



Professional Indemnity Insurance Guide to Renewal 2014/2015

12 November 2014



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Disclaimer

THIS GUIDE IS INTENDED AS GENERAL GUIDANCE AND DOES NOT CONSTITUTE A DEFINITIVE STATEMENT OR INTERPRETATION OF THE LAW. WHILST CARE HAS BEEN TAKEN TO ENSURE THE ACCURACY OF THE INFORMATION IN THIS GUIDE AS AT THE DATE OF PUBLICATION, THE SOCIETY WILL NOT ACCEPT ANY LEGAL LIABILITY NOR WARRANT THE ACCURACY OF THE INFORMATION WITHIN.

Update notice

NOTE: This guide will be updated on an ongoing basis during the renewal period. Firms are advised to check the Society's website throughout the renewal period to ensure that you are using the most up-to-date version of the guide. This is the first publication of the guide. Subsequent updates will be noted in this section of the guide.

UPDATE 12 NOVEMBER 2014: List of Brokers section updated to include O'Leary Insurance Group and Lockton Companies LLP.

Tips for renewal

Responsibility for renewal

- 1.1. Ultimately, you are responsible for obtaining professional indemnity insurance (“PII”) before the mandatory renewal date of **1st December 2014**. This date is not negotiable.

Collect information now

- 1.2. Firms should start collecting information well in advance of submitting the common proposal form, as the information required can be difficult and time-consuming to find. The collation of information should continue on an ongoing basis throughout the year to save time and money in the long-term.
- 1.3. Most of the information required in this year’s common proposal form was already provided in last year’s common proposal form. Firms are advised to check their completed forms from last year, and the documentation provided with that form.
- 1.4. If your firm now, or in the past, has been engaged in areas insurers consider to be high risk, such as conveyancing, wills and probate¹ and personal injuries, you should prepare an outline of the steps taken by your firm to minimise the risk of claims from these areas and demonstrate your firm’s experience in the relevant practice areas.

Seek a copy of your claims history

- 1.5. The claims history of a firm should be obtained from the current insurer for the current indemnity period, and previous insurers of the firm for previous indemnity periods. The insurer is required to provide this information in accordance with the Participating Insurers Agreement².
- 1.6. The claims history report from the current insurer should contain the following information:
 - (a) a summary of each claim made against the firm under each policy;
 - (b) the amount reserved by the insurer against each claim (including the basis on which the amount was calculated) and whether the amount includes defence costs; and
 - (c) information on any excess or deductible for each claim and any amounts paid out in relation to each claim (including any excess or deductible due from but not paid by the firm).
- 1.7. You should include with your claims history in the common proposal form:
 - (a) comments on the current status of any outstanding claims; and
 - (b) outline what steps have been taken to avoid re-occurrence of the problem.

Research the market

- 1.8. You should research PII market conditions and enquire from brokers about what type of firms are covered by each insurer. Many insurers may have narrow underwriting criteria and will only quote certain types of firms.

¹ Although some insurers consider probate work to be low risk

² Previously known as the “Qualified Insurers Agreement”.

- 1.9. Enquiries should also be made as to what are the key issues that suitable insurers for your type of firm will be looking for in assessing proposals.

Notification of claims by 30th November 2014

- 1.10. All claims made against your firm and circumstances that may give rise to such a claim should be notified to your firm's insurer as soon as possible.
- 1.11. In particular, claims made between 1st December 2013 and 30th November 2014 (both dates inclusive) should be notified by the firm to their insurer by 30th November 2014. Special care will be needed in the weeks and days approaching 30th November 2014 and on the day itself to ensure that the deadline is not missed.
- 1.12. It is proper practice for firms to notify insurers of claims or circumstances during the year as they arise, not at the end of the indemnity period. Notifying all claims and circumstances at the end of the indemnity period is referred to as "laundry listing" by insurers, and is not looked on favourably.
- 1.13. In addition, your firm should ensure that it complies with any notification requirements set out in the insurance policy terms and conditions.
- 1.14. Firms are permitted to report claims or circumstances of which they are aware prior to expiry of cover to their insurer within a grace period of 3 working days immediately following the end of the coverage period.
- 1.15. Notifications of claims and circumstances to your insurer are vital due to the "double trigger" requirement as set out in the 'Important points to note' section of this guide.

Check if you are a distressed firm

- 1.16. If insurers consider your firm to be high risk, or a 'distressed firm', this can lead to refusal to quote, higher premiums and higher excess. Indicators that you may be considered a distressed firm include:
- (a) sudden increase in the frequency and/or severity of claims being made against the firm;
 - (b) deterioration in the firm's claims history;
 - (c) rogue fee earners in the firm;
 - (d) partners involved in fraudulent activity;
 - (e) litigious nature of, and liabilities arising from, conveyancing work;
 - (f) failure to engage and implement risk management strategies;
 - (g) laundry listing claims at the end of the year;
 - (h) delay in notifying claims (see "double trigger" section in the guide); and
 - (i) difficulties with your firm's last renewal.
- 1.17. If you are concerned that you may be considered to be a distressed firm, you should seek advice from your broker on how to make your firm more attractive to insurers, including early application, providing professional and in-depth information to reassure underwriters, commissioning an independent risk review to focus on problem areas in the firm where claims have arisen, identifying the underlying causes of claims, implementing risk management measures in relation to claims

and ensuring that all claims and circumstances have been properly notified and accepted by the firm's existing insurer.

