

The logo for Financial Advice New Zealand. The word "Financial" is in a white sans-serif font. "Advice" is in a larger, bold white sans-serif font, with a white speech bubble shape behind it. Below "Financial" is the text "NEW ZEALAND" in a smaller white sans-serif font.

Financial Advice  
NEW ZEALAND

# Professional Liability Programme

#### DISCLAIMER

This booklet is provided as an education tool to raise awareness and understanding of Professional Liability insurances only. The information is general advice and does not take into account what you currently have, want and need for your personal circumstances.

This booklet contains examples of claims, they are provided as illustrations only. They do not substitute the provisions of the insurance policy, and claims will be interpreted on a case-by-case basis.

Please contact Curated Risk should you like further information.

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# INTRODUCTION

The Financial Advice NZ Liability Professional Programme has been designed for the protection of Financial Advice Providers (FAPs) and Financial Advisers.

This booklet has been designed to enhance your knowledge and understanding of our liability programme. This is a bespoke programme with benefits that are unique for Financial Advice NZ members.

We have trusted Curated Risk to be the Financial Adviser to the programme. They will provide you with quality advice and provide the right solution for your individual needs.

The two primary insurers to the programme are Ando Insurance (Ando) and Berkshire Hathaway Speciality Insurance (Berkshire Hathaway). Both have a reputation for placing the needs of their clients first and, most importantly, have a good financial strength rating. This is fundamentally important at claim time.

There are three distinct parts to the programme:

- Professional Indemnity Insurance
- Management Liability Insurance
- Cyber Risk Liability Insurance

Additional to the programme:

- One stop shop for all general insurances.

We consider the programme will provide you and your FAP practice with the right insurance protection for financial advice in the new regime.

We believe this programme will meet your professional needs.

# SUMMARY OF THE PROFESSIONAL LIABILITY PROGRAMME

The Programme offers the following parts:

- Professional Indemnity Insurance
- Management and Liability Insurance, including:
  - General Liability
  - Statutory Liability
  - Employers Liability
  - Crime Cover
  - Legal prosecution and defence costs
  - Directors and Officers Liability
- Cyber Risk Liability Insurance

# HIGHLIGHTS OF THE LIABILITY PROGRAMME

The highlights of the programme are:

- It is tailored to your specific requirements as an adviser. We have recognised there are different types of advice and have structured the insurance product and premium accordingly.
- We are building long-term partnerships with two insurers who were new to the programme in 2022 - Ando and Berkshire Hathaway.
- We have unlimited access to cover for members who provide Fire and General Advice.
- Discretionary Investment Management Services can be covered if you have such a licence.

## **Professional Indemnity Insurance**

- The limit of indemnity is in respect of your FAP practice and engaged Financial Advisers only. You can obtain cover of up to \$5 million on any one claim. If the FAP requires higher levels, you can apply for additional layers to \$15 million.
- The Professional Indemnity Insurance is not aggregated across all members in the programme – your policy is to the level you choose with the amount you consider appropriate for your programme. This means you are not a risk of the aggregated limit being reached and potentially complicating access to or missing out on cover.
- Other FAPs' mistakes do not affect your cover. This cover is yours and yours alone.
- Professional Indemnity Insurance covers the advice provided by your FAP (salaried employees, commission employees, authorised bodies, and contractors who give advice under your licence).
- Professional Indemnity Insurance is based on your revenue, not the number of advisers in your FAP.

## **Management Liability Programme**

- Management Liability Insurance is a packaged approach to liability insurances outside of Professional Indemnity Insurance.
- There are two modular packages to this cover that allow you to pick the risk areas relevant to your needs – this is not a one-size-fits-all approach. The premiums are based on your own FAP's revenue and do not cross-subsidise others in the programme who have greater needs.
- If relevant for your business, you can select Employers Liability, Crime cover, Legal Prosecution Defence Costs and Directors and Officers Liability.

## **Cyber Risk Insurance**

- We believe this offer is a comprehensive policy, at an affordable premium. It is the policy that is most common across the market for Financial Advisers.

