



## **Professional Indemnity Insurance Certificate Policy Terms & Conditions**

### **Mortgage & Finance Intermediaries**

# **PROFESSIONAL INDEMNITY CERTIFICATE**

## **1 What this Certificate Covers**

Subject to the terms, conditions and exclusions set out below We will indemnify You up to the Limit of Indemnity for

- a) Indemnity that You become legally liable to pay arising from any Claim or Claims made against You
- b) Claims Expenses
- c) Loss of Documents
- d) Data Protection Act Breach
- e) Libel & Slander
- f) Unintentional Breach of Copyright
- g) Court Attendance Costs
- h) Introducing to Debt Managers

Provided in each case that this first occurs and is specifically notified to Us during the Certificate Period

## **2 What You Must Do**

The following are conditions precedent to liability under this Certificate. Cover under Your Certificate will not be available unless these conditions are complied with. Please take careful note of Your obligations

- 2.1 You must notify any Claim or Circumstance to Us immediately and in any event within 28 days provided always that this is within the Certificate Period. Any Circumstance so notified that later results in a Claim will be deemed to have been made within the Certificate Period and subject to the terms, conditions and exclusions of this Certificate
- 2.2 In the event of a Claim or Circumstance that requires Claims Expenses or Indemnity to be paid You must pay the Excess before We will make any payment under this Certificate to You or any other party. We will not accept payment of the Excess by anyone else
- 2.3 You must not admit liability for or settle or make or promise any payment in respect of any Claim or Circumstance or incur any costs and expenses in connection therewith without Our written consent. We are entitled to take over conduct in Your name the defence or settlement of any Claim. In doing so We may conduct the defence and/or settlement as We, in Our discretion think fit. This right will include, but is not limited to the right to commit Your Excess to any settlement and to make admissions in respect of the whole Claim or any part of the Claim
- 2.4 You shall at all times provide Us or Our duly appointed representatives with all such information, co-operation and assistance as We may reasonably require. Insofar as the Claim is subject to the Civil Procedure Rules such assistance will extend, but is not limited to the provision of signed statements as may be required to facilitate compliance with all and any Civil Procedure Rules, practice directions and pre-action protocols that apply. By way of example, and without limitation, Your obligations will include:
  - a) The provision of full and prompt information, instructions, and or assistance to Us or Our duly appointed representatives; and
  - b) The undertaking, by an appropriate representative of a reasonable search for documents required to be disclosed in any litigation, together with the provision of a signed disclosure statement in terms advised by legal representatives appointed by Us; and
  - c) The provision, by an appropriate representative of a signed statement verifying that You believe the facts stated in the defence, statement of case, responses to other parties requests for information or witness statements to be true

### 3. **Definitions**

3.1 **Certificate Period** means the period of cover as shown in the schedule

3.2 **Circumstance** shall mean a specific situation where there is:

- a) An intimation that there may be a Claim against You in the future
- b) Any known direct or indirect criticism or dispute whether expressed or implied relating to Your performance (whether justified or not) which may give rise to third party loss or damage
- c) Any known direct or indirect criticism or dispute whether expressed or implied relating to performance (whether justified or not) of a party for whom and for which You may be responsible which may give rise to third party loss or damage
- d) Any awareness by You of a failing or real doubt about the efficacy of Your performance or of the performance of a party for whom and for which You may be responsible which might give rise to third party loss or damage
- e) Any awareness or suggestion that materials, goods, services or actions specified, designed or recommended by You or by a party for whom and for which You may be responsible have failed to meet the standard required and which may result in some third party loss or damage

Where if a Claim is later made it would be covered under this Certificate

3.3 **Claim/Claims** shall mean any legal proceedings, Letter of Claim or FOS Complaint or series of them (whether by one or more than one Claimant) alleging breach of professional duty in the conduct of Relevant Business arising from or in connection with or attributable to any one act, error, omission or originating cause

3.4 **Claimant** means any natural or corporate person or legal entity capable of bringing legal proceedings or an FOS complaint against You. Where advice is given jointly to no more than two connected individuals then Claimant will mean the two connected individuals collectively provided that this is in relation to the same Transaction

3.5 **Claims Expenses** means the reasonable and necessary legal costs incurred by You with Our consent in the defence of a Claim or investigation of a Circumstance or defence of a Data Protection Act Breach. Claims Expenses do not include any costs incurred by You in assisting and co-operating with Us