Apply early

- 1.18. Some insurers limit the amount of business that they accept and, when this limit is reached, they will stop offering cover. Therefore, common proposal forms should be submitted as soon as possible.
- 1.19. Early submission should also indicate that a firm is professional and well managed and therefore less likely to constitute significant risk. Making an application close to the deadline is not viewed favourably by insurers.
- 1.20. Wherever possible, firms should meet with insurers or brokers to address any key issues or concerns of the insurers or brokers.
- 1.21. If you deal with more than one broker, try to ensure that your proposal form is not sent to any particular insurer more than once. This can cause delay.
- 1.22. Ensure the common proposal form is comprehensively and accurately completed with all the required documentation. Ensure your responses are legible, accurate and well-presented. Try to avoid submitted hand-written proposal form. The form is available in an editable pdf form on the Society's website at www.lawsociety.ie/PII/.
- 1.23. Further information on completing your common proposal form application can be found in the *Common Proposal Form Guidelines* on the Society's website at www.lawsociety.ie/PII/.

Follow up on your application

- 1.24. Follow up with your broker on the status of your application once submitted, including the identities of the insurers the broker submitted the form to and the dates the form was submitted.
- 1.25. Respond promptly to any requests for further information or clarifications from your broker or insurer.
- 1.26. Seek regular updates from your broker on the progress of your proposal if they do not in any event provide such information. Insurers must confirm they are willing to cover a firm and provide a quote within 10 working days of receiving a properly completed proposal form.

Accept quotation promptly

- 1.27. If you receive an acceptable quote for cover, do not delay unduly accepting the quote, as the quote may be available for acceptance only during a specified period or may be withdrawn before acceptance. Never delay accepting a quotation beyond close of business on 30th November 2014.
- 1.28. It should be noted that insurers are required to leave quotes open for a period of not less than 10 working days. This requirement was introduced in the 2012/2013 indemnity period and remains in place for the 2014/2015 indemnity period. Make sure you confirm your decision to accept a quote before the offer expires.
- 1.29. Further information on factors to be considered when deciding whether to accept a quote can be found in the 'Guide to Brokers' section of the guide.

Risk management

- 1.30. The Society strongly recommends that firms adopt formal risk management policies and procedures and notify insurers of the procedures in place. The risk management section of the common proposal form takes up a significant portion of the form, which reflects its importance to insurers.
- 1.31. Each insurer is expected by the Society to advise those firms currently insured by that insurer which the insurer believes would need to arrange for a risk management audit of their practice in order to facilitate the renewing of their PII.

If you are unable to obtain cover

- 1.32. If it becomes clear that you are unable to obtain cover in the market, or it appears likely that you will be unable to do so, act immediately. As a matter of urgency, discuss the situation with your broker and contact the Society's PII helpline (see details in "PII Helpline" section below).
- 1.33. You should inform the Society in writing that you have been unable to obtain cover in the market before the 30th November 2013 and keep the Society updated on your progress to obtain cover.
- 1.34. You should contact the Special Purpose Fund Manager, Capita Commercial Insurance Services, in relation to applying to the Assigned Risks Pool ("ARP") for cover. Further information on the ARP can be found in the 'Guide to Special Purpose Fund' section of this guide.
- 1.35. Failure to obtain cover will result in the firm being declared a "defaulting firm" and the firm will be required to close if cover cannot be obtained. Further information on defaulting firms can be found in the 'Important points to note' section of this guide.

Confirmation of cover

- 1.36. Confirmation of PII cover for a firm must be provided to the Society within 3 working days. Therefore, confirmation of cover in the designated form must be provided to the Society on or before **THURSDAY 4 DECEMBER 2014**.
- 1.37. The Society has a facility whereby brokers can furnish the Society, on behalf of the firm, with confirmation of cover via the Society's website. Such confirmation must include your policy number, and confirmation of cover cannot be provided until the policy is actually in place.
- 1.38. As your firm has a statutory obligation to ensure such confirmation of cover is provided to the Society on or before Thursday 4 December 2014, you are responsible for ensuring that your broker provides the Society with confirmation of cover by that date.
- 1.39. You should also ensure that your broker has familiarised themselves with the online confirmation system, and has the necessary information to confirm cover online (such as their login and password) in advance of 4 December 2014.
- 1.40. It is noted that some firms who have confirmed PII cover to the Society during 2014 have a coverage period that extends past 30 November 2014. Such firms are still required to reconfirm cover for 2014/2015 with the Society by 4 December 2014.
- 1.41. Please note that your firm will not be reflected as having PII in place on the Society's "Find a Firm" online search facility until such time as the Society has received the required online confirmation of cover.

1.42. The online PII confirmation system is now closed for 2013/2014 indemnity period submissions. The system will be available to accept submissions for the 2014/2015 indemnity period on 1st December 2014.

PII Helpline

1.43. The Society continues to operate the PII Helpline to assist firms in dealing with PII queries. The Law Society's PII helpline is available Monday to Friday 10am to 4pm to assist firms with PII queries at 01 879 8707 or piihelpline@lawsociety.ie.

Renewal resources

1.44. Renewal resources for the 2012/2013 indemnity period are available to download from the Society's website at www.lawsociety.ie/PII/ and include the common proposal form, list of brokers, list of insurers, the Participating Insurers Agreement, the current PII regulations, Assigned Risks Pool and Run-off Fund documentation and documentation from previous indemnity periods. This area will be updated frequently as more documentation becomes available.

General guidance for obtaining the best quote

What is the best quote?

- 2.1. Firm should not make the mistake of presuming that the best quote for your firm is the cheapest quote. Firms should consider the financial stability of the insurer, the premium price, the service provided by your broker and the level of expertise of the insurer.

