



Guide To Solicitors Professional Indemnity Insurance



Solicitors Professional Indemnity Insurance

Professional indemnity insurance (PII) is one of the major overheads for all law firms.

If you are a solicitor in practice you are required to have professional indemnity insurance by your regulatory body, but premiums for this essential class of insurance cover vary widely between insurance companies.

The cover is the best that money can buy, because the policy wording is stipulated to the Insurers by the Solicitors Regulation Authority (SRA), but the professional indemnity market for solicitors can still be a minefield.

It has seen more than its fair share of insurers go bust as well as many law firms closed down by the SRA because they were unable to obtain cover.

So it's important to have some understanding of how this market works to be able to make an informed decision on which product is best for your firm. Our guide will help and it covers all of the key points.

We recommend this guide is circulated to all Partners, Directors and Senior Managers for their



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SECTION 1

ABOUT US



PIIB has been providing expert advice to law firms across the UK since 2011. We are a specialist professional indemnity insurance broker, working with many clients of all shapes and sizes.

Choosing the right professional indemnity policy is a critical decision for any law firm as it provides peace of mind and protects the business when something goes wrong. However, the insurance market can be a minefield for the unwary. PIIB recognises that every firm is different and must be matched with the right insurer.

All insurers have a different outlook, expertise, speciality, financial strength and appetite, so we can help find the right one for your individual needs.

SECTION 2

Where can we get a quote?

Over 90% of law firms buy their cover through insurance brokers, so brokers totally dominate market distribution. A good broker's market knowledge lowers premium spend and provides valuable advice and support throughout the insurance period, especially on claims. We are a specialist broker so for a quotation or free advice please contact us.

- Request our Solicitors' Quotation Pack
- Call us on 0345 251 4000

The cost of solicitors' professional indemnity insurance

Rates for this insurance typically range between 1% and 3% of fee income depending on the usual risk factors and market competition. But rates can also be higher or lower than this depending on the work undertaken, the claims history etc. Rates are discounted for new start firms as there is no history or legacy to insure.

You should also bear in mind that minimum premiums will apply which will vary between insurers. The minimum premium is the insurance company's starting point for insuring a risk and they can vary significantly for solicitors. For example, a minimum premium could be £ 1,000 or £ 5,000 depending on the Insurer.

If you stop trading you will be required by the SRA to carry run-off insurance. This will be calculated as a multiple of the annual premium, usually three times the annual premium for a six year period of cover.

A word of warning. The history of this market shows that it's foolish to buy solicitors' professional indemnity insurance as a 'commodity' purchased only on its price. Professional indemnity is commercial insurance and coverage disputes still occur. There is also a high churn rate of insurance companies entering and exiting the market, so use a specialist broker to get the right advice.

The impact of COVID-19

The additional challenges presented by remote working and disruption to business caused by COVID-19 is likely to result in an increased number of professional negligence claims against Solicitors.

Therefore, firms should be ready to demonstrate

to their professional indemnity insurers that they have assessed these additional risks and have a clear plan in place to mitigate the risks.

Firms should also ensure that they have read and understand completely the terms of their professional indemnity policy. If any points are unclear, you should clarify these points with your broker.



Setting up a new law firm

When submitting an application to the Solicitors Regulation Authority, new firms will need to include a quotation or 'offer of professional indemnity insurance' from an SRA authorised professional indemnity insurer. This must be in accordance with the Minimum Terms and Conditions (MTC) as set out in the SRA Indemnity Insurance Rules. To obtain a quotation, the following documents are required:

- a fully completed proposal form
- a copy of the business plan
- cash flow forecasts
- and CVs of the partners or directors

This information helps give the underwriter a clear picture of what the business will be doing, its risk management processes, revenues etc.

New firms should bear in mind that under the SRA rules, there is a six year mandatory 'run off' requirement for professional indemnity insurance. So if you cease to practice for any reason, you will have a six year 'run off' premium pay.

SECTION 3

Premium calculation

The rating of a law firm or any professional indemnity risk is a complex process. Underwriters need to be highly skilled and require a significant amount of information to enable them to provide a quotation which accurately reflects the risk they are pricing. Premiums are calculated based on many factors which will include:

- The claims history of the firm
- Categories of work performed by the firm
- Number of partners / directors / staff
- Firm's annual revenue

To assess the risk the underwriter will require a fully completed proposal form which they will consider in detail. They will also look at the firm's website and they may even look deeper online into a firm's background.

Creating the right impression

Presentation is more important than you might think. The underwriter is assessing the professionalism and quality of your firm and if the information is badly presented, it may influence their judgement and the premium they offer or they may even decline to quote.