## **Run-Off Cover**

- This is available if you are going to retire, cease to trade, or sell your advice practice and no longer provide financial advice.

## **Additional benefits**

- If you change providers to the Financial Advice NZ scheme from another scheme or provider, you will be able to obtain cover for your past liability, with a retroactive date, matching your current cover.
- Curated Risk will provide advice to ensure you understand the programme being applied for and the choices you make to protect your professional liability, to find a programme that it is fit for purpose.
- At the time of a claim notification, you will have Curated Risk walking beside you all the way.

# PROFESSIONAL INDEMNITY INSURANCE (PI)

The programme is in two parts, depending on the advice your FAP provides.

## **Part 1: Mortgage, KiwiSaver, Risk, and Fire & General Advice:**

- Limits of indemnity are available at \$1m, \$2m, \$3m, \$4m and \$5m with defence costs in addition to your limit of indemnity.
- The policy extends to you having cover for public relations consultants to protect your reputation as a direct result of a valid claim.
- Cover available for Fire and General insurance advice rather than limited to referral only or a percentage of your advice.
- The insurer for this part of the programme is Ando, with Lloyd's of London as the underwriter.

## **Part 2: Investment Advice:**

- Limits of indemnity are available at \$1m, \$2m, \$3m, \$4m and \$5m with defence costs to \$1m.
- Investment fluctuations write-back cover can be purchased as an additional cover. This is a unique cover and is best discussed directly with Curated Risk.
- The insurer for this part of the programme is Berkshire Hathaway.

Retroactive date: the new insurers are able to match your current date.

The policies contain an automatic reinstatement.

This policy covers all areas of financial advice your FAP provides.

# EXAMPLE OF CLAIMS



## **Mortgage Advice**

A mortgage adviser has a client who wishes to borrow funds to purchase a property. They complete their relevant advice process and advise the client that they won't be able to obtain lending from a first-tier lender. The client accepts that advice and enters into a loan agreement with a second-tier lender.

A few months into the lending contract, the client approaches a main bank and has a loan approved at a lower interest rate. The client subsequently cancels the loan agreement with the second-tier lender, attracting a break fee. The client then seeks reimbursement from the adviser for the break fee and all fees paid to the adviser.

The PI policy covers the break fee, the client's legal fees associated with the change in security on the title, and the costs of the legal counsel representing the adviser.



## **Risk Advice**

A client seeks advice on life, income protection, and mortgage protection insurance. The adviser meets with the client and at the client's request reads the questions on the application form aloud to the client. The adviser then completes the application with the client's answers in the same meeting.

The application is printed, and the adviser has the client sign it as "true and correct". The client says they do not want to review it because they have done it together. The insurance is placed.

Sometime later the client is diagnosed with a medical condition. The insurer requests medical records in reviewing the claim and determines there is a non-disclosure of relevant prior medical history.



The client brings a claim against the adviser, alleging the adviser said, “Just tell me the serious stuff, like stuff you have been diagnosed with and operations you’ve had”. The adviser denies this and says they had read each of the specific questions out and received a “No” answer from the client to each.

There is no documentation to support this verbal interaction.

Legal counsel defending the adviser ultimately reaches a settlement of 75% of the unpaid mortgage protection and income protection policies, plus legal defence costs, on the basis that they cannot prove on the balance of probabilities that the client is not accurately recalling how the application form was completed.



### **Investment Advice**

An adviser meets with a client to discuss their investment portfolio. The client advises they want a strategy change towards a more socially responsible investment portfolio, and instructs the adviser to split the portfolio 70% to Fund A and 30% to Fund B.

The adviser implements the instruction the following day but accidentally places the portfolio in the opposite split. The adviser does not send an email to the client confirming the portfolio change, so the opportunity for correction is missed.

Four months later the client is sent an update and immediately notices the error. The client claims the “lost opportunity cost and all trading costs associated with the trade strategy change”.

The PI policy covers the costs of putting the client back in the position they ought to have been in following their meeting.

