLEASE READ CAREFULLY

Taking advice from the Professional Representative

Before you contact the Professional Representative you must have:

- *all relevant details, documents and papers to hand; and*
- *a pen and paper ready to take notes.*

When you discuss any issue with the Professional Representative you must:

- *be truthful and give a full account of the issues involved; and*
- *keep accurate written records, including dates of calls, the name of the advisor to whom you spoke and details of the advice provided.*

COMPLAINTS

Temple aims to provide a first class service. However, if you have any complaint regarding the standard of service that you have received under your policy the following procedure is available to you to resolve the situation:

1. In the first instance, please raise your concerns with Ashfords.
2. If the complaint has not been dealt with to your satisfaction, please then set out your complaint fully in writing to the Managing Director, Temple Legal Protection Limited, Portsmouth House, 1 Portsmouth Road, Guildford, Surrey, GU2 4BL. Please provide us with copies of all relevant documentation. We will aim to deal with your complaint quickly and courteously.
3. If you are not satisfied with the response from Temple, you may write to the Managing Director, Europ Assistance Insurance Limited, Sussex House, Perrymount Road, Haywards Heath, West Sussex, RH16 1DN.
4. Should you remain dissatisfied or fail to receive a final answer from us or Europ Assistance Insurance Limited then you have the right to refer the matter to the Financial Ombudsman Service at: South Quay Plaza, 183 Marsh Wall, London, E14 9SR.

Our complaints procedure will not affect your rights in law.