

# Solicitors' Professional Indemnity Insurance Renewal 2023

Approximately two thirds of law firms in England & Wales will be preparing themselves for their professional indemnity insurance (PII) renewal on 1 October 2023.

Here is a selection of key points to keep in mind, though there will doubtless be others.

## Completing the proposal form

What is your process for gathering information? The proposal form will contain a declaration to the effect that all claims and circumstances which may give rise to claims have already been disclosed to your insurers. How do you know? Some may rely – unwisely – on the assumption that anyone who is aware of a problem will have told them. Others just ask partners, or only ask fee earners, yet support staff may be those who have their finger on the pulse and know of lurking problems.

Check the form – some (not all) contain extensive warranties that you have asked *all* staff. It is in any event prudent to do so. Ask them in plain English if they are aware of any mistakes or complaints, even unmeritorious ones, and keep a record to ensure everyone has responded. Check again before you finalise cover.



## Block notification

Sometimes the firm knows there is a problem, perhaps involving a particular client or intermediary, a type of work, or an individual fee earner or team. Rather than leave it hanging over the firm, it may be necessary to consider notifying this to the firm's current insurers in order to ensure, so far as possible, that future claims fall on the current policy. That may be a requirement for renewal, possibly, but not invariably, to facilitate a change of insurers, or as a step prior to a merger or closure.

Block notifications in these circumstances need careful drafting, because insurers may in future seek to argue that claims made after the policy expired do not arise from the circumstances which were notified to them. We have extensive experience of drafting notifications and dispute resolution with insurers.

## How much cover will you buy?

The SRA Indemnity Insurance Rules require you to buy 'adequate and appropriate' insurance. The decision making should be recorded. Firms which may be considering reducing cover should remember that the 'claims made' basis of professional indemnity cover means that if the firm has done high value work in the past, this may be unwise.

A problem we have encountered many times relates to the provision in every policy which provides, in terms, that claims which arise from similar causes are subject to a single limit of indemnity. This can mean that claims from low value, volume work exceed the policy limit. The writer has acted for many firms in coverage disputes where this provision has been an issue, including multiple claims from property investment schemes, and claims arising from partner dishonesty impacting many of a firm's clients.

## Personal liability for excesses and run off premiums

Many policies provide for personal liability on partners, LLP members and limited company directors in relation to unpaid excesses. Some even provide for such liability for the run off premium too. How effective these provisions are in the case of incorporated practices has been disputed in a number of cases in which we have acted. We have seen some insurers asking for personal guarantees.

## Mergers and acquisitions

Financial pressures are leading to a number of law firm closures. Other firms may see opportunities – acquiring the practice, or a team, or (purportedly, at least) a will bank.

Many, perhaps most, firms are aware of the successor practice provisions in policies written under the Solicitors Regulation Authority (SRA) Minimum Terms and Conditions of Insurance (MTC), but that is only a small part of the overall picture as mentioned below. We have seen many firms make crippling mistakes, one small firm ending up with a £1m premium and a £1m excess.

There are considerations for both the firm which is closing and the firm which is acquiring and these extend far beyond the next insurance renewal. They may affect available levels of cover for years into the future, which is an important factor when claims are made against solicitors far in excess of the primary six year limitation period, illustrated in part by statistics in the Willis Towers Watson report commissioned by the SRA into Post Six Year Run Off Cover.

These provisions not only afford many opportunities for being caught out and inadvertently assuming the cost of insuring the liabilities of another practice (or the risk of being unable to obtain cover at all), but the acquisition of a practice or part of it may alter the firm's risk profile in the eyes of insurers; firms should seek the advice of their brokers on that aspect.

There are cases where the acquiring firm should agree to be successor, cases where it should not, and cases where the transaction should simply not go ahead at all. We have advised in several hundred cases, including many arising from the collapse of substantial practices, some of them US and other international firms with London offices.

## Russian clients and connections

All practitioners should be aware of the extensive sanctions prohibiting the provision of legal advisory services following the amendment to the Russia (Sanctions) (EU Exit) Regulations on 29 June 2023.

Insurance policies invariably exclude cover for sanctioned clients, but firms are finding that insurers are being ultra-cautious about any exposure where firms act for clients with links to Russia, Ukraine and Belarus with extensive questionnaires on the subject.

## Other insurance

Many law firms have been subject to cyber attacks, and some have faced regulatory action from the SRA and the Information Commissioner's Office. Attacks are becoming more common, and bad actors using artificial intelligence may become more sophisticated at deploying phishing and deep fakes. Firms need to train their staff and review the adequacy of their security measures constantly.

Insurance may help mitigate risk where all else fails. Broadly, compulsory insurance under the MTC covers claims by clients for losses arising from cyber incidents, but does not cover the firm's own losses.

Cyber insurance can provide cover for the firm's losses, but, perhaps more importantly, it will provide support for tackling the problem in the aftermath of a breach, like breakdown cover for a car.

However, cyber cover is not a panacea. It is not as broad as MTC insurance, and may contain onerous provisions, non-compliance with which may exclude cover in the firm's hour of need. We have seen terms which would require a firm to implement additional security measures costing several times the amount of the premium. Care is clearly needed.

Other types of policy to discuss with your brokers include management liability, which may also cover SRA investigation costs, and employment practices insurance.

## Independent review

Sometimes, in problem cases, an independent assessment of the firm may help your broker obtain renewal terms, explaining more fully what the firm is doing to tackle its risk issues. We have extensive experience of providing reports both on firms' practices and on file reviews, drawing on our extensive experience of defending professional indemnity claims and advising on coverage, including firms across the spectrum of the profession.

*For legal advice on your insurance renewal contact Frank Maher or Francis Dingwall on [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk) or 0345 330 6791.*

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