To obtain a quotation you have to complete a fairly lengthy proposal form and new firms also need to provide a considerable amount of additional information. This will all be carefully reviewed by an experienced underwriter. Remember that the proposal form is a representation of the quality of your business to the insurance market, so it's worth spending some time making sure it looks professional. An underwriter will be using it to judge you and they will also look at your website and perhaps your financial information.

If you spend time and money on risk management and improving quality, make sure your insurer knows about it. This could easily be overlooked and not reflected in your premium so add some notes on this subject.

High-risk work

All work carries some risk and for the legal profession, this can vary considerably. The following is by no means an exhaustive list but will give you some idea of the type of legal work where professional indemnity claims come from.

- Low Risk - Adjudication, Agency, Children

Work, Criminal, Expert Witness, Immigration, Officers and Appointments.

- Medium Risk - Defendant Litigation, Employment, Matrimonial, Personal Injury, Town Planning.
- High Risk - Commercial Litigation, Estate Agency, Financial Advice, Intellectual Property, Probate, Trusts and Wills, Tax Planning.
- Very High Risk - Conveyancing, Commercial Work (public and non public companies).

SECTION 4

The market for solicitors' professional indemnity insurance

The current market is in good shape to deliver some very competitive premiums to the profession. This is primarily due to the scrapping of the 'assigned risks pool' and the 'common renewal date', which is making the market far more attractive to new Insurers.

Until 2014, all law firms renewed their PII on the same day each year: the 1st October. But this was a chaotic system and the common renewal date idea was finally abandoned by the SRA. Now solicitors are free to arrange and renew their cover at any time during the year although around 75 % of firms still renew their professional indemnity insurance on 1 October and it will probably take many years for this date to unravel itself from the renewal process.

In revenue terms, solicitors professional indemnity is worth in the region of £ 250 million in annual premiums to the insurance market. This is for the 'primary' insurance cover and a further £ 50 million comes from excess layer or 'top-up' cover. This is generated by the 11,000 law firms practising in England and Wales.

Market distribution is heavily dominated by brokers who arrange PII on behalf of almost all law firms, with only a small number of firms arranging cover direct with insurers. Like any market, you'll find the good, bad and ugly so if you want some good advice about which insurers are best suited for your firm, please contact us anytime.

In England and Wales you can only buy professional indemnity insurance for solicitors from an insurer who has signed up to the SRA's Qualifying Insurers Agreement. There are approximately 20 'Qualifying Insurers' signed up

to underwrite solicitors' professional indemnity insurance but there is some churn each year with some insurers withdrawing and some new entrants.

Examples of claims against Solicitors

Scenario 1 - Conveyancing: Solicitors acted for the purchaser in a house purchase. The sellers had built an extension to the property but had never received Building Regulations approval. The solicitors didn't request sight of the certificate on learning of the extension in their pre-exchange enquires. After the purchase completed the local authority found the extension to be non-compliant with building regulations and took enforcement action. The solicitors were negligent for failing to note the non-compliance pre-exchange. Settlement: Over £ 50,000

Scenario 2 - Fraud: A partner in a prominent high-street law firm partnership was involved in a large mortgage fraud, together with other complicit professional advisers in the local area. The resulting claim eventually led to the firm's closure and recovery actions against all the Partners by the financial institutions who suffered financial loss. Settlement: £ 3,000,000 (the full indemnity limit)

Scenario 3 - Litigation: Solicitors acted for the owners of a residential apartment block who were pursuing a building contractor for negligent repair works carried out six years earlier. The solicitors failed to issue proceedings against the contractor in time for the expiry of the limitation deadline. The solicitors were negligent for missing the deadline. Settlement: Over £ 10,000

Scenario 4 - Commercial Litigation: Solicitors acted for a manufacturer in their proceedings against a wood supplier. The client had paid for and taken delivery of wood which was spoiled and unfit for purpose. The solicitors commenced proceedings against the supplier on behalf of their client for the cost of the wood, but the claim was poorly drafted and struck out. The client pursued a loss of chance claim against the solicitors. Settlement: Over £ 10,000

Scenario 5 - Probate: Solicitors acted for a client in the drafting of his Will. After his death, the Will was found to have been poorly drafted and ambiguous as to the shares of the estate due to his children as well as items of high value which were not adequately dealt with under the Will. Settlement: Over £ 200,000

What does 'minimum terms' mean?

All qualifying insurers must provide a policy wording which is no less comprehensive than the 'minimum terms' for professional indemnity insurance, as set by the SRA.

The policy wording provided under the SRA 'minimum terms' is a civil liability wording and widely regarded as the Rolls Royce of professional indemnity insurance. The cover is broad and the small print generally favours the policyholder rather than the insurance company.