# MANAGEMENT LIABILITY INSURANCE

Management Liability is essentially a package suite of different liability insurance policies including:

- General Liability Insurance (sometimes referred to as Public Liability)
- Statutory Liability Insurance
- Employers Liability Insurance
- Crime Cover
- Legal Prosecution & Defence Costs
- Directors and Officers Liability Insurance

The Management Liability policy brings all these covers into one policy. This is an ideal solution for professional services practices that need a simple risk management solution to protect their varied risks.

If you are a sole-adviser FAP, there is an option in the programme to provide only General and Statutory Liability Insurance – the most essential covers for all advisers.

This cover is provided by Ando. The Directors and Officers Insurance is being underwritten by Lloyd's and the balance of the Management Liability insurance policies underwritten by The Hollard Insurance Company Pty Limited.

## Components of Management Liability



### **General Liability Insurance - how it works**

General Liability (sometimes call Public Liability) provides cover for your legal liability to a third party for accidental property damage or personal injury. Additionally, it covers the costs and expenses of investigating and defending a claim.

While personal injury claims in New Zealand are rare due to our ACC scheme, the most relevant part of this cover is the property damage cover – there is the potential for substantial claims against you asserting your legal liability for accidental and unforeseen damage to property, and it is a requirement you carry this cover under most lease agreements.

The cover under the Professional Liability Programme has a limit of indemnity of \$5m and will provide cover for almost all requirements of a FAP practice.

### **Examples of General Liability Claims**

1. An adviser hosts a meeting in their office of potential clients from out of town. The clients arrive with their luggage and personal effects. The adviser suggests they pop down to the café to have a coffee prior to the presentation.

When all return, the office door is wide open and the client's luggage and personal effects have been opportunistically thieved.

A General Liability policy will cover the adviser's legal liability for the property left in their care, custody, and control.

2. An adviser travels to a trade show / conference and is

excited to arrive and set up their stand for the sessions. Carrying boxes, briefcases, and pull-up banners, they slip and the banner shatters a large plate glass entrance door to the venue.

A General Liability policy will cover legal liability to third party property damage (the entrance door) and consequential loss associated with the additional security requirement and installation on behalf of the adviser business.



### **Statutory Liability - how it works**

Statutory Liability is a liability insurance policy we consider the most essential to FAP businesses. This policy protects against a prosecution or official investigation following an unintentional breach of most New Zealand laws and regulations. As with all liability insurance policies, it is the defence cover that is most valuable, as those costs are most often higher than the penalty awarded.

The policy also covers the fines and penalties payable following conviction for an offence under an insured statute (except under the Health & Safety at Work Act – see below).

Legislation in New Zealand’s financial services industry has changed significantly over the past few years and FAPs can be exposed to not only new legislation but a new focus on enforcement from the Regulator.

This creates an environment where transferring this risk to an insurance policy is by far the most logical solution for FAP practices.

Defending such breaches would not only be a substantial cost to a FAP, but if uninsured would be a significant interruption to the day-to-day operation.

The premium cost for Statutory Liability is negligible compared with the exposure and impact of being uninsured.

Though fines from the Health and Safety at Work Act are

prohibited from being insured (meaning they are not covered), defence costs and reparation awards ordered by the court are covered by the policy. Health and Safety at Work exposures for professionals are generally low, though advisers who travel long distances to meet clients have increased exposure compared to general office work. These strict liability responsibilities should not be overlooked by any business.

### **Example of Statutory Liability Claim**

An adviser is notified that the FMA has received a complaint alleging they have breached the Financial Markets Conduct Act 2013 and are investigating further.

The adviser receives a notice under the Financial Markets Authority Act 2011 requiring them to supply information, produce documents, and attend an interview.

The adviser notifies their insurer. Defence counsel are appointed to check the validity of the notice, negotiate a reasonable deadline for responding to the information request, and attend the interview.

The counsel then becomes the primary contact for the FMA and therefore minimises the interruption for and stress on the adviser. Counsel then assist the adviser in collating and supplying the information and attends the interview with the adviser.

