



# Ruling in favour of solicitors' insurer over debts and trading liabilities

Author: Phil Murrin And Parminder Badhan, Dac Beachcroft

Published Date: 06:19, 02 November 2016

**Decision suggests insurers will not generally be liable for obligations assumed by solicitors to litigation funders**

In a key ruling in favour of insurers last week, the UK's Supreme Court held that the insurers of a firm of solicitors were not liable to indemnify the solicitors' liability to a third-party funder for loans made to cover disbursements in intended litigation (*Impact Funding Solutions Limited v AIG Europe Insurance Ltd [2016] UKSC 57*).

The solicitors had a funding agreement under which numerous loans were provided to their clients, and used to pay disbursements incurred in the conduct of their clients' litigation. The funder was awarded damages following the solicitors' breach of the funding agreement and the clients' non-repayment of the loans, and claimed an indemnity for this liability from the solicitors' professional indemnity (PI) insurers.

The appeal raised a question of general public importance concerning the scope of a standard exclusion clause in the minimum terms and conditions of cover that must be incorporated into all solicitors' PI insurance policies; and also because it was important to the business model by which many solicitors have funded litigation since legal aid for civil cases was significantly reduced.

The Supreme Court (by a majority) held that the solicitors' liability fell within the debts and trading liabilities exclusion, which excluded the liability of insurers for claims or losses arising from the breach by the insured of the terms of any contract or arrangement for the supply to, or use by, the insured of goods or services in the course of the solicitors' practice.

The majority ruling overturned the Court of Appeal's conclusion that the disbursement loans were inherently part of the solicitors' professional practice and that their liability to the funder was a liability professionally incurred which came within the policy cover. That conclusion was considered by the Supreme Court at odds with the purpose of the policy, which in the context of the regulatory background was to protect the clients of solicitors, and also third

parties to whom solicitors owe duties of care, and not commercial lenders who can protect themselves.

This is an important decision for insurers as it suggests that they will not generally be liable for obligations assumed by solicitors to litigation funders. A different outcome carried the risk of affecting insurers' appetite to write solicitors' risks and/or premium levels. Insurers will very much welcome the Supreme Court's unwillingness to broaden the scope of a solicitors' professional indemnity insurance policy beyond that traditionally understood by the insurance market.

*Phil Murrin is a partner and Parminder Badhan an associate, at DAC Beachcroft*