Underwriter requirements

- 2.2. Underwriters are responsible for making decisions on your PII application. They often have a accountancy or actuarial background. They are tasked with pricing the risk associated with different applicants as accurately as possible in accordance with actuarial practices. Their objective to is make a profit for their employer and therefore their ideal firms are those that are less likely than average to have a claim.
- 2.3. It is important to have knowledge of underwriter requirements in the insurance industry generally, and knowledge of the difference between requirements of individual organisations, both in Dublin and in London, in order to tailor your application. There may be distinct differences between the requirements of underwriters in Dublin and senior management in London, where final decisions in difficult cases are made.
- 2.4. Firms are advised to seek information on underwriter requirements from their broker, and take such information into consideration when preparing the proposal form.

Underwriter expectations of solicitor firms

- 2.5. Underwriters expect solicitor firms to be well managed and business orientated. They expect firms to have, at the very least, a basic grasp of the principles of practice and risk management.
- 2.6. Some underwriters have precise requirements for the register of undertakings and will not accept registers that do not conform to these requirements.
- 2.7. In most cases, the requirements of underwriters are unspoken and unpublished, and are subject to change annually based on the claims experience of previous years. This is why insurers have such an input into the common proposal form, in order to make the requirements of underwriters more transparent, as they are reflected in the questions in the form.
- 2.8. Distressed firms should seek advice from their broker and take time to research this area, as compliance with the requirements of underwriters can make the difference between being offered cover and being refused.

Communication

- 2.9. Firms are advised to consider how best to bridge the gap in understanding and communication between the firm and the insurers. Firms should not attempt to operate from memory or rely on trust as a substitute for good risk management systems and procedures. Firms need to adhere to basic operating standards for law firms in order to present themselves as a good risk to insurers.

Register of undertakings

- 2.10. The common proposal form contains extensive questions of the handing of undertakings by firms, including the register of undertakings, as this is a good risk indicator for insurers.

2.11. The main issues to be kept in mind with regard to the register of undertakings are the importance of using a good format and the importance of actively managing the register once it is in a good format.

2.12. The advantages of keeping your register in good format include:

- (a) enhanced understanding of your firm's risk exposure;
- (b) the register acts as a powerful indicator to underwriters that your firm's risk exposure in this area is minimised, which puts the firm into a lower risk category;
- (c) the register allows you to track and monitor the status of transactions;
- (d) the register highlights undertakings which are in a high risk category and permits you to prioritise them; and
- (e) the register is an excellent supervision tool.

Duty of utmost good faith

2.13. In addition to reviewing underwriter criteria, firms are advised to review the duties of solicitors applying for PII. While in certain respects the common law in relation to insurance is overridden by the minimum terms and conditions, attention must be paid to the doctrine of utmost good faith that underpins the contractual relationship, except as varied by the minimum terms and conditions.

2.14. There are two elements to this doctrine:

- (a) the obligation to make full and proper disclosure; and
- (b) the duty to avoid making material mis-statements.

2.15. The general position is that only the insured persons know the special facts upon which the policy is to be computed and the underwriter has to rely on the representations made to him or her that induce him or her to insure the risk. Suppression of relevant information, even without fraudulent intent, can have serious effects on the validity of your policy. Therefore, firms are advised to ensure that material facts and material changes are disclosed in the common proposal form.

Material fact

2.16. Material facts are generally understood to be any information which may influence the judgment of a prudent insurer in deciding whether to accept the risk and, if so, on what terms.

2.17. An obvious example of a material fact is to disclose a firm's claims record. Failure to disclose the claims record with the common proposal form can be expected to result in a lot of difficulties for firms.

Material change

2.18. Material changes are generally understood to be changes to material facts that arise on renewal or during the currency of the policy that have not previously been disclosed to the insurer as a material fact.

2.19. Examples of material changes include:

- (a) fraud on the part of any of the partners and employees of the firm;
- (b) changes in the composition of the firm; and
- (c) mergers with, and acquisitions of, other firms.

2.20. Firms experiencing any of these types of material change are advised to contact their broker and insurer prior to the event occurring if possible (for example in cases of mergers and acquisitions).

2.21. Other changes in the composition of a firm may take place where the duty to inform the insurer is not so obvious, in particular where a principal or partner becomes ill or incapacitated. In such cases, where the principal or partner is not working in the office for a number of months, there has been a practical change in the composition of the firm and it should be reported in order to keep the firm compliant with the duty of disclosure.

Misrepresentation or non-disclosure in placing PII

2.22. Any misrepresentations or non-disclosure in placing PII has the potential to reduce the effective level of cover for your firm, or remove cover altogether for claimants that are financial institutions.

2.23. Claims by financial institutions can be declined by the insurer if there is any material misrepresentation or non-disclosure (other than innocent misrepresentation or non-disclosure) in placing the insurance. In this case, the insurer is required to demonstrate that the firm was guilty of material misrepresentation or material non-disclosure in placing the insurance. The burden of proof is on the insurer to prove that this is the case.

2.24. In the case of claims by non-financial institutions, cover cannot be avoided by the insurer for misrepresentation or non-disclosure, but your firm may have to indemnify the insurer for claims in such cases.

2.25. The insurer cannot avoid or repudiate insurance on any other grounds, with the exception of proven material misrepresentation or non-disclosure or the 'double trigger', including in the case of innocent misrepresentation or non-disclosure.

2.26. Therefore, firms must complete the common proposal form correctly in all respects and all relevant information provided to your insurer.

Firm profile

2.27. It is important to have a clear understanding of the profile of your firm as this is one of the main factors taken into account by underwriters. A firm's profile is derived from:

- (a) the size of the practice;
- (b) the practice areas and fee income derived;
- (c) risk level of legal services provided; and
- (d) expertise and experience in core areas of practice.