They liaise with the FMA after the interview and supply further relevant information that arises during the interview. The FMA decides not to undertake enforcement action. Part of this outcome is achieved by working with the adviser and identifying changes the adviser should make to their practice to satisfy the FMA that they met their obligations.

The legal fees well exceeded \$50,000. The policy responds to fines under some statutes in this case it was just the legal fees.



## **Employers Liability – how it works**

Employers Liability insurance is different to Employment Disputes Insurance in that it does not cover personal grievances or wrongful dismissal. Rather it provides protection against common law claims brought by employees for personal injuries not covered by ACC legislation.

Such claims could be for mental injury or mental anguish without physical injury, gradually occurring diseases from the workplace environment, (such as from chemical environments) or disease or infection.

Most claims like these seek a lump sum payment based on pain, suffering, and loss of enjoyment of life.

While these exposures are indeed low, any practice employing staff has an exposure where such cover, especially as provided by a package policy such as management liability, gives the FAP protection against the financial impact such claims can have.

The Professional Liability programme includes cover in the full Management Liability programme for a limit of indemnity of \$1m and \$1m defence costs in addition.

### **Example of Employers Liability Claim**

An aggrieved client visits an adviser's business and demands to speak to the adviser. One of the adviser's employees conveys to the client that the adviser is not in the office. The client believes the adviser is there and does not want to speak to them and becomes verbally aggressive and intimidating.

Eventually the client leaves, the employee is in a state of shock and goes home and does not return to work that week. Subsequently, they send a medical certificate to the adviser saying the employee is unable to return to work and that they are suffering extreme mental anguish.

A claim for medical costs, ongoing wellness treatment, and other associated losses is made against the adviser by the employee's lawyer.

The insurer appoints defence counsel to investigate and ultimately negotiates a resolution with the employee avoiding any legal proceedings and keeping the allegation and resolution, confidential.



### **Crime Cover - how it works**

Crime Cover reimburses the FAP for loss of money, securities, or other property due to the dishonesty of your employees or outside third parties. The insurance policy also covers the costs of investigation by an investigator or forensic expert to establish the amount of loss suffered.

Cover can also extend to outsourced services such as payroll, computing, and accountancy services.

For professional services practices such as Financial Advisers with often a small number of long-serving employees where there is a high-trust environment, this cover can be essential to protect against an event that could have a devastating financial impact on the practice.

### **Example of Crime Claim**

An adviser has a longstanding assistant who, in effect, runs the business. The assistant is away on unplanned leave and the adviser undertakes to make the normal monthly creditors payments.

When they review the creditors listing, they note a payment has been made monthly for the past nine months for "office flowers" to a company named ABC Florists Limited.

The adviser then discovers there is no such company, and the bank account loaded for payment is the same as their "trusted" employee's payroll bank account.

The Crime Cover policy covers the cost of investigating the quantum of loss, and the amount stolen, subject to the policy.



### **Legal Prosecution and Defence Costs - how it works**

Legal Prosecution and Defence Costs provide a cover for defending legal action alleging an offence under statute.

Financial Advisers, as sole professionals, are sometimes in personal situations where a client may allege something untoward happened, even out of the professional business. Though such allegations would be devastating personally and to the reputation of an adviser, defending such an allegation can be substantially costly.

Legal Prosecution and Defence Costs cover is best suited to provide protection for such legal expenses as some allegations may fall in the gaps of coverage of specific policies. The Professional Liability Programme provides cover up to \$1m.

This is an example of where a package policy like Management Liability can provide policies that, while having low exposure to the FAP business, could have potentially dramatic impacts to the business and the advisers.

Having such policies included in the Management Liability package means the premium paid for cover is offset by the premium for other policies rather than purchasing this as stand-alone cover.

### **Example of Legal Prosecution and Defence Costs Claim**

An adviser meets a new client at their home and completes an initial meeting interview and a brief discussion. Nothing further happens after the meeting and the adviser follows up after a week or so and receives no response.

Two months later the adviser is visited at home by the



Police who say they are investigating an allegation of sexual harassment against the adviser from that meeting.

The adviser is gobsmacked but is subject to further investigation and is charged.

