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Try our comparison chart now



Welcome to the latest edition of “Commercially Minded”.

Starting this issue is a look at the increasing number of low value commercial cases requiring ATE insurance; this is followed by a report from the recent PNLA conference for professional negligence litigators, plus a rationale for After the Event insurance from Temple that you can now ‘have it your way’. There’s lots more as well - just click on the image or gold colour heading below and you’ll go straight to that article. Enjoy reading our views; if you’d like to share yours, please get in touch with our team - contact details are on page 9.



LOW VALUE COMMERCIAL CASES - AN ACHIEVABLE CHALLENGE FOR ATE INSURERS?

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GOOD THINGS COME IN THREES: AFTER THE EVENT INSURANCE YOU CAN ‘HAVE IT YOUR WAY’

With Temple it’s now even easier to choose the best way to obtain commercial ATE - Page 4



PAYING THE PRICE OF THE PANDEMIC: BUSINESS INTERRUPTION INSURANCE

Does a BI policy cover such an extraneous circumstance such as Covid-19? - Page 6



FAIR RULES FOR UNFAIR PREJUDICE CLAIMS

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Low Value Commercial Cases - an Achievable Challenge for ATE Legal Expenses Insurers



By Matthew Pascall, Senior Underwriting Manager

ATE insurers are increasingly asked to insure large volumes of relatively low value cases, often on a delegated basis whereby the solicitor assesses the merits of their own cases and issues policies of insurance on the insurer's behalf. These cases bring their own unique challenges. This article reviews the approach underwriters generally adopt when asked to provide cover.

Some Basics

There is nothing commercially sensitive about the fundamental principle of insurance - if the cost of claims exceeds premium income, it doesn't work. If they balance out, there is no return on the capital at risk for the insurer - so there needs to be a reasonable margin.

But what about the client? If they can't afford the premium, they simply won't take out the insurance.

Some ATE insurance premiums are deferred and contingent, regardless of the amount of cover provided. As a result, the insured has to pay the premium only if and when they are successful. Other insurers might defer payment of a portion of the premium or ask for a single payment "up-front."

Whichever model is adopted, the premium still has to be paid and (it is assumed) paid out of the damages the client will recover or expects to recover. It follows that the premium has to be affordable in the context of the value of the claim. For most cases a reasonable rule of thumb is that the premium will usually be affordable where the likely damages are at least twice the likely cost of the litigation to the insured.

The Challenge?

There are many good claims brought for damages that are likely to be significantly less than twice the cost of bringing the claim. These cases present a real challenge for insurers. How does an insurer such as Temple meet the challenge?

What an Insurer Needs

There are five factors to consider when looking to insure low value cases: -

1. Volume of cases;
2. The number and value of adverse costs orders that are likely to occur within any given batch of cases;
3. The likely damages claimants are going to recover;
4. Disbursements, and;
5. Reliable partners.

Taking each of these in turn -

Volumes

How many claims are likely to need insurance? A sensible and realistic estimate of the number of insurable cases is required. In some situations, this will be an informed guess and in others the estimate can reflect actual experience.

Likely adverse costs orders

No one likes talking about losing - but the insurer needs to know. Actual experience and data always helps, but it is necessary - and insurers have to work with sensible and realistic estimates.

The Value of the Claims

This is currently one of the most difficult issues to be addressed. Our good friends "sensible and realistic" are more important than ever when estimating just how much clients are going to recover.

The starting point is that no one gets 100% of their actual loss; the vast majority of cases settle on the basis that reasonable clients will want to settle for a good offer rather than risk a trial. If an insurer gets this wrong, they end up with a premium that simply isn't affordable or is too low to make the exercise commercially viable.

This article continues on our website.

[Click here](#) for lots more insight, including Matthew's observations on the importance of disbursements, reliable partners and getting the price right for low value commercial cases.

We are here to help. If you would like more information on our ATE insurance and disbursement funding products, or you have any other legal expenses insurance query, please email matthew.pascall@temple-legal.co.uk or call him on 01483 514428.