3.6 **Court Attendance Costs** means costs up to £10,000 in the event that We or Our legal representatives require You to attend Court as a witness or in any other capacity in connection with a Claim notified to, and to which indemnity is granted, under this Certificate. We agree to indemnify You at the following rates per day for each day or part of a day for which attendance in Court is required:

- (i) for any Partner, Member or Director: £300
- (ii) for any Employee: £150

Which sums shall not be subject to "the Excess". However, We shall only pay such sums to You in the event of the legal action against You not succeeding or the case against You being not proven

3.7 **Data Protection Act Breach** means Claims Expenses up to a limit of £50,000 (which is included within and is not in addition to the Limit of Indemnity) resulting from any prosecution for offences under sections 21(1), 21(2), 22(6) or 47(1) of the Data Protection Act 1998 first brought against You and notified to Us during the Certificate Period which arises from the conduct of Your Relevant Business

3.8 **Excess** means the amount specified in the schedule. A separate Excess will apply for each and every Claim and each and every Claimant and each and every Transaction. We will only be liable for that part of any Claim or Claims Expenses that exceed the Excess:

- a) In relation to a Data Protection Act Breach Excess means £5,000 each and every prosecution
- b) In relation to Loss of Documents Excess means £250 each and every Claim or Claimant
- c) In relation to Libel and Slander Excess means £1,000 each and every Claim or Claimant
- d) In relation to Unintentional Breach of Copyright Excess means £1,000 each and every Claim or Claimant
- e) In relation to Commercial Mortgages, Bridging Loans, Secured Loans and Commercial Insurance Excess means £2,500 each and every Claim or Claimant or the amount specified in the schedule if higher

- f) In relation to Introducing to Debt Managers Excess means £1,000 each and every Claim or Claimant or the amount specified in the schedule if higher
- 3.9 **Indemnity** means damages that You are legally liable to pay pursuant to a Court judgement, award or settlement of a Claim that has been agreed by Us
- 3.10 **Introducing to Debt Managers** means any Claim or Circumstance arising from introducing Debt Management business to professional Debt Management firms but always subject to the following:
- a) The Retroactive Date in respect of Introducing to Debt Managers is the date of first application by You for this activity
  - b) The sub Limit of Indemnity in respect of Introducing to Debt Managers is £100,000 in the aggregate including Claims Expenses
- 3.11 **Isolated** means
- a) One Claim during the Certificate Period of less than £100,000 made by no more than one Claimant or
  - b) One Claim made in relation to a number of Transactions by one or more Claimants where the amount claimed is no more than £100,000 in total
- 3.12 **Letter of claim** shall mean any letter or written communication whether expressed to be written under a pre-action protocol or otherwise which indicates any suggestion that a Claim against You may be made or that You may have to pay compensation or incur costs and expenses
- 3.13 **Libel and Slander** means any Claim or Circumstance made against You alleging Libel or Slander or Defamation committed in good faith by You arising out of Relevant Business
- 3.14 **Limit of Indemnity** means the sum specified in the schedule or any sub limit defined herein which are aggregate limits of indemnity and is inclusive of Claims Expenses. It is the maximum sum that We will pay as the result of any Claim or Claims made during the Certificate Period
- 3.15 **Loss of Documents** means the cost of up to £5,000 in the aggregate, which is included within and is not in addition to the Limit of Indemnity, should You lose clients documents and be legally required to pay for the reconstruction or reconstitution of them
- 3.16 **Non Investment Insurance Contracts** unless otherwise agreed by Us means the sale of regulated non investment personal lines insurance that is not purchased for any trade, business or profession which for the purpose of this Insurance includes:
- a) buildings insurance, contents insurance, personal accident, private motor, and private motor GAP, individual or family travel insurance, pet insurance and individual let property insurance arranged on residential properties and;
  - b) non investment life and pure protection business including; payment protection plans, accident sickness and unemployment plans, (ASU or MPPI or ASR or IIU) paid on a monthly instalment basis, term assurance, family income benefit, critical illness (CI), private medical insurance (PMI), permanent health insurance (PHI), non investment premium backed long term care insurance and death in service (DIS), (note, group PMI, CI, PHI & DIS are also included.)
- Pension term assurance is also included within the definition, but subject to a retroactive date of 6<sup>th</sup> April 2006 in all cases
- 3.17 **Relevant Business** shall mean those professional activities relating solely to arranging, bringing about or giving advice regarding Mortgage/Loan products in the United Kingdom as declared in the proposal form. It does not include any activity whatsoever relating to any other Financial/Loan product whether regulated by the Financial Services Markets Act 2000 or not and regardless of whether or not the product is advised upon in conjunction with the mortgage loan unless We have agreed in writing to cover General Insurance Activities in which case Relevant Business includes the selling of Non Investment Insurance Contracts and as otherwise agreed
- 3.18 **Retroactive Date** means the date specified as the retroactive date in the schedule
- 3.19 **Transaction** means an individual client transaction, for example a single mortgage, loan or insurance product

