



## Guide to buying professional indemnity insurance

The Law Society has collaborated with the British Insurance Brokers' Association and Association of British Insurers to provide you with this Guide to Buying Professional Indemnity Insurance (PII). The guide provides information about the rights and responsibilities of solicitors, brokers and insurers in the renewal process, and covers the following areas:

<b>1. Getting started.....</b>	<b>2</b>
Market participants .....	2
Qualifying insurers .....	2
Assigned risks pool .....	2
Insurance brokers .....	3
<b>2. Choosing a broker / insurer .....</b>	<b>3</b>
Choosing a broker .....	3
Using multiple brokers .....	3
Selecting a qualifying insurer.....	3
<b>3. Dealing with your broker / insurer.....</b>	<b>4</b>
Best practice for solicitors.....	4
Duties of brokers and insurers.....	5
Duties of all FSA regulated organisations.....	5
Duties owed to you by brokers and insurers.....	6
Duties owed to you by brokers under agency law .....	8
Duties owed to you by brokers and insurers under contract law .....	8
Individual agreements with your broker .....	8
<b>4. Making a complaint about your broker / insurer.....</b>	<b>9</b>
Will the Financial Ombudsman Service consider your complaint? .....	9
What should you do if the FOS will not consider your complaint? .....	9
<b>5. Further information and resources .....</b>	<b>10</b>

## 1. Getting started

The Guide to Buying Professional Indemnity Insurance builds upon the Law Society's recent [practice note](#) on PII. The practice note provides information about:

- PII – What is it? Why and when do solicitors need it? Who provides it? How much cover do solicitors need?
- the current market
- applying for PII
- writing the proposal form
- considering offers received from insurers
- difficulties obtaining PII
- other relevant issues – including what a solicitor should do if they receive poor service from a broker or insurer; if they want to merge; or cease practice.

Sections 1 and 2 provide a summary of the information in the practice note about market participants and selecting the right broker and insurer for your firm. You should refer to the practice note for further details.

### Market participants

#### Qualifying insurers

You must obtain PII from either:

- a qualifying insurer, or
- as a last resort – the assigned risks pool (ARP).

A qualifying insurer is an insurer that:

- is authorised to conduct insurance business in the UK, and
- has signed the [Qualifying Insurer's Agreement](#).

The Solicitors Regulation Authority (SRA) publishes a list of [qualifying insurers](#). Neither the Law Society nor SRA vets, approves or regulates qualifying insurers.

#### Assigned risks pool

If you cannot get PII from a qualifying insurer before the annual renewal deadline on 1 October, you may apply for PII from the ARP. The ARP is intended as an option of last resort. You will be required to pay a higher premium than the market rate, and to be inspected and monitored by the SRA at your own expense. You may also be required to attend approved courses and to implement specified practice management measures.

You may be insured through the ARP for up to 24 months in any five-year period. After this time, you must secure cover from a qualifying insurer or cease practice.

## Insurance brokers

Insurance brokers advise on and arrange insurance. Most qualifying insurers can only be accessed through an insurance broker. Both the British Insurance Brokers' Association ([www.biba.org.uk](http://www.biba.org.uk)) and the Law Society ([www.lawsociety.org.uk/professionalindemnity](http://www.lawsociety.org.uk/professionalindemnity)) publish the details of insurance brokers that offer PII through qualifying insurers.

## 2. Choosing a broker / insurer

There are a number of factors you should consider when choosing a broker or insurer for your firm. Price should not always be the determinative factor.

### Choosing a broker

If engaging a broker, relevant factors may include:

- ☒ Is the broker regulated by the Financial Services Authority (FSA)?
- ☒ What services does the broker provide?  
Brokers may sub-broke to a larger broker, act merely as an intermediary between you and the insurer, or perform an advisory role whereby they inform you about market conditions and advise you about how best to apply for PII.
- ☒ How experienced is the broker in dealing with the solicitors' PII market?
- ☒ Which qualifying insurers does the broker place business with?  
Some brokers have a commercial agreement with a single qualifying insurer for certain segments of the profession. This may mean that the broker can place business with only one qualifying insurer or that the broker is the only broker that places business or certain types of business for that insurer.