This article was first published by the Law Society in their April 2022 edition of Litigation Funding



Professional Negligence: 'The Secrets of Success' PNLA Conference, May 2022

By Matthew Pascall, Senior Underwriting Manager

Andy Lyalle and Matthew Pascall were lucky enough to attend the first post-COVID in-person PNLA conference at Billesley Manor, near Stratford, earlier this month. Temple were proud sponsors of this unique event that brings together leaders in the field of professional negligence for a day-long meeting focusing on the latest developments in professional negligence law and procedure.

The PNLA were able to secure the attendance of the Hon. Mr Justice David Waksman who delivered the Keynote address. The Conference included in-depth contributions from a number of leading silks including Patrick Lawrence QC (as entertaining and informative as ever) as well as Nicholas Davidson QC and Michael Pooles QC.

Matthew Pascall introduced the audience to Temple's new Concierge pathway to ATE and reminded PNLA members that they had exclusive access to ATE premiums at heavily discounted prices.

If you would like more information on ATE insurance and disbursement funding products for professional negligence cases, or you have any other legal expenses insurance query, please email matthew.pascall@temple-legal.co.uk or call him on 01483 514428.

‘Don’t just take our word for it’

"I found Temple Legal Protection highly professional, expert and supportive through all stages of applying for ATE insurance for clients last year. They were highly attuned to the needs of the client and myself as the lawyer, and receptive to questions asked along the way."

Simon Tolson, Fenwick Elliott LLP

Mediation, Arbitration, Motivation: The Changing Face of Civil Dispute Resolution

Alternative dispute resolution: it's fast, it's efficient and seemingly, it's here to stay.



By Sam Knight, Underwriter

When the Civil Justice Council (CJC) concluded that parties could lawfully be compelled to participate in ADR in June 2021, most lawyers were sceptical. Below we share our views on this.

What the CJC were saying was directly contrary to the well-established principle in *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civl 576 which says that ‘it would be wrong for the court to compel’ the parties to engage in ADR (per Lord Justice Dyson at [10]).

But that decision was pre-pandemic and almost 20 years ago. The uptake and interest in ADR has increased tenfold since then, with a 16% increase in arbitration caseloads from 2019-2020 alone. A movement that seems to be gathering momentum.

It seems that ADR is here to stay and could even become compulsory for civil claims in the near future. Whether this is due to the pandemic effect, the realisation of increased technology in dispute resolution, or, as Sir Geoffrey Vos MR puts it, the fact that ‘for small claims, the parties often want a swift cost-free resolution’, it seems lawyers will need to be ready to engage in ADR more readily than ever before.

Alternative dispute resolution still carries an adverse costs risk for your clients. Temple Legal Protection can offer full adverse costs cover for ADR proceedings as well as for traditional litigation, providing the same level of protection no matter which method of dispute resolution your client is engaged in.

If you would like more information on ATE for commercial ADR proceedings, please email matthew.pascall@temple-legal.co.uk or call him on 01483 514428



Good Things Come in Threes: After the Event Insurance you can 'Have it Your Way'

By Andy Lyalle, Senior Business Development Manager

In a restaurant, the meal you order depends on how hungry you are, the time of day and your budget - with the menu laid out accordingly. Here at Temple, we think getting After the Event (ATE) insurance policy to cover your client's adverse costs and their own disbursements should be similarly easy - and have come up with a simple and flexible process. This means, as Burger King used to say, you can 'have it your way'. Find out more below.

When a solicitor applies for ATE insurance for their client, the cover they get and its cost depend on several factors - the type of case, whether the premium is recoverable, the level of indemnity required, stage that the case has reached and if security for costs is required.

We have created three routes to obtaining ATE insurance cover and it will often be possible for a law firm to move from one process to another or to have more than one. These three new pathways to commercial ATE insurance cover are Solo, Concierge and Espresso.

'Solo' starts with a solicitor contacting us by phone or e-mail and we will let them know if we think that prima facie, this is a case that we are interested in and will look at with a view to offering terms. We will also give an indicative, non-binding premium estimate to discuss with their client.

If the client wishes to proceed, then the solicitor completes an individual proposal form and sends it to us to be reviewed by the underwriter. If the merits of the case are as required by an underwriter and the insurance premium likely to be proportionate in relation to the damages sought an offer of insurance terms will be made and the solicitor can refer to their client.