Size of practice

2.28. With regard to the size of the practice, sole practitioners and sole principals may find that the number of insurers interested in covering such firms is limited. It is important to ascertain which insurer will quote this business. Firms with four partners or more may find that there are more options open to them as certain insurers feel that the bigger the practice, the lower the risk. This preference is based on the assumption that proper resources are available in larger firms to manage risk and put proper systems in place.

Practice areas and fee income derived

2.29. With regard to the practice areas and the fee income derived, certain areas are regarded by insurers as high risk. These areas of practice vary over the years and an area which is considered high risk this year may be low risk in a few years. Firms which had a high concentration of domestic and commercial conveyancing over the past few years now find that this area is approached with caution by insurers. Other areas pose a lower risk. The perception of risk for particular practice areas varies from insurer to insurer, and firms are advised to seek information from their brokers on the views of insurers regarding the risk associates with specific practice areas, and to take such views into account when completing the common proposal form.

Risk level of legal services

2.30. With regard to risk level of legal services provided, legal services with lower claim statistics tend to be criminal law, family law, general commercial work and probate³. If firms are engaged in what are perceived as high risk areas, they should pay special attention to informing the insurer of the risk management systems in place in the firm relating to those practice areas.

Expertise and experience in practice areas

2.31. Insurers are reassured if firms can demonstrate expertise and experience in the firm's practice areas. For example, firms should be able to clearly define their core business, even if the firm is a general practice, as there are a number of practice areas which you will offer and a number of practice areas which you will not.

2.32. Firms should be clear on the areas in which they offer legal services, and those areas in which they do not offer legal services. Many claims arise in situations where firms agree to act in transactions where they were not sufficiently knowledgeable. In this way, small firms which practice in a number of different unrelated areas or firms which have recently set up and have little or no experience in their practice areas can be seen by insurers as presenting a higher risk.

Risk management procedures and policies

2.33. The common proposal form strongly emphasises the importance of risk management to insurers, including risk management procedures and systems, risk management accreditation, how the firm deals with undertakings and whether the firm limits its liability by contract.

2.34. Firms that lack a formal, effective, written risk management strategy are seen by insurers as presenting a higher risk.

2.35. Risk management should be viewed as an opportunity to help your practice improve efficiency and reduce costs, leaving you free to concentrate on fee earning, rather than a burden imposed.

³ Although some insurer still view probate work as high risk.

- 2.36. Implementation of risk management systems help to reduce exposure to claims. In-depth written policies, marks of quality and accreditation can be a key differentiator to insurers when calculating premiums, as insurers are increasingly looking for reassurance that risk management is being properly addressed and covering what they see as the main causes of claims. Insurers have adopted a robust and co-ordinated approach to risk assessment which has resulted in more selective underwriting.
- 2.37. Insurers look for systems in firms that mitigate risk, and may wish firms to be audited to ensure compliance with such risk management systems. Firms are advised to show that post-loss corrective actions are taken by firms following claims as evidence of the firm's commitment to high risk management standards and best practice.

Claims history

- 2.38. PII operates on a “claims made and notified” basis which means that the firm’s current insurer is responsible for covering any claim which is both made and notified to the insurers during the same indemnity period .
- 2.39. The implications of this from an insurer’s perspective are that they must assess the risk based, not just on the firm’s commitment to risk management going forward, but also on what risk management measures have been in force in the past. Firms that lack clear risk management procedures present a higher risk of claims to insurers.
- 2.40. A claims history is regarded by an insurer as being a reflection of future performance. If the insurer sees a poor claims history, the assumption is that the circumstances which gave rise to claims in the past may cause claims to arise in the future. The simplest decision an insurer can make in this situation is to decline the risk. As stated previously, firms with poor claims histories are advised to provide explanations for such claims histories and state the risk management procedures put in place to prevent such claims arising in future. It is hard to overstate the importance of explaining your firm’s claims history. If necessary, firms should consider retaining expert advice if the claims history of the firm is poor.
- 2.41. Firms should obtain their written claims history from their current insurer for the current indemnity period, and previous insurers for previous indemnity periods and take the time to analyse it and explain the actions the firm has taken to ensure that similar claims do not arise in future.
- 2.42. If your firm has a claims free history, the question is whether that claims free history is a result of good luck, or good management. Firms with a claims free history of over 30 years can still be bankrupted by a single claim. If you believe your claims free history is attributable to good management, ensure that this is set out in the covering letter provided to the insurer.

Disciplinary, regulatory and complaints history

- 2.43. Insurers also consider the disciplinary, regulatory and complaints histories of firms and such details are required to be disclosed in the common proposal form. Firms with poor disciplinary, regulatory or complaints histories are advised to provide copies of any adverse decisions made against the firm and other relevant documentation, together with an explanation of how such matters arose and the steps taken by the firm to prevent a reoccurrence of such situations.
- 2.44. Provision of regulatory information is not necessarily negative. For example, an Investigating Accountant’s report disclosing no adverse issues will be seen in a positive light by insurers.
- 2.45. Your firm’s disciplinary, regulatory and complaints history provides an independent assessment of your firm’s management of client accounts and compliance with regulations. A good history, or clear examples of firms putting in place effective procedures to deal with a poor history, are selling points for the firm.

Financial viability

- 2.46. Firms may feel that their PII premium should decrease in situations where the fee turnover for the firm has decreased or is at a low level. PII is offered on a “claims made and notified” basis. Therefore, your firm’s risk exposure is determined by the firm’s past. If the firm had a high turnover in a high risk area for many years which has reduced, or the firm deals or dealt primarily in high risk areas, the risk of claims has not in fact reduced for the insurer.
- 2.47. Insurers take the financial viability of firms into account and may be reluctant to insure firms that may be required to close during the year due to financial issues. This is due to the fact that claims may arise on your firm and, as the firm has ceased during the indemnity period, the principal or partner may not be available to manage the claims for the rest of the indemnity period.