The broker's Terms of Business will provide useful information about the broker's regulatory status and services.

### Using multiple brokers

You may need to use more than one broker to gain access to the full range of qualifying insurers that are willing to offer PII to your firm. You should not need to approach more than three brokers to ensure adequate access. If you use multiple brokers, you should ensure that your proposal does not go to the same insurer more than once.

### Selecting a qualifying insurer

You should seek your broker's advice about whether to accept an offer you receive from an insurer. If two insurers have offered you PII, your broker should be able to advise you about which is the best offer for your firm. Relevant factors may include:

- ☒ What level of excess must you pay in the event of a claim?
- ☒ What is the cost of run-off cover?
- ☒ What claims service and support does the insurer provide?
- ☒ Is the insurer offering a commitment to renew for future periods?
- ☒ How experienced is the insurer in dealing with the solicitors' PII market?
- ☒ Does the insurer provide risk management support?

### 3. Dealing with your broker / insurer

Ultimately you are responsible for obtaining PII. There are steps that you should take when dealing with your broker or insurer to maximise your chances of obtaining PII.

#### Best practice for solicitors

Submission of proposal form
<p>You should submit your proposal form to your broker(s) / insurer(s) early, preferably by <b>mid-July</b>.</p> <p>You should use the proposal as an opportunity to convince the insurers that they should take your firm on risk. Your proposal form should be clear, accurate, well-presented and comprehensive.</p> <p>You should decide what level of cover you need. This will depend on your firm's size and exposure to risks. You should seek advice from your broker and/or insurer to ensure that you have sufficient cover.</p>
Reach an agreement on the renewal process
<p>You should seek to reach an agreement with your broker(s) / insurer(s) on the renewal process, including:</p> <ul style="list-style-type: none"><li>• How will the broker(s) / insurer(s) review your proposal form?</li><li>• How will the broker(s) / insurer(s) keep you informed about the progress of your proposal?</li></ul>
Actively manage your relationship with your broker(s) / insurer(s)
<p>You should contact your broker(s) / insurer(s) regularly to seek updates about the progress of your proposal if they fail to provide them.</p>
Respond to requests from your broker(s) / insurer(s)
<p>You should respond in a timely manner to any requests for further information or clarification from your broker(s) / insurer(s).</p>
Communicate your decision
<p>If you have received an offer for PII, you should check how long the offer is open for and ensure that you communicate your decision before the offer expires.</p>
Fulfil the terms of your contract
<p>You should ensure that you comply with the terms of a contract which you have finalised with your broker and/or insurer. For example, most qualifying insurers will require you to pay the whole premium upfront (although some brokers offer premium financing facilities).</p>

## Duties of brokers and insurers

Your broker and insurer owe you a number of duties. These duties arise from various sources.

## Duties of all FSA regulated organisations

The FSA regulates brokers and insurers. The FSA is responsible for regulating financial services in the UK, and aims to promote efficient, orderly and fair financial markets and help retail financial service consumers get a fair deal. The FSA works to 11 key Principles of Business which set out the high level standards that all financial institutions must meet. You should give consideration to these principles when seeking to buy PII.

1. **Integrity** - A firm must conduct its business with integrity.
2. **Skill, care and diligence** - A firm must conduct its business with due skill, care and diligence.
3. **Management and control** - A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4. **Financial prudence** - A firm must maintain adequate financial resources.
5. **Market conduct** - A firm must observe proper standards of market conduct.
6. **Customers' interests** - A firm must pay due regard to the interests of its customers and treat them fairly.
7. **Communications with clients** - A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
8. **Conflicts of interest** - A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
9. **Customers: relationships of trust** - A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.
10. **Clients' assets** - A firm must arrange adequate protection for clients' assets when it is responsible for them.
11. **Relations with regulator** - A firm must deal with its regulators in an open and co-operative way and must disclose to the FSA anything relating to the firm of which the FSA would reasonably expect notice.