- 3.20 **Unintentional Breach of Copyright** means any Claim or Circumstance brought against You arising out of any unintentional breach of copyright or the unintentional infringement of the systems or designs of others
- 3.21 **We, Us or Our** means Underwriters subscribing to this Certificate
- 3.22 **You/Your** means: -
- a) The named insured; and
  - b) Any subsidiaries or associated companies of the named insured but only if they are set out in the schedule or added by Us by way of an endorsement during the Certificate Period; and
  - c) Any director, officer, manager or employee (including a part time or temporary employee,) or specified Appointed Representative(s) but only with respect to the performance of his or her duties and only for work done while acting within the scope of his or her employment

#### **4 Exclusions**

We will not make any payment under this Certificate in relation to any Claim or Circumstance:

- 4.1 Arising out of or related to work undertaken prior to the Retroactive Date
- 4.2 Known or which ought reasonably to have been known by You prior to inception of this Certificate
- 4.3 Arising out of, based upon, directly or indirectly resulting from or in consequence of, or in any way involving the normal or abnormal fluctuations in any financial, stock or commodity or other markets which are outside Your influence or control
- 4.4 Arising out of or related to the failure to arrange finance unless the failure is as a direct result of Your negligence
- 4.5 Where allegations of fraud or dishonesty are made against You unless You can demonstrate to Our satisfaction that no Principal or Partner or Director had knowledge of and/or was implicit in the fraud and that either;
  - a) The fraud or dishonesty did not occur and You therefore need Us to defend You to establish this
  - b) You have robust fraud detection procedures and that any Claim is Isolated

Any cover afforded by this exception is subject to a sub-limit of £100,000 in the aggregate for any Claim or Claims and Claims Expenses

- 4.6 Where the Claimant either directly or indirectly is a Bank, Building Society or other lending institution unless the Certificate is specifically endorsed to cover these Claims
- 4.7 Where You are unable to provide Us with a copy of the client file, computer records or other documents that in Our reasonable judgement demonstrates a serious attempt to comply with FSA guidelines, Mortgage Code Compliance Board regulations or any other relevant legislation or code governing the conduct of business unless any Claim is Isolated
- 4.8 Regarding a self certification mortgage unless You can demonstrate that affordability has been appropriately assessed by You and the client advised in writing accordingly or that You made it clear that no advice was being provided or that any Claim is Isolated
- 4.9 Alleging financial loss as a result of a change in interest rates payable on any mortgage / loan product (including, but not limited to tracker, fixed, discounted or capped rate mortgages) unless any Claim is Isolated or You can demonstrate:
  - i) That You appropriately assessed affordability and advised the client in writing with affordability warnings or that You made it clear that no advice was being provided and

- ii) That You advised the client specifically in writing in relation to the financial effect of the termination of any discounted period or can produce other documentation evidencing that the client was so advised (for example lender or product provider literature)
- 4.10 Arising out of the arranging of any single premium payment protection Insurance
- 4.11 Arising out of any fees, commission or other payments claimed back by Your client or agent or which have had to be refunded to Your client or agent due to:
- a) the actual or alleged non-performance or mis-performance of, or overcharging for (including the receipt of any profit commission, over-rider payment or other payment not disclosed fully to clients), Your contractual or other obligations to that client or agent; or
  - b) an award or order for damages, or Arbitrator's or Ombudsman's award, or compromise of a Claim, which makes allowance for such fees or remuneration or otherwise has the effect of requiring such refund or credit to be made
- 4.12 Arising out of any liability directly or indirectly assumed by You under any express warranty, agreement or guarantee unless such liability would have attached in the absence of such express warranty, agreement or guarantee
- 4.13 Arising out of any goods or products sold, supplied, hired-out, repaired, altered, manufactured, installed or maintained by You or any related company or sub-contractor
- 4.14 That is brought by a firm company or organisation in whom any Partner(s)/Director(s) have a controlling interest unless such Claim or Claims are brought against You by an independent third party source
- 4.15 Arising out of investment related advice or any activity regulated by or pursuant to the Financial Services Markets Act 2000 or any subsequent related legislation except where We have agreed in writing to cover this
- 4.16 As a result of or related to Your insolvency or that of any insurer or carrier or financial institution or finance provider
- 4.17 Arising out of the design or construction of any mortgage, secured loan or other loan products, general Insurance and non investment products
- 4.18 For bodily injury, sickness (including mental stress), disease or death sustained by any person arising out of and in the course of their employment by You
- 4.19
- a) For personal injury, bodily injury, sickness (including mental stress), loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination
  - b) For the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances
- 4.20
- a) Where this would involve payment of any fines, prosecution costs (unless in relation to a Data Protection Act Breach) or penalties of any kind
  - b) Where this would involve payment for punitive or exemplary damages
- 4.21 Arising out of the ownership, use, occupation or leasing of property mobile and/or immobile, by to or on Your behalf
- 4.22 Arising out of:-
- a) work carried out in the United States of America or Canada
  - b) or actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the Courts of the United States of America or Canada
- 4.23 For or related to the loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel

- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

4.24 Arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:-

- a) Asbestos, or any materials containing asbestos in whatever form or quantity; or
- b) The actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind

4.25 Arising out of or related to any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power

4.26 Arising out of or related to any loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss

For the purpose of this Certificate an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear

4.27 Arising out of the provision of Debt Management advice or Insolvency Practitioner and/or Bankruptcy work unless otherwise agreed by Us

## **5 General**

### **5.1 Agreement to pay Claims**

We agree to pay Claims that are covered under this Certificate without requiring You to dispute any Claim unless a Queen's Counsel or lawyer of comparable standing in the territory concerned (to be mutually agreed upon by You and Us) advise that the same could be contested with a reasonable prospect of success

### **5.2 Other Insurance**

If at the time any Claim arises under this Certificate and You would but for the existence of this Certificate be entitled to indemnity under any other Certificate or Certificates, We shall not be liable except in respect of any Excess beyond the amount which would have been payable under such other Certificate or Certificates had this Certificate not been effected

### **5.3 Subrogation**

If any payment is made under this Certificate in respect of a Claim hereunder We are then subrogated to all of Your rights of recovery. However We shall not exercise any such rights against any of Your employees or former employees unless the Claim has been brought about or contributed to by any dishonest fraudulent criminal or malicious act of the employee, it being understood that We shall at all times retain all Your rights of recovery against any person or party who is not an employee

### **5.4 Fraudulent Claims**

If You make or refer any Claim knowing the Claim to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all Claims hereunder shall be forfeited

### **5.5 Disclaimer of Liability By Us**

In the event that We are at any time being entitled to avoid this Certificate ab initio by reason of any materially inaccurate or misleading information given to Us in the proposal form or at any time during the negotiations leading to the inception of this Certificate or as a result of failure to disclose material facts before the conclusion of the Certificate or for any other reason at law, We may at Our election instead of avoiding this Certificate ab initio give notice to You that We regard this Certificate as being of full force and effect, but that there shall be excluded from the cover afforded hereunder any Claim which has arisen or which may arise and which is related to a Circumstance which ought to have been disclosed to Us. This Certificate shall then continue as if the same had been specifically endorsed on the Certificate excluding the particular Claim or Circumstance referred to

### **5.6 Interpretation Clause**

Notwithstanding the jurisdiction limits contained herein, any dispute in respect of the interpretation or application of this Certificate, or its terms, conditions and exclusions, will be subject to the laws of England and Wales and the exclusive jurisdiction of the English Courts

### **5.7 The Financial Ombudsman Service**

The cover provided to You in respect of any award made against You by the Financial Ombudsman Service only applies provided that had the Claim instead been made by way of Court proceedings this would have been covered under this Certificate. We will not indemnify You in respect of any liability to comply with any recommendation made by the Financial Ombudsman Service in respect of any amount in addition to an award of £100,000 inclusive of interest and costs and inclusive of all fees, expenses and administration charges payable to the Financial Ombudsman Service in connection with an award. Any payment in respect of FOS awards is included within and is not in addition to the Limit of Indemnity. All other terms, conditions and exclusions of the Certificate apply to this cover, including the Excess



## 5.8 **Contract (Rights of Third Parties) Act 1999 Provisions Clause**

It is hereby noted and agreed that the terms of this Certificate will only be enforceable by You. A person who is not You has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Certificate but this does not affect any right or remedy of a third party which exists or is available apart from that act