Changing insurer

- 2.48. Consideration should be given to the effect of changing insurer, especially the loss of the benefits of continuation of cover with one insurer, including avoidance of coverage disputes that may arise between insurers in different policy years.

Improving your insurance profile

- 2.49. Firms can distinguish their firm from others by:
- (a) treating the renewal as a priority, thereby improving both the number of insurers prepared to cover the firm and the terms upon which they may be prepared to do so;
 - (b) applying early to demonstrate that your firm is professional and well managed, as late applications may be treated as distressed applications;
 - (c) preparing for the renewal in the same way as you would prepare for a business tender, and make your proposal stand out through its clarity, presentation and level of details, as these are indicative of the way the firm conducts the rest of its business;
 - (d) taking responsibility for the renewal and application at a senior level;
 - (e) ensuring there are no mistakes in the proposal form by checking and rechecking the proposal form before submitting the form to insurers;
 - (f) taking the time to sell the firm as a good risk in the covering letter with the proposal form;
 - (g) stressing your risk management and best practice processes and systems as a key component of your renewal strategy, including accreditations if obtained;
 - (h) where claims have arisen, indicating the steps that you have taken to address such matters;
 - (i) focusing on key high risk areas that insurers see as the main causes of claims and demonstrating to insurers the processes you have in place to prevent claims, such as the register of undertakings, critical dates diary, evidence of regular file reviews, a designated partner for risk management, regular meetings with fee earners and procedures to ensure proper cover for absent fee earners; and

- (j) following up on the application, as firms should not assume that “no news is good news” and should ensure they remain engaged with the insurer and the broker until the policy is put in place.

Benefits to the firm

- 2.50. Implementation of good systems will be of benefit to the firm in the long run. Improving quality standards makes a statement to insurers, helps improve efficiency, and should reduce complaints, potential claims and the management time, expense and worry involved in dealing with them.
- 2.51. Such improved management practices may lead to greater profitability, not only by virtue of any reduction in insurance premiums that it may achieve, but also as a result of greater efficiency achieved throughout your practice.
- 2.52. While there is no guarantee that discounts on your premium will be secured, the more issues you can address, the greater the likelihood of minimising your premium.

Important points to note

Indemnity period and coverage period

- 3.1. The indemnity period is a period of one year, from 1st December to 30th November annually.
- 3.2. The coverage period is a period for which the insurance held by a firm affords cover and must not exceed 24 months.
- 3.3. In the case of the ARP, where a firm applies to join the ARP prior to the start of an indemnity period, the coverage period shall run from 1st December to 30th November in that indemnity period. Where a firm applies to join the ARP during the indemnity period, the coverage period shall run from the date of application until 30th November in that indemnity period.
- 3.4. It should be noted that a firm's indemnity period and coverage period may not be the same, although they are the same for the significant majority of firms. Firms with variable renewal dates may have a coverage period that is longer than the indemnity period, and their cover may not expire on 30th November 2014. Your coverage period should be clearly set out in your policy.

Renewal date

- 3.5. The mandatory PII renewal date is **1 DECEMBER 2014**. This date is not negotiable.
- 3.6. All cover under the current indemnity period will expire on 30th November 2014, with the exception of firms with variable renewal dates, as the coverage period for such firms may extend past 30th November 2014. All firms, including those with variable renewal dates, are responsible for ensuring that confirmation of cover is provided to the Society on or before **THURSDAY 4 DECEMBER 2014**.
- 3.7. Confirmation of cover should be provided by your broker through the Society's online PII confirmation system. Such confirmation must include your policy number, and confirmation of cover cannot be provided until the policy is actually in place.
- 3.8. As your firm has a statutory obligation to ensure such confirmation of cover is provided to the Society on or before Thursday 4 December 2014, you are responsible for ensuring that your broker provides the Society with confirmation of cover by that date.
- 3.9. You should also ensure that your broker has familiarised themselves with the online confirmation system, and has the necessary information to confirm cover online (such as their login and password) in advance of 4 December 2014.
- 3.10. It is noted that some firms who have confirmed PII cover to the Society during 2014 have a coverage period that extends past 30 November 2014. Such firms are still required to reconfirm cover for 2014/2015 with the Society by 4 December 2014.
- 3.11. Please note that your firm will not be reflected as having PII in place on the Society's "Find a Firm" online search facility until such time as the Society has received the required online confirmation of cover.
- 3.12. This online PII confirmation system is now closed for 2013/2014 submissions. The system will be available to accept confirmations for the 2014/2015 indemnity period from 1 December 2014 onwards.

Variable renewal dates

- 3.13. In response to demand by the profession, variable renewal dates were permitted with effect from 1 December 2011 and continue to be permitted in the 2014/2015 indemnity period.
- 3.14. It should be noted that, while the Society is permitting variable renewal dates, their availability on the market will be subject to such dates being offered by insurers and will be subject to agreement between firms and their insurer. The Society cannot oblige any insurer to provide variable renewal dates.