## Duties owed to you by brokers and insurers

In addition to the FSA's core Principles of Business, there are specific duties owed to you by brokers and insurers relating to initial communications, provision of information, claims and fees.

<b><u>Brokers' duties</u></b>	<b><u>Insurers' duties</u></b>	<b><u>Reference</u></b>
<b>Role:</b> to act as your representative in the insurance world and to be transparent in all dealings with you.	<b>Role:</b> to provide contract certainty by the timely issue of the policy documentation and clarity by ensuring clear meaning of the clauses of the policy.	Insurance Conduct of Business (ICOBS) - FSA Handbook
<b>Communication between you and your broker / insurer</b>		
Before a firm approves a financial promotion it must take reasonable steps to ensure that the financial promotion is clear, fair and not misleading.		<b>ICOBS 2.2.3</b>
<p>Prior to the conclusion of an initial contract of insurance, a firm must advise you as to whether:</p> <ul style="list-style-type: none"> <li>• it gives advice on the basis of a fair analysis of the market</li> <li>• it is under a contractual obligation to conduct insurance mediation<sup>1</sup> business exclusively with one or more insurers, or</li> <li>• it is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurers and does not give advice on the basis of a fair analysis of the market.</li> </ul>		<b>ICOBS 4.1.6</b>
A firm should also explain that you have a duty to disclose all circumstances material to the policy, what needs to be disclosed, and the consequences of any failure to make such a disclosure.		<b>ICOBS 5</b>

<sup>1</sup> 'Insurance mediation' means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

Time	
Your insurer and broker must take reasonable steps to ensure that you are given appropriate information about a policy in good time and in a comprehensible form, so that you can make an informed decision about the arrangements proposed. This includes details of the premium and fees to be charged. Your insurer must issue your policy by the time it takes effect so that you achieve contract certainty.	ICOBS 6.1.5
Information should be provided within good time. In determining what is in good time, a firm should consider the importance of the information to your decision-making process and the point at which the information may be most useful.	ICOBS 6.1.8
Information about the firm(s)	
<p><b>Brokers only</b> - prior to the conclusion of an initial contract of insurance a firm must provide you with the following:</p> <ul style="list-style-type: none"> <li>• its name and address</li> <li>• whether it is included in the FSA Register and the means for verifying this</li> <li>• whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given insurance undertaking</li> <li>• whether a given insurance undertaking has a direct or indirect holding representing more than 10% of the voting rights or capital in the firm, and</li> <li>• the procedures allowing you and other interested parties to register complaints about the firm and redress procedures.</li> </ul>	ICOBS 4.1.2
Claims and renewals	
Appropriate information should be provided to ensure that you are able to make an informed decision about renewals.	ICOBS 6.1.6
Fees	
<p>A firm must provide you with details of the amount of any fees other than premium monies for an insurance mediation activity.</p> <ul style="list-style-type: none"> <li>• the details must be given before you incur liability to pay the fee, or before conclusion of the contract, whichever is earlier</li> <li>• to the extent that an actual fee cannot be given, a firm must provide you with details of the basis for its calculation.</li> </ul>	ICOBS 4.3.1
<p><b>Brokers only</b> - on your request, a broker must promptly disclose the commission that it and any associate receives in connection with the policy. Disclosure must be in cash terms and in writing. If this is not possible, the firm must give the basis for calculation.</p> <p>A broker should include all forms of remuneration from any arrangements it may have. This includes arrangements for sharing profits, for payments relating to the volume of sales, and for payments from premium finance companies in connection with arranging finance.</p>	ICOBS 4.4.1

## **Duties owed to you by brokers under agency law**

The relationship with your broker is one of principal and agent whereby the broker is your agent and therefore owes you fiduciary duties. A broker is required to use reasonable endeavours to obtain insurance on the best possible terms.