At the opposite end is 'Espresso'. A delegated scheme can be for a whole non-injury dispute resolution team or for a particular segment within that team e.g. defamation, professional negligence or insolvency. Except for a few triggers, the solicitor will have authority to decide on the

merits of the case and then, using the Temple Online Policy System, issue the insurance policy themselves. Quick and strong, it gets the case started and moving.

There is also a middle ground - 'Concierge'. Here we agree a short, on-line, questionnaire with the firm for their exclusive use. As the process is on-line and focussed on the particular cases being handled by the firm, the underwriter instantly gets the right information to enable the case to be assessed quickly and the case handler at the firm doesn't have to repeat the same generic information every time they want cover, saving valuable time and cost.

It may be that a 'Solo' law firm will start to generate a greater volume of cases or a particular department within the firm may do the same. They may then wish to move onto the 'Concierge' or 'Espresso' process for getting their cases insured. Also, a firm using 'Concierge' or 'Espresso' may not hit projected volume and wish to move to a 'Solo' offering.

To sum up, the process or pathway to getting your cases insured can be as important as the ATE insurance itself that you ultimately secure for your client.

We aim to work with our existing and prospective solicitor partners and put together the best process possible for getting your cases insured. As always, we would like to hear from you so that we can discuss what you do and agree the best way to get your cases insured. If you would like to discuss further, please email andy.lyalle@temple-legal.co.uk or call me on 07936 903767.



Get the Perfect Fit

With Temple it's easy choosing the best way to obtain ATE for your commercial clients

We now offer three ways to access our ATE insurance with our comparison chart.

Visit - bit.ly/atechart to find out more and select which works best for your clients.

In every case you are guaranteed fully deferred and contingent premiums at market-leading rates from a UK-based "A" rated insurer.

For a no-obligation discussion about your ATE requirements, please call us on (01483) 577877 or email commercialate@temple-legal.co.uk.

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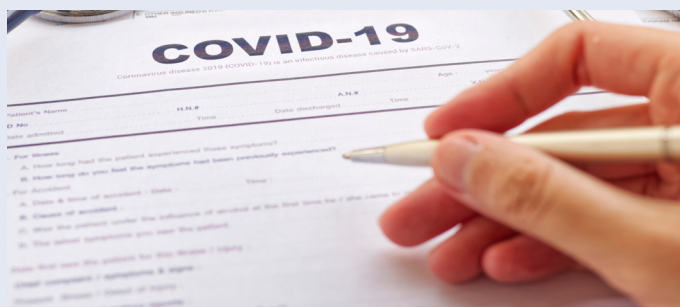
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to view our
comparison chart



WE HELP MORE

Paying the Price of the Pandemic: Business Interruption Insurance and Covid-19



By Sam Knight, Underwriter

The Covid-19 pandemic brought unprecedented challenges to businesses across the UK and throughout the world. The hospitality sector was one of the worst effected, with waning footfall and weary customers told to stay at home and protect the NHS.

Many businesses sought to rely on their business interruption insurance policies taken out before the extraordinary reality of Covid-19 set in. But that led to a question for the insurers, namely: does the business interruption policy cover such an extraneous circumstance?

According to the High Court in *Corbin & King Limited & Ors v Axa Insurance UK PLC* [2022] EWHC 409 (Comm), there are circumstances where it does. In that case, cover was offered to the Claimants on the basis that 'actions taken by the police or any other statutory body in response to a danger or disturbance at your premises or within a one-mile radius of your premises' constituted a business interruption and thus the policy covered such losses.

Mrs Justice Cockerill found that 'COVID-19 is capable of being a danger within one mile of the insured premises, which, coupled with other uninsured but not excluded dangers outside, led to the regulations which caused the closure of the business and caused the business interruption loss'.

The case requires insurers to go back to the drawing board and be clearer about what is and is not excluded from their business interruption policies. In all likelihood, 2022 will be a year flooded with similar cases disputing insurance coverage in the light of the Covid-19 pandemic.

It may be wise for parties to such a dispute to take out ATE cover and ensure that their interests are protected by minimising their adverse costs risk, particularly in the wake of the pandemic. Temple Legal Protection offers fully deferred and contingent policies that could protect your client and help to get them back on their feet at this trying time, protecting their interests in a commercially sensitive fashion.