The Legal Prosecution and Defence Costs cover responds by way of covering legal defence costs by a criminal lawyer, and the charges are dismissed.



### **Directors & Officers Liability - how it works**

Directors of companies have wide-ranging responsibilities and accountabilities for which they can be personally liable. Businesses are expected to act in a lawful, responsible manner, and directors can be held accountable for all aspects of governance, business failings, oversights, and omissions. This accountability is not only to employees and shareholders but also creditors and the general community.

Should there be alleged mismanagement of a company, such as a FAP entity, it is important to consider a director may also be sued personally by the Serious Fraud Office, the Commerce Commission, and the Financial Markets Authority.

The cover provided under the Professional Liability programme is for \$500,000, and includes defence costs, cover for judgments and settlements, and appearance and investigation costs.

Coverage levels are designed for small to medium professional entities. If your FAP considers there is more substantial exposure, then Curated Risk will work with you to ensure the policies arranged are appropriate.

It is also important to remember that in small practices such accountability can arise not only as a result of your own directorship activities, but also from the activities of fellow directors.

Again, the risk management strategy in having such cover

is primarily as a defence cost cover. This means a FAP business has access to the insurer's panel lawyers, who are specialist counsel and can provide assistance and defence of allegations, and so minimising the interruption to the practice and the associated stress such an action causes to the directors.



### **Cyber Risk Liability – how it works**

NZI insurance's Cyber Ultra insurance policy is a good solution at an accessible premium level to all FAP practices. Therefore, this cover continues to be provided.

As Cyber resiliency becomes a bigger focus for Financial Advisers, Financial Advice NZ's Professional Liability Programme provides Cyber Risk Insurance as an accessible cover that is widely adopted across financial adviser programmes in New Zealand.

Features of this cover are:

- Limits of indemnity available \$500,000, \$1m, \$2m
- Excess options are based on fee income of your FAP
- Social Engineering Fraud is an optional extension

We believe that in the new environment this is a must-have insurance.

Most cyber risk is related to software and data. However, there are examples of where software viruses have caused physical, or "real world" damage. The most common risk perceived is the theft of data or a virus that locks access to your system with an associated demand for ransom.

It is essential to think about cyber risk not as an IT or technology risk, but as a true business risk. The insurance industry considers cyber risk will grow to the biggest liability insurance portfolio in a matter of years.

In the Financial Advice sector, regulators are increasingly focusing on the risk management practices of FAPs and the attention risks such as the privacy of client data get from

the management and directors of an entity.

Network security, firewalls, and password protections with two-factor authentication are now base-level protection.

Attention should be turned to proactive risk management such as penetration testing of a business's systems.

Cyber Risk insurance does not protect against a cyber event; however, the policy provides immediate access to breach coach services, IT consultants, and forensic data experts who can help minimise the interruption to the advice practice.

There is also access to public relations consultants to assist with advice around how to manage the reputational aspects of such an event.

**Cyber Risk is not  
someone else's  
responsibility.**



# NEW OFFERING

## ONE-STOP-SHOP

Curated Risk is a financial adviser business completely focused on Fire and General advice. They have experience, knowledge, and the access to risk solutions from across the market.

Outside their sweet spot of professional liability advice, they can also advise across other aspects of commercial business insurance including:

- Property Insurance for office premises and fitout, and buildings if required.
- Commercial Motor Vehicle solutions that are a little more bespoke than the direct offerings to market.
- Travel Insurance solutions that will provide an annual insurance policy covering both business and leisure travel for directors of the advice business entity.

Curated Risk will follow a similar process to the Professional Liability Programme in using a bespoke risk evaluation to gather information and provide a recommendation and programme summary of these covers for your consideration.

The solutions we will recommend will not be at direct insurer premium levels, especially for vehicles. However, in professional office environments there are often requirements such as artwork or assets of the business that are unique and require attention outside a generic insurance policy.

# CLAIMS PROCESS

Curated Risk provides claims procedure instructions in the programme documentation following renewal. However, in practice, liability insurance claims are more complex than notifying of a car accident or a damaged windscreen. There may be urgent attention required, especially if there is a time constraint due to court proceedings already being lodged.