In *Standard Life Assurance v Oak Dedicated Ltd and Aon Limited* [2008] EWHC 222 (Comm), Tomlinson J stated that a broker must:

- discover the needs of their client
- match risks with coverage
- arrange insurance appropriately

For example, given that brokers know that 1 October is an immovable deadline and that failing to meet it could lead to harsh professional outcomes, there is even more of a requirement for brokers to obtain and present quotations in good time prior to this deadline.

## **Duties owed to you by brokers and insurers under contract law**

Once you have finalised a contract with your broker and/or insurer, the broker or insurer would be subject to the terms of that contract.

## **Individual agreements with your broker**

While your broker is not bound to provide the following services, it would be to your advantage to agree that your broker:

- discuss and advise on the types and level of insurance cover that may be required, and assist with the evaluation of existing standards of loss control
- advise on your retention of insurance documents and keep all relevant records relating to your insurance arrangements
- ensure that the following is undertaken in good time:
  - pursue the insurance company to ensure prompt issue of insurance policies
  - ensure that all documents are sent to the insurers and to you, and
  - issue you with renewal notices and reminders
- compile the insurance renewal information from data supplied by you
- supply you with details of the insurers approached and quotes received
- provide information relating to the reputation, suitability and solvency of possible insurers, and
- monitor claims activity and pursue claims recoveries on your behalf.



#### 4. Making a complaint about your broker / insurer

If you have a complaint about the service provided by your broker / insurer, you should initially write to them directly before seeking any alternative recourse. They are obliged to provide information about their complaints policy prior to the conclusion of the initial contract (see above). If you are unhappy with the response, or do not receive a response within eight weeks, you should then write to the Financial Ombudsman Service (FOS). The FOS will consider whether the matter falls within its jurisdiction.

#### **Will the Financial Ombudsman Service consider your complaint?**

Whether the FOS will consider your complaint will depend upon whether you meet the following criteria:

1. The type of activity to which the complaint relates

The FOS can consider a complaint if the subject matter is deemed to be a 'regulated activity'. This includes effecting contracts of insurance (See the [FSA's Handbook](#) for full details.)

2. The place where the activity to which the complaint relates was executed

The FOS's 'Compulsory Jurisdiction' only covers complaints about the activities of a firm carried on from an establishment in the UK. However, a complaint can be dealt with by the FOS whether or not you live or are based in the UK.

3. Whether you are eligible

'Private individuals' and businesses which have a group annual turnover of less than £1 million are considered eligible. You should also have established a professional relationship with the broker or insurer.

You should refer to the FSA's Handbook for further detail as to what constitutes a business and qualifying relationship.

4. Whether your complaint was referred to the FOS in time

The FOS must receive your complaint within six months of the date on which the broker or insurer sent its final response.

You should refer to the FSA's Handbook for further detail regarding time limits and exceptions.

#### **What should you do if the FOS will not consider your complaint?**

If the FOS considers that your complaint may be out of jurisdiction, they will give you an opportunity to make representations before they make a final decision. The FOS can also refer your complaint to another complaints scheme where appropriate. Alternative redress should be made through the courts. A remedy might be sought under the law of agency if you are seeking redress from a broker who has breached his / her fiduciary duties. You may also be able to sue your insurer and / or broker for breach of contract.

## 5. Further information and resources

You can obtain further information relating to PII from the following:

***Assigned Risks Pool Manager***

[arp@capita.co.uk](mailto:arp@capita.co.uk)

0870 402 7788

***Association of British Insurers***

[www.abi.org.uk](http://www.abi.org.uk)

***British Insurance Brokers' Association***

[www.biba.org.uk](http://www.biba.org.uk)

***Financial Ombudsman Service***

[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

***Financial Services Authority***

[www.fsa.gov.uk](http://www.fsa.gov.uk)

***Solicitors Regulation Authority***

[www.sra.org.uk](http://www.sra.org.uk)

***The Law Society***

[www.lawsociety.org.uk/professionalindemnity](http://www.lawsociety.org.uk/professionalindemnity)