Primekings & Ors v King & Ors [2021] EWCA Civ 1943 - Fair Rules for Unfair Prejudice Claims

By Sam Knight, Underwriter

In Primekings v King the Court of Appeal recently confirmed the validity of the approach in Graham v Every [2015] 1 BCLC 41, [2014] EWCA Civ 191 to tackling unfair prejudice claims under s994 Companies Act 2006.

It must now be shown that there is a 'causal connection' between the personal actions of a shareholder or third party, and some other act or omission constituting conduct of the company's affairs for such matters to be pleaded as unfair prejudice under s994. What this means is that, as in *Primekings v King*, unfair prejudice claims must be confined to their proper scope.

As Lord Justice Snowden said at [63]: 'the principle that statements of case should only set out the facts that go to make up each essential element of the cause of action relied upon is particularly relevant to pleadings in unfair prejudice petitions'. Essentially, the court has given itself a new lease of life to strikeout elements of unfair prejudice claims that do not rely on a 'causal connection' as outlined above.

Arguably, this has made drafting statements of case for unfair prejudice claims far stricter, lest your client face a strikeout application. On the other hand, the court is reining in unfair prejudice claims and keeping them on the straight and narrow, giving effect to the actual wording of the statute and what it was designed to protect.

Interim applications are part-and-parcel of modern-day civil litigation and can result in a serious adverse costs risk mounting against your client.

Temple's commercial ATE policies are fully retrospective from their inception, covering the entire adverse costs risk accumulated throughout the lifetime of the case and reassuring your clients that they are properly protected.



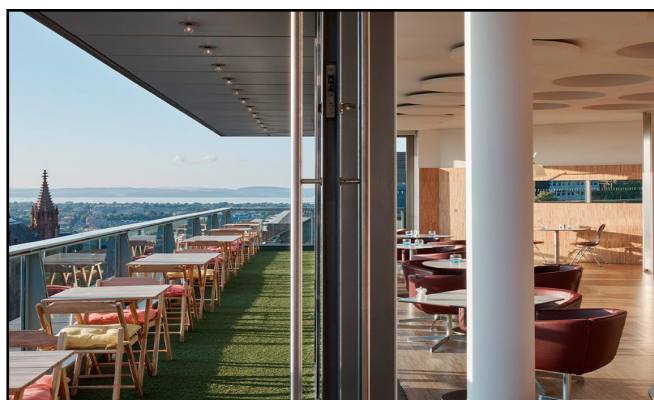
Wining and Dining 1: Temple's Edinburgh Excursions

By Sam Knight, Underwriter

Between exquisite wines and excellent canapés, this event was a fantastic opportunity to visit friends old and new whilst reaffirming Temple's commitment to providing top quality ATE insurance and outlay funding in Scotland.

Temple Legal Protection recently hosted a wine tasting masterclass followed by dinner at Harvey Nichols in Edinburgh. Our team, excited to finally return to Scotland in-person after being delayed for so long by the pandemic, were eager to engage with our Scottish colleagues in Edinburgh's beautiful backdrop.

The event consisted of a series of top-class red and white wines paired with gorgeous canapés and good company. Although Temple's staff were poor in our knowledge of wine (as evidenced by the quiz that followed the masterclass), we solidified our reputation as experts in the Scottish ATE market and learnt more about the relevant topical issues affecting the Scottish legal profession.



From the introduction of QOCS to issues surrounding the rules of prescription, we very much enjoyed discussing the changing legal climate in Scotland and how we could assist lawyers through our tailor-made Scottish ATE insurance products and outlay funding.

We cannot wait to return to Scotland but do recognise the challenges facing the Scottish legal profession and always strive to provide the highest quality service.

To find out about how our ATE insurance and outlay funding products can help your firm and your clients we suggest an online discussion/conference call with our commercial team to your litigation fee earners. Please contact our office on **01483 577877**.



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Queen Elizabeth's Foundation for Disabled People

Working with children and adults with physical and learning disabilities

Here at Temple we remain committed to our charitable endeavours and to support selected activities of our law firm customers. In this newsletter we asked The Queen Elizabeth's Foundation for Disabled People (whom we have supported for several years) to share their story.

The Queen Elizabeth's Foundation for Disabled People is a national disability charity based in Surrey. We have more than 85 years' experience of developing innovative services supporting almost 10,000 disabled people a year to increase their independence and achieve their goals in life.