Notification of claims

- 3.15. All claims made against solicitors' firms and circumstances that may give rise to such a claim should be notified to the firm's insurer as soon as possible. In particular, claims made between 1st December 2013 and 30th November 2014 (both dates inclusive) should be notified by the firm to their insurer by 30th November 2014.
- 3.16. It is proper practice for firms to notify insurers of claims or circumstances during the year as they arise, not at the end of the indemnity period. Notifying all claims and circumstances at the end of the indemnity period is referred to as "laundry listing" by insurers, and is not looked on favourably. Firms should also ensure that their claims and circumstances notifications meet the notifications requirements set out in the insurance policy terms and conditions.
- 3.17. The minimum terms and conditions for PII were amended in the 2011 PII regulations, which change is retained in the minimum terms and conditions for 2014/2015, to permit firms to report claims or circumstances of which they are aware prior to expiry of cover to their insurer within 3 working days immediately following the end of the coverage period. Therefore, a 3 working day grace period from 30th November 2014 is in place with regard to notification of claims and circumstances to your insurer.

Quotes

- 3.18. Insurers are required to leave quotes to firms open for a period of not less than 10 working days. This requirement was introduced in the 2012/2013 indemnity period and remains in place for the 2014/2015 indemnity period.

Terms of cover

- 3.19. Firms, rather than individual solicitors, are covered by PII.
- 3.20. The PII regulations prescribe only the minimum level of cover required for firm, which is €1.5 million for each and every claim.
- 3.21. PII is on a "claims made and notified" basis. This means that claims are covered only if they are notified to the insurer in the correct coverage period, which is the coverage period in which the claim is first made against the firm. Further information on the "claims made and notified" basis of cover can be found in the 'double trigger' section below.
- 3.22. Cover for legal defence costs for the insurer dealing with the claim are not limited.
- 3.23. Insurers may not repudiate claims by non-financial institutions on any grounds, including fraudulent misrepresentation or non-disclosure. They must cover such claims but may pursue the firm subsequently.

3.24. Statutory compensation or restitution to clients, such as may be ordered by the Solicitors Disciplinary Tribunal, is covered.

“Double trigger” – claims made and notified

3.25. PII is on a ‘claims made and notified’ basis. This means that insurance must indemnify the firm against civil liability incurred by the firm arising from any provision of legal services provided that:

- (a) a claim in respect of such civil liability is first made against the firm during the coverage period and notified to the insurer during the coverage period or within 3 working days immediately following the end of the coverage period; or
- (b) a claim in respect of such civil liability is first made during or after the coverage period and arises from circumstances first notified to the insurer during the coverage period or arises from circumstances first notified to the insurer within 3 working days immediately following the end of the coverage period provided that the firm was aware of the circumstances during the coverage period.

3.26. This means that the insurance that will cover a claim is not necessarily the insurance that was in place when the alleged negligent act occurred.

3.27. The requirement for a claim (or circumstance) to be both made against the firm and notified to the insurer during the same coverage period as set out above is referred to as the “double trigger” in that both requirements must be met for the claim to be covered under the policy.

3.28. For the 2013/2014 indemnity period, the double trigger provisions have been amended so that, for claims and circumstances arising after 1st December 2013, the requirement to notify the claim or circumstance in the same coverage period as it was made will not apply if your firm has continuous cover with that insurer (has not changed insurer between the indemnity period). The self-insured excess for the claim shall be the higher of the applicable self-insured excesses between the two coverage periods and the limit of liability shall be the lower of the two coverage periods. Where a firm has changed insurer between coverage periods, the double trigger applies and the claim or circumstance must be notified in the same coverage period in which it was made. Against, firms should ensure that they notify claims and circumstances to their insurer as soon as they arise and that they meet the notification requirements as set out in the firm’s insurance policy terms and conditions.

3.29. The “coverage period” is the period for which the insurance (or ARP coverage as the case may be) held by the firm affords cover. Firms whose coverage period and indemnity period are the same, should ensure that all claims and circumstance are notified to their insurer before 30th November (or within 3 working days thereafter) to ensure the requirements of the “double trigger” are met. Firms with variable renewal dates, whose coverage period and indemnity period are not the same, such ensure that all claims and circumstances are notified to their insurer by the end of the coverage period, or within 3 working days thereafter.

3.30. The insurer may be entitled to deny cover in respect of any claim first made against your firm on or before the end of the coverage period (normally 30th November annually) if the claim (or circumstance) is not notified to the insurer in the same coverage period (or within 3 working days immediately following the end of the coverage period) in which it was made against the firm.

Self-insured excess

3.31. Firms can agree to any level of self-insured excess with their insurer. In the event of a claim where the firm does not pay out the self-insured excess portion of the payment to the client, it is paid by the insurer and recovered by the insurer from the firm.

Additional cover

- 3.32. Your firm should consider whether the value and nature of work carried out by your firm requires “top-up” cover and whether your firm should seek to limit by contract its liability to clients to the minimum amount permitted by law, which is €1.5 million each and every claim.
- 3.33. Firms providing legal services relating to the laws of any other jurisdiction should note that the minimum terms and conditions do not cover legal services relating to the law of other jurisdictions. Such firms should therefore arrange to put additional cover in place if they consider it appropriate.
- 3.34. PII is provided on a “claims made and notified” basis, which means that a transaction that your firm believes requires additional cover will need that additional cover renewed in subsequent coverage periods, as a claim in respect of the transaction may arise after the end of the coverage period in which the transaction is carried out.

Exemptions

- 3.35. Firms providing legal services from an office outside the jurisdiction are not obliged by Irish regulations to have PII cover in place in respect of the practice carried on from such an office.
- 3.36. An exemption for in-house solicitors providing legal services only to their employer applies.