Liability claims are stressful, and due to the personal nature of the advice industry it is usually an event advisers do not wish to talk loudly about. It is essential that the insurer's claims counsel are involved at the earliest opportunity to mitigate a situation and also to provide advice and an empathetic approach to assist the adviser.

Curated Risk has developed a **notification link** that enables an adviser to quickly and efficiently notify a claim or circumstance under their policy. Much like the risk evaluations, these are forms that capture the base information in an immediate fashion.

From there, Curated Risk will be in contact with you as soon as required, using the base information to notify a claim or circumstance to the insurer.

Insurer's claims counsel will require all the documentation received and surrounding the claim or circumstance. They will comment and assist in drafting responses to correspondence received from the complainant and will offer objective advice and assistance on how to deal with situations.

The insurers may appoint specialist insurance law counsel immediately. Defending professionals against such claims is what they specialise in, and their experience in the Financial Adviser industry is substantial. The insurers involved with the Financial Advice New Zealand Professional Liability Programme will retain expert counsel with substantial knowledge and previous experience of claims against Financial Advisers. They will have access to expert witnesses from the

industry and will be well versed in not only theoretical best practice but normal practice across adviser businesses.

At the point where an insurer's counsel is appointed, the terms of engagement may refer to a "Without Prejudice to Indemnity" basis. This is not something to be alarmed about – it is usual for the initial engagement of the counsel to refer to such a "without prejudice" engagement. At the point where the counsel is appointed, they will not have access to all the policy information, and information about the claim. To allow them to engage immediately, a "without prejudice" basis is followed.

Curated Risk, the insurer and their counsel are there to support the adviser and the FAP. Liability insurance claims are indeed quite often more personal in nature than claims involving tangible loss, so it is essential all parties work together.

# HOW TO APPLY AND THE PROCESS

Curated Risk will utilise a Risk Evaluation tool to gather details of your FAP practice. The question set will be dynamic to the types of advice you offer.

On completion of the initial Risk Evaluation, Curated Risk will deliver a recommendation and programme summary for your review and consideration.

Confirming acceptance of the programme will be done through a placement link allowing surety of the cover you have.

Invoicing will come directly from Curated Risk and be able to be paid annually online, or through a Premium Financing arrangement that is bespoke to Financial Advice New Zealand members from a New Zealand-owned and operated independent premium financing company.

If you have any queries, please contact Clinton Stanger 021 985 006 or [cstanger@curatedrisk.nz](mailto:cstanger@curatedrisk.nz)

[www.curatedrisk.nz](http://www.curatedrisk.nz)

# FAQ'S

## **1. If I move schemes do I have retroactive cover?**

If you change providers to the Financial Advice NZ scheme from another scheme or provider you will be able to obtain cover for your past liability with a retroactive date matching your current cover.

## **2. Can a bigger group apply for these insurances?**

Professional Indemnity Insurance is based on your revenue, not the number of advisers in your FAP. Therefore FAPs of all sizes can apply for cover.

## **3. Why have you decided not to have an aggregated limit in the current programme?**

The Professional Indemnity Insurance is not aggregated across all members in the programme – your policy is to the level you choose with the amount you consider appropriate for your business. This means that you are not a risk of the aggregated limit being reached and potentially complicating access to or missing out on cover.

We do not offer aggregated limits, as the new regime with FAP's of size, changed the risk of limits-based programmes.

## **4. How much does the PI Insurance costs?**

We are happy to share these details with you directly. We believe the scheme is competitive in the marketplace.

There are minimum premiums for each advice class.



# REMUNERATION FOR CURATED RISK AND FINANCIAL ADVICE NZ

Commission is payable by the insurer on the premiums and amounts between 20% to 22.5% on professional indemnity, 24.25% on management liability premiums, and 23.25% on cyber insurance premiums.

Financial Advice NZ receives 25% of these commissions, from Curated Risk, which goes into our general funds and used to benefit members.





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