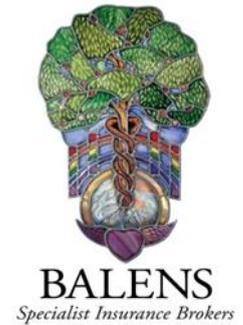


Briefing Document and Position Statement for OTs (Occupational Therapists), Case Managers, and other related Health Professional client of Balens regarding Dual Insurance Issues



Balens, Specialist Insurance Brokers

Following a webinar in spring 2021 designed to clarify the BAOT Insurers' position, we have received a number of calls and communications from our OT and Case Management individual clients and client firms to clarify certain issues concerning Dual Insurance.

As a values-driven business, our intention is to help and support our clients, and not to disrespect or compete with any other organisation or person. We therefore hope that this document, offered in good faith as Balens' Position Statement on the topic, will help to allay the fears and concerns we have so far encountered and bring further clarity to our clients in the private practice sector, who we have served for over 26 years.*

It may be helpful to state the relevant facts from our perspective in the form of a bullet point list with further explanations below as footnotes. Most important points are in bold.

1. **A corporate entity or a limited company cannot be a BAOT member and the block insurance will not cover them.** It is possible that a claim may be made against the individual personally, in which case we would imagine the BAOT insurance would respond. Unfortunately, no one has any control over who a third-party lawyer will or will not sue. **
2. **If you are only working one to one with clients who pay you directly, then you don't need the Balens policy** - BAOT cover should be fine, subject to their policy terms and conditions, (which you should be aware of and understand) and provided that all your work is included within their comprehensive and very open definition of scope of practice - which you should consult if in any doubt.
3. **Even if you are not a limited company, the BAOT policy may not be sufficient for you to dispose of your contractual insurance requirements. If you work as an individual subcontractor to a contracting organisation (e.g., a corporate firm, Charity, Public Corporate body etc.), it is usual for that contractor to require you in their contract document to indemnify them (a clause usually called "indemnity to principal").** If you haven't covered them in this way, it is quite likely that their own insurance policies won't respond either, as they usually stipulate that subcontractors must have their own individual policy which indemnifies the contractor in order to grant cover.
4. **Dual Insurance. In view of the potential confusion and the lack of foreseeability as to who a third party may or may not sue, it makes sense to have the Balen policy in place, but especially for individuals who do subcontracting work for the reasons stated above, irrespective of whether they are a limited company or not.** As mentioned before if you are sued as a limited entity, our policy would respond and the BAOT Block Scheme wouldn't -so this is fairly clear-cut. ****
5. **Whilst the two wordings cover many of the same things, they are not like-for-like. There are two significant differences in the two policies- – a. the contractual issue (3. above) and b. the cover restricted to named individuals only (1. above).** Inevitably all insurances have exclusions, terms and conditions, which you should familiarise yourself with. Some other differences in our policy exist as explained below. *****

6. **Online work is normally included.** Our cover is for work performed worldwide excluding USA and Canada for UK domiciled professionals. For professionals living abroad other than Eire and Holland, we are presently unable to cover. If you are dealing directly with US or Canadian clients please refer to us, as usually an endorsement is required and an additional premium may be payable.`

* **Balens** were originally asked by BAOT in the mid-1990s to **provide a solution for the private practice OT section, (as distinct from their public sector members) and consulted with some of their senior private practice members to design a bespoke facility.** We have been looking after the insurance needs of a significant number of both individual and corporate OTs ever since.

** In practice and in our experience, **it is more likely that the limited company will be sued** as they are assumed to have deeper pockets, and indeed in a contractual arrangement, it is more likely that the contract will be in the name of the OT(etc) Ltd company, and not the individual person. If indeed a company is first sued, then a lawsuit is later instigated to include the individual this may be messy and expensive, and **the important thing in our view is to have an insurance in place to respond immediately to either threat.** It involves two lots of costs to issue two lawsuits, so normally all parties involved are named initially and these names may get removed from the lawsuit as things unfold.

*** **It is worth making a point of checking your contractual insurance requirements when you take on work, in this regard.** Balens has always had this indemnity to others included since the 1990s, not just for Liability sections of cover, but hard wired into all sections of our comprehensive specialist policy- including Professional Indemnity and Malpractice. It is possible that the BAOT brokers (or others) may be able to cover limited companies via a separate policy on an individual basis for an additional premium. There is an indemnity to others cover on the Block BAOT Policy, but it only indemnifies your personal representatives in the event of your death should there be a valid claim on the policy.

We like to think that our insurance solution has stood the test of time in this specialist marketplace.

**** Contrary to a commonly-held belief, it is not illegal to have dual insurance. It would be illegal to claim for the same thing twice on say a household or motor policy, but in the field of liability and malpractice, it normally means that the two insurers may end up splitting the costs. They normally have to sort this contribution issue behind the scenes without overly involving the client. **Our policy has a typical “rateable proportion” clause for dual insurance situations, which means that the costs are shared in proportion.** Although the BAOT wording has an exclusion for claims where you are entitled to indemnity under any other insurance (e.g., ours), we are not sure how this would work out in practice. If, as some clients have told me, you claim as an individual for a valid claim with them and then it changes to a claim against the limited company further down the track, which the BAOT policy does not cover, I am not sure as has been reported to me that you would be liable for legal fees up to that point, as there may be a good reason for you to involve another insurer later, if further information comes to light which wasn't there in the first place. I am sure BAOT's insurers can clarify to your satisfaction on that point- we can only conjecture. Any overlaps should be resolvable between insurers, and presumably BAOT insurers would attempt if possible, to claim any recoverable costs from the other insurer (and vice-versa).

***** There are other features which are different and not (as I understand it) included on the Block scheme which may be useful to the private practitioner. Such as:

1. If you are doing work involving adaptations on buildings, you should be aware of their requirement to get approval from an independent surveyor or architect. Balens do not have this exclusion.
2. Breach of copyright, intellectual property etc., is also excluded, which we include.
3. loss of reputation expenses, and legal defence to help avoid giving court evidence where it may be shown to harm your vulnerable client.
4. the upgrade clause giving you the ability to increase your sum insured for work performed in previous years, enabling you to keep pace with increasing costs for later discovered claims.

Should you have any further questions please contact us at:

OTUpdate@balens.co.uk