We work with children and adults who have physical and learning disabilities or acquired brain injuries. Whether it's developing life skills to live as independently as possible, neuro rehabilitation to rebuild a life after a brain injury, or learning to drive a specially adapted car, we support each person to increase their independence.

We offer a wide range of expert services providing support and advice, specialist care, neuro rehabilitation and development of life skills that make a real difference to disabled people's lives.

Our Services:

- **QEF Care and Rehabilitation Centre:** The new centre provides expert, multidisciplinary neuro rehabilitation for people with acquired injury and stroke.
- **Independent Living Services:** based in Leatherhead, supporting adults with complex physical disabilities, and learning disabilities to live as independently as possible.

- **Mobility Services:** Provides a wide range of services focused on helping people of all ages become mobile and independent such as driving assessments for people with progressive disabilities or for people that have suffered an accident and need to learn to drive again.
- **MERU:** Improves the lives of disabled children by designing and manufacturing specialist assistive products, including MERU's Bugzi. Bugzi is a powered wheelchair for young children and thanks to fundraised income it can be loaned for free to disabled children.

There are many ways in which we can be supported:

- Run the TCS London Marathon 2022 (We still have places left for 2022, so please get in contact and spread the word)
- Do a Skydive with us
- Attend one of our amazing events
- Create a bespoke fundraising event
- Simply donate

If you want to get involved in any way, please email verity.millican@qef.org.uk or for our events email Events@qef.org.uk. Alternatively we can be called on 01372 841 151.

COMMERCIALLY MINDED

A solicitor update on litigation insurance and funding from Temple Legal Protection

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legal protection

Wining and Dining 2: The Cambridge Law Society Awards Dinner



By David Pipkin, Non-Executive Director

Temple dusted off their tuxedos to attend Cambridgeshire Law Society (CLS) Annual Gala Dinner.

Andy Lyalle, Matthew Pascall and David Pipkin from Temple enjoyed a glittering evening at the CLS dinner and annual legal excellence awards held at the splendid King's College, Cambridge.

Over 200 guests were treated to fine food and drink and the awards were presented by former National Law Society President Simon Davis. Temple was proud to sponsor the award for best Dispute Resolution Team, which was awarded to Howes Percival.

Michael Frape, the CLS President, hosted the event which coincided with its 150th anniversary. It was good to catch up with a lot of people we had not seen for some time to make new acquaintances.

This was the first of several social events Temple will be attending and sponsoring over coming months and good to see so many of us getting our glad rags on and enjoying each other's company.

Contacts:

Matthew Pascall

Senior Underwriting Manager

Matthew was called to the Bar in 1984 and before leaving to join Temple was a Legal 500 Tier 1 barrister. He leads the commercial litigation insurance team and his wide-ranging knowledge experience of the commercial legal sector is invaluable to our client firms.

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Andy Lyalle

Senior Business Development Manager

Andy has 25 years' experience in the legal services sector, working in technical and managerial roles. Based in our Bristol office, Andy works predominantly with the Commercial team, meeting with existing and potential clients nationwide and is always ready to discuss your litigation insurance and disbursement funding requirements.



Amy Edgington

Underwriting Support Manager

Amy provides underwriting support for the Commercial team as well as managing our underwriting assistants. Committed to providing the highest levels of service, her role includes the swift and efficient creation of quotes, issuance of policies and fielding of enquiries.

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Nicholas Ellor

Senior Underwriter

Nicholas has twenty years' experience working as a solicitor on both contentious and non-contentious company commercial and corporate matters. Having been a practitioner, he is fully aware of the pressure and time constraints a commercial litigator has to operate under.

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Sam Knight

Underwriter

After achieving an Outstanding Bar Training Course and being called to the Bar of England and Wales, Sam joined Temple in July 2021 to capitalise on his love for complex commercial cases and to put his knowledge into action. Sam's technical understanding of the law and the realities of litigation means he understands the value of getting things done quickly and correctly.

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'Don't just take our word for it'

'We are writing to record our positive experience in working with Temple. From the outset we found Temple be very responsive on all occasions - in relation to the original application for cover, during the ongoing proceedings (including amendments to the claim) and then in settling the claim. We have enjoyed working with you and would certainly recommend you to other practitioners.'

Charles Pugh, Oury Clark Solicitors



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