The 'minimum terms' are forever evolving to cater for changes in legislation and changes to the legal profession.

Policy Exclusions

Your insurance policy is a contract between you and your insurer. Like any contract, it is prudent to familiarise yourself with its wording. In particular, you should always read the policy exclusions.

The policy will have the usual exclusions you'd expect to see in a professional indemnity policy. This could include:

- Partnership disputes
- Personal debts and trading liabilities or guarantees
- Defence costs for disciplinary proceedings
- Dishonesty, a fraudulent act that has been commissioned or condoned by an insured individual
- Bodily injury including death and property damage
- Employment issues, wrongful dismissal etc.
- Penalties and fines or orders to pay costs in the investigation into professional conduct

The insurance company may be able to seek recovery of their claim payments if a firm is found to have engaged in non-disclosure of relevant factors, misrepresentation, dishonesty or fraud.



SECTION 5

Buying Online

Due to the complexity of the risk, online quotations are not yet available for law firms. Please call us for our solicitors' quotation pack on 0345 251 4000.

What level of cover (limit of indemnity) is required?

The SRA specifies the minimum level of professional indemnity cover a firm must carry, depending on the structure of the firm.

- Firms as defined by the SRA are obliged to have cover of at least £ 3 million for any one claim.
- In the case of sole practitioners and partnership firms the requirement is at least £ 2 million for any one claim.

Extra cover on top of the SRA's minimum requirements can also be purchased if required. This is called an 'excess layer' or 'top-up' and the total amount of cover will depend on the size of the firm and its exposure to risk.

Although it's not law firm specific, you can also read our informative guide on choosing the right level of professional indemnity cover.

Extended Policy Periods: What are they and how do they work?

You may not always be able to complete your professional indemnity insurance (PII) renewal in time, so what happens then?

If your firm has not completed its PII renewal in time, its current policy will be covered under the Extended Policy Period (EPP).

This means that you can operate normally for 30 days. However, if you fail to renew or take out a new insurance policy at the end of these 30 days, you will move into the Cessation Period (CP).

The CP is a 60-day period where your insurer must continue to provide cover to your firm. During this time, your firm will be unable to accept any new instructions. However, you are permitted to work on existing files while you prepare to close the firm at the end of these 60 days if you have been unable to secure PII.

In light of the COVID-19 pandemic, it was announced earlier this year by the Solicitors Regulation Authority (SRA) that firms struggling

to obtain PI insurance due to the issues caused by the virus can apply to their insurers for an extension to both the EPP and CP periods.

However, these extensions are subject to the insurer's consent, meaning it is unwise for firms to rely on this. If your firm closes, you are still responsible for paying run-off cover as usual in accordance with your policy terms.

The issue with relying on extended policy periods

Although the EPP and CP may sound like simple ways to gain extra time with your renewal, it is essential that you are aware of the potential risks involved, as they can have severe consequences for your firm.

If you made a claim during these periods, your current insurer would be notified. However, the SRA requires any PII that your firm eventually takes out to be backdated to when your policy expired.

With this in mind, it would then become your new insurer's responsibility to make the notifications and you would be required to disclose them prior to the inception of the policy, likely causing your prospective new insurer to withdraw your policy or increase your insurance premium.

It is also important to be aware that, when applying for PII, many proposal forms ask whether your firm has ever been in the EPP or CP. It is unlikely that a new insurer will look upon your application favourably if you have.

Run-Off Insurance

If you decide to close your firm, you will be required to carry 'run-off' insurance cover for a period of six years from closure. This is a mandatory requirement of the SRA and it can be expensive. Your insurer is obligated to provide this cover and your current policy should contain details of the cost of the insurance. It is often calculated at 300% of the annual premium, paid as a one-off premium for the six year period. For more general information about run-off cover, please read our Guide to Run-off Insurance.

SECTION 6

Trading without professional indemnity insurance

Trading without adequate professional indemnity insurance is a serious breach of the regulatory requirements and a firm will be prevented from trading and closed down if they cannot obtain cover. The availability of professional indemnity insurance for every law firm should not be taken for granted as there are numerous examples of the SRA closing down firms who were unable to obtain cover.

This system means that the insurance market is in effect deciding who can or can't practice. So we cannot overemphasise enough the importance of internal risk management and maintaining a good risk profile, as evidence of a firms cover is required every year by the SRA.

Obtaining your quotation

For a general chat, some free advice, or for a competitive professional indemnity insurance quotation, please contact us on **0345 251 4000** or email **sales@professionalindemnity.co.uk**.

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