Defaulting firms

- 3.37. Any firm without confirmation of cover on 1 December 2014 will be a “defaulting firm” until such confirmation is obtained and notified to the Society.
- 3.38. All firms, including those with variable renewal dates, for which confirmation of cover is not received by the Society within 3 working days of 1 December 2013 (that is by **Thursday 4 December 2014**) will be classified as “defaulting firms” until such time as the required notification is provided to the Society.
- 3.39. It is in the interests of all firms to avoid becoming a defaulting firm. If your firm becomes a defaulting firm, you should use your best endeavours to regularise your position promptly and should seek to ensure that your cover, when renewed is effective from the date of expiry of your previous cover with a view to mitigating the adverse consequences of defaulting firm status.
- 3.40. The Assigned Risks Pool (“ARP”) will provide defaulting firms with very limited PII cover (see Special Purpose Fund section for more information).
- 3.41. If claims should arise while a firm is a defaulting firm, which are paid by the ARP, the ARP will have recourse against the firm and its principals for recovery of the full amount of the claim, including defence costs.
- 3.42. It is the policy of the Society to seek a High Court order compelling any defaulting firm, which does not regularise its position promptly, to cease practice.

Agents of participating insurers

- 3.43. Participating insurers who use agents on their behalf to transact or facilitate business will be required to ensure that its agent makes a clear statement to the insured firms that it is acting as an agent of the participating insurer and not the firm.

Quotations from insurers

- 3.44. Insurers are required to respond to the firm no later than 10 working days following the receipt of a fully and correctly completed proposal form, confirming:
- (a) whether the insurer is willing to insure the firm; and
 - (b) confirming the amount of the premium being sought by the insurer for such coverage.
- 3.45. Quotations from insurers must remain in effect for 10 working days or until the expiry of the previous coverage period, whichever date is earlier.
- 3.46. As introduced in the 2011/2012 indemnity period, a prohibition remains in place on insurers, or brokers on behalf of insurers, asking for the amount of premium paid by the firm in any previous indemnity period or any quote received by the firm in any indemnity period, due to concerns that a requirement on firms to provide such information would tend to undermine the proper functioning of a fully competitive market.
- 3.47. Guidance on what factors should be considered when choosing which quote to accept can be found the 'Guide to Brokers' section.

Amendments for the 2014/2015 indemnity period

- 3.48. The 2014 PII regulations consolidate the PII regulations for 2011 with the 2012 and 2013 amending regulations. These regulations contain the minimum terms and conditions, and are available on the Society's website at www.lawsociety.ie/PII.
- 3.49. A new regulation 8(b) has been included in the 2014 regulations, which introduces the requirement for a firm to cease practice on the date specified in the firm's notice of intention to cease practice, even if that firm's PII cover extends beyond the notified date of cessation. This is ensure that firms actually cease on their nominated date of cessation and cannot provide legal services past that date. Firms are advised, if possible, not to have a nominated closing date earlier than the date of cessation of your PII cover. Firms may close their doors and refuse any new business earlier than the date of cessation of their cover, and take the extra time to thoroughly and properly wind-down their practice with PII in place. If firms wish to change their notified date of cessation, this must be done in advance of the date of cessation, not retroactively.

PII Helpline

- 3.50. The Society continues to operate the PII Helpline to assist firms in dealing with PII queries. The Law Society's PII helpline is available Monday to Friday 10am to 4pm to assist firms with PII queries at 01 879 8707 or piihelpline@lawsociety.ie.

Guide to Special Purpose Fund

Special Purpose Fund

- 4.1. The Special Purpose Fund (“SPF”) was established in the 2011/2012 indemnity period and consists of two elements, namely the Assigned Risks Pool (“ARP”) and the Run-off Fund (“ROF”). The SPF is contributed to by the participating insurers in proportion to their market share by premium.

SPF Manager

- 4.2. The SPF Manager is responsible for managing the ARP and the ROF. However, each fund is a separate entity.
- 4.3. The SPF Manager from the 2011/2012 indemnity period to the 2013/2014 indemnity period has been Capita Commercial Insurance Services. Capita will remain in place as the active SPF Manager until 30 November 2014 and should continue to be contacted as the SPF Manager for all queries and applications until that date. Capita’s contact details are as follows:

Address	Capita Commercial Insurance Services 65 Gresham Street London EC3V 7NQ
Telephone	0044 207 397 4539
Email	spf@capita.co.uk

- 4.4. Following an extensive tender process in 2014, the position of SPF Manager for 2014/2015 was awarded to Triton Claims Ireland Limited. Triton will commence as SPF Manager on 1 December 2014, and any queries or applications to the SPF Manager on or after that date should be directed to Triton. Triton’s contact details are as follows:

Address	Triton Claims Ireland Limited 92/93 St Stephen's Green Dublin 2
Telephone	00353 1 428 3406
Email	spf@triton-global.com

SPF Management Committee

- 4.5. The SPF Management Committee oversees the management of the SPF and has equal responsibility for the ARP and the ROF. It has taken over certain functions from the PII Committee, but is overseen by the PII Committee. Membership of the SPF Management Committee includes representatives of the Society, the SPF Manager and the two participating insurers with the largest market share by premium. The SPF Management Committee meets approximately 4 times a year.