## 5.9 **Your Duty**

Your written proposal form and any statements made in support of Your application for this Certificate form the basis of Our contract with You. This means that the statements are a warranty and You should check them carefully. Commencing with Your proposal and throughout the Certificate Period You are under a continuing duty to disclose as soon as reasonably practicable all material changes in information supplied to Us as part of the proposal

## 5.10 **Tax**

You will pay any tax due on the premium in accordance with current legislation

## 5.11 **Run Off Cover**

In the event that You cease trading You should advise Us immediately and subject to underwriting this Certificate shall be converted to provide Run Off cover until the renewal date or termination whichever is sooner

## 5.12 **Cancellation**

This Certificate is not cancellable by You

It will however terminate automatically in the event of Your Part IV permissions under the Financial Services and Markets Act being suspended or revoked or You being declared being in default by the Financial Services Compensation Scheme or You ceasing to trade or in the event of Your Administration or Liquidation unless a Run Off Certificate has been specifically agreed. It is also subject to cancellation for non payment of premium as set out below

## 6 Premium Instalment Clause

In consideration of Our accepting payment of the premium under this Certificate by instalments, one of the following alternatives shall apply:

- a) if payment of the premium is made by using the Towergate approved monthly Premium Instalment option:  
In the event of a payment default this Certificate may be cancelled at any time at the request of the premium instalment facility provider in writing to Towergate Lifestyle and the premium hereon shall be adjusted on the basis of Us receiving or retaining the customary pro-rata adjustment

In the event of a payment default this Certificate may also be cancelled by Us or on Our behalf by seven days notice given in writing to You at Your last known address, and the premium hereon shall be adjusted on the basis of Us receiving or retaining the customary pro-rata adjustment

or:

- b) if payment is to be made to Towergate Lifestyle using the monthly direct debit option:  
It is hereby noted and agreed that in the event of any default in payment of any instalments by You, the full outstanding balance becomes payable immediately to Towergate Lifestyle

In the event of You failing to pay such amount within 10 days of the notice of default of payment, it is hereby noted and agreed that this Certificate may be cancelled at any time at the request of Towergate Lifestyle by seven days notice given in writing to You at Your last known address and the premium hereon shall be adjusted on the basis of Us receiving or retaining the customary pro-rata adjustment

Notice shall be deemed to be duly received in the course of the post if sent by pre-paid letter post properly addressed

### Reporting Complaints or Allegations Made Against You

Report all complaints or claims immediately on receipt to:

The Managing Director  
Towergate Lifestyle  
Suite 6 The South West Centre  
Troutbeck Road  
Sheffield  
South Yorkshire

Tel: 0114 250 0011  
Fax 0114 250 0033  
Email [lifestyle@towergate.co.uk](mailto:lifestyle@towergate.co.uk)

Or to:

Devonshire Claims Services  
5<sup>th</sup> Floor Minster House  
42 Mincing Lane  
London  
EC3R 7AE

Tel: 0870 839 0839  
Fax: 0870 839 0909

## Complaints Procedure

Any enquiry or complaint should be made in writing and addressed in the first instance to Your Broker or to Towergate Lifestyle at the following address:

The Managing Director  
Towergate Lifestyle  
Suite 6 The South West Centre  
Troutbeck Road  
Sheffield  
South Yorkshire  
S7 2QA

Tel: 0114 250 0011  
Fax:: 0114 250 0033  
Email: [lifestyle@towergate.co.uk](mailto:lifestyle@towergate.co.uk)

We will acknowledge Your complaint at the earliest opportunity, investigate Your complaint thoroughly, keep You informed of the progress at all times and will do everything We can to resolve Your complaint quickly and fairly.

If You are not satisfied with the way Your complaint has been dealt with, You may ask the Complaints Department at Lloyds to review Your case without prejudice to Your rights in Law. The address is as follows:

Complaints Department  
Lloyds  
1 Lime Street  
London  
EC3M 7HA

Tel: 0207 623 7100

If the complaint cannot be resolved to Your satisfaction and You are seeking resolution as a private individual or as a small business, charity or trust with an annual turnover of less than £1 million You may refer the matter to:

The Financial Ombudsman Service  
South Quay Plaza  
183 Marsh Wall  
London  
E14 9SR

Tel: 020 7488 6200  
Fax: 020 7423 7222  
Email: [enquires@financial-ombudsman.org](mailto:enquires@financial-ombudsman.org)  
Web: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)