



## NAVIGATING D&O MARKET TRENDS

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leaders following a disaster, holding them responsible for any damages that resulted. Senior leaders can be deemed accountable in these cases if they failed to implement reasonable controls to help prevent the disaster or lacked a proper response plan to limit the damages after the disaster took place.



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REGARDLESS OF YOUR ORGANISATION'S SIZE OR INDUSTRY, LEGAL ACTION AGAINST SENIOR LEADERS CAN OCCUR WITHOUT WARNING AND EASILY TOTAL THOUSANDS OF POUNDS. THAT'S WHY PURCHASING SUITABLE D&O COVER IS VITAL.

At a glance, D&O insurance provides legal cost protection for a range of claims, including actual instances or allegations of wrongful acts, errors, omissions, negligence or breach of duty by any member(s) of your senior leadership team.

Nevertheless, insurance experts confirm that current D&O market trends have made it increasingly difficult for organisations like yours to secure adequate levels of cover. Indeed, senior leaders being held increasingly accountable for large-scale organisational disasters (e.g. cyber-attacks, environmental incidents and financial failings) has generated unfavourable D&O market conditions across the UK.

Review this guidance for an outline of

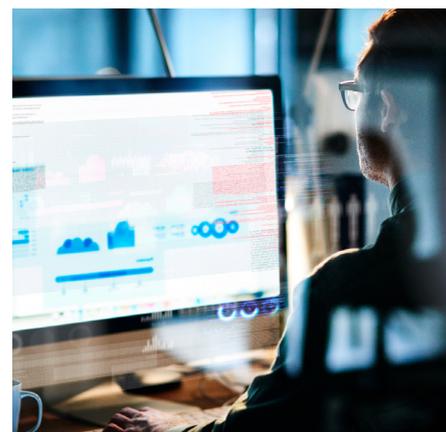
current D&O market trends, how these trends have impacted D&O insurance offerings and top tips for securing adequate levels of cover in the midst of these conditions.

## D&O MARKET TRENDS

In recent years, the D&O market has experienced a major shift as senior leaders have been held more accountable by their fellow employees, clients and government bodies for organisational failings. As a result, stakeholders have begun taking increased legal action against individual leaders within organisations rather than the company as a whole when incidents occur. With this concept in mind, the following D&O market trends are emerging throughout the UK:

- **'Bad news' litigation** - Instances of bad news litigation, also known as 'event-driven' litigation, have become a top cause of D&O claims. These claims can occur as a result of product problems (e.g. recalls, malfunctions or false advertising), natural disasters and corporate corruption. In these cases, stakeholders will take legal action against an organisation's senior

- **Environmental issues** - As climate change concerns continue to rise, organisations are now expected to consider environmental risks within their daily business operations. Failure to adjust key operations and bolster environmental risk management measures as climate change progresses could result in D&O claims from a variety of sources including government bodies, regulators and investors.
- **Securities class actions** - Workplace technology is consistently evolving, providing innovative solutions and advancements for organisations across industry lines. However, new technology comes with increased cyber-security and data protection risks. What's more, the General Data Protection Regulation (GDPR) requires organisations and their senior leaders to take specific steps to prevent and appropriately respond to a cyber-attack or face



hefty non-compliance consequences. In response, senior leaders are being held accountable more than ever before for maintaining proper data protection practices. Senior leaders who don't ensure GDPR compliance or effectively protect stakeholder data could face D&O claims in the form of securities class actions — a type of litigation in which a group of stakeholders takes collective legal action against a senior leader for the damages that result from an organisational security failing.

- **Financial failings** - The past few years have seen a significant increase in business insolvencies and bankruptcies across the globe, with the 2018 collapse of Carillion making waves throughout the UK. As financial experts predict economic downturn to continue in the coming years, it's crucial for organisations to engage in proper cash flow practices with trusted senior leaders to avoid the risk of insolvency or bankruptcy. Senior leaders who engage in poor financial decision making could face substantial D&O claims.

#### HOW MARKET TRENDS AFFECT D&O COVER

Current market conditions and emerging trends have contributed to an increase in D&O claims. This surge in demand has resulted in a major market fluctuation, leaving D&O insurers to pay the hefty price tag of additional claims with a limited financial supply. Consequently, D&O insurers have implemented a variety of measures to reduce their risk of paying out costly claim settlements. These measures include:

- **Extra information** - Prior to renewal, insurers have begun requiring more detailed information from organisations regarding their D&O risk management methods. Doing so can significantly lengthen the amount of time it takes to generate proper terms and determine an updated policy.
- **Higher premiums** - In order to compensate lost profits from a growing number of claims, many insurers have increased their premium rates forcing organisations to pay additional expenses for adequate cover.

#### TOP TIPS FOR SECURING ROBUST D&O COVER

Despite the harsh implications of D&O market trends, you can help your organisation maintain adequate cover with this guidance:

- **Communicate with your broker** - Make sure you meet with your insurance broker to discuss what level of cover and unique policy features your organisation needs. After all, your broker has the insurance expertise to provide you with the most cost-effective, high-quality cover solutions. Ensuring frequent communication with your broker will help you stay informed and supported during the current tough market conditions.
- **Start the renewal process early** - In a difficult market, you can't wait until the last minute to secure quality cover. With this in mind, be sure to engage in your D&O policy

renewal process as early as possible. Doing so will give you plenty of time to gather any documentation required for renewal. In addition, insurers will likely ask more questions than usual before finalising your policy, making it even more vital to get a head start on the process.

- **Invest in risk management** - Now more than ever, it's vital to invest in robust D&O risk management processes and provide documentation of these practices to your insurer upon renewal time. Your risk management documentation should highlight:
  - Proper financial practices, cash flow controls and healthy profit margins
  - Seamless contracts with stakeholders
  - A business continuity plan, cyber-incident response plan and risk assessment
  - Robust internal policies to mitigate on-site risks and ensure regulatory compliance.

### GET IN TOUCH

If you are a trade association and would like to find out more about how working with Miles Smith can benefit you, please email Ian Cook, Interim Managing Director of Miles Smith Insurance Solutions - [icook@milesmith.co.uk](mailto:icook@milesmith.co.uk) or call 020 7977 4800.



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