ARP conditions

- 4.6. The ARP is a safety net for firms unable to obtain cover in the market and provides cover at a lower level than that available in the market.
- 4.7. The premium charged by the ARP is calculated in accordance with the ARP premium schedule and is likely to be significantly more than quoted in the market. It is important to appreciate that ARP premiums are high for good reason. The ARP was not designed as an optional insurance measure for firms. It was set up as the insurer of last resort and therefore designed to protect consumers and prevent a situation where insurers could control what firms are and are not permitted to practice in the market. The high premiums are there to act as a deterrent, not an invitation. The ARP premium schedule can be found on the Society's website at www.lawsociety.ie/PII/.
- 4.8. Inevitably, firms do not choose to enter the ARP as it is not pleasant to find that you are regarded by the market as a 'distressed risk' firm. Entering the ARP is likely to result in a much higher premium and, if you are unable to pay the ARP premium, the firm's closure.
- 4.9. The ARP cover for the 2014/2015 indemnity period will be subject to the following conditions and limitations:
 - (a) An aggregate limit on claims of €1.5 million.
 - (b) Exclusion of all claims by financial institutions.
 - (c) Defaulting status for firms for non-payment of ARP premium.
 - (d) Formal rating schedule for the pricing of firms in the ARP.
 - (e) New entrants to the ARP may only remain in the ARP for a maximum of 12 months.
 - (f) There is a prohibition on start-up firms entering the ARP.
 - (g) Firms with ARP cover must notify any claim or circumstance to the SPF Manager as soon as it is reasonably practicable after the firm becomes aware of such claims or circumstances.
 - (h) The coverage date in respect of ARP coverage will be amended to take account of variable renewal dates if necessary.

Run-off Fund

- 4.10. The Run-off Fund provides run-off cover for firms ceasing practice:
 - (a) who have renewed their PII for the indemnity period in which they cease; and
 - (b) subject to meeting eligibility criteria, including that there is no succeeding practice in respect of the firm.
- 4.11. Any firm intending to cease practice after 30th November 2014 is required to renew cover for the 2013/2014 indemnity period.
- 4.12. A new regulation 8(b) has been included in the 2014 regulations, which introduces the requirement for a firm to cease practice on the date specified in the firm's notice of intention to cease practice, even if that firm's PII cover extends beyond the notified date of cessation. This is to ensure that firms actually cease on their nominated date of cessation and cannot provide legal services past that

date. Firms are advised, in possible, not to have a nominated closing date earlier than the date of cessation of your PII cover. Firms may close their doors and refuse any new business earlier than the date of cessation of their cover, and take the extra time to thoroughly and properly wind-down their practice with PII in place. If firms wish to change their notified date of cessation, this must be done in advance of the date of cessation, not retroactively.

- 4.13. Further information on run-off cover and succeeding practices can be found on the Society's website at www.lawsociety.ie/Pages/PII/Run-off-Cover/ and a Guide to Run-off Cover 2014/2015 will be published shortly.

Guide to Insurers

Insurers

- 5.1. Insurers provide a transfer of risk in exchange for an insurance premium, in accordance with the terms of the insurance policy. Insurers are private companies seeking to maximise profits for the benefit of their shareholders and can be accessed in the solicitors' PII market in this jurisdiction through brokers.
- 5.2. Very often, when asked for their insurance details, firms give the details of their broker and are unable to distinguish between their broker and their insurer. The broker organises and places the insurance, but the policy and cover is provided by the insurer, not the broker. Firms are advised to keep a record of both their insurer and their broker, and to build a relationship with their insurer, as it is the insurer that will be needed if a claim is made against the firm.

Participating insurers and the Participating Insurers Agreement (“PIA”)

- 5.3. The PIA is a contract that is entered into each indemnity period that requires insurers to offer solicitors' PII policies in accordance with the minimum terms and conditions. The PIA for the 2013/2014 indemnity period, which includes the minimum terms and conditions, can be found on the Society's website at www.lawsociety.ie/PII/.
- 5.4. With regard to the regulation of participating insurers and the Society's role, the following should be noted:
 - a) The Society does not vet, approve or regulate insurers.
 - b) Insurers are supervised and regulated by the Central Bank of Ireland.
 - c) In accordance with EU law, the Central Bank of Ireland is obligated to permit insurers regulated in other EU member states to trade in Ireland through the 'passport system'. Where an insurer from another jurisdiction is passported into the Irish system, the insurer is regulated by the financial regulator in their home jurisdiction and subject to the minimum standards and requirements of that jurisdiction.
 - d) For reasons relating to EU competition law, it is not possible for the Society to require insurers have a minimum level of financial security, a minimum financial rating or indeed any financial rating at all for participation in the solicitors' PII market.
 - e) The Society is not responsible for policing the financial stability of any insurer and does not undertake any solvency checks on insurers.
 - f) Participating insurers are not required to have a minimum financial rating or any financial rating at all.
 - g) The Society is obliged to permit any insurer who meets the following requirements to become a participating insurer:
 - (I) the insurer is authorised by the Central Bank of Ireland to write non-life insurance in Ireland;
 - (II) the insurer has signed the Participating Insurers Agreement⁴ for the relevant indemnity period in a timely manner.

⁴ Formerly known as the “Qualified Insurers Agreement”. This is a contract that insurers enter into with the Society each year that requires participating insurers to offer solicitors' PII policies in accordance with specified minimum terms and conditions.

- 5.5. Only participating insurers are permitted to write mandatory solicitors' PII insurance in the market. A list of participating insurers is provided below. Insurers are not required to be participating insurers in order to write top-up cover for the firm.
- 5.6. Participating insurers were previously known as "qualified insurers". The Society has changed the title to participating insurers in the 2013/2014 indemnity period, which title remains in place for the 2014/2015 indemnity period, to more accurately reflect and emphasise the Society's limited role regarding insurers in the solicitors' PII market and to dispel the mistaken impression of approval or financial strength that may have been incorrectly inferred from the title.
- 5.7. You should note the importance of considering whether their insurer will be able to meet claims under their PII policy when making the business decision of which insurer to chose. You should be under no illusions regarding the potential serious personal and financial consequences that can result from that decision. It should be noted that a financial rating does not guarantee the solvency of an insurer, but does provide an independent indication of the financial strength of an insurer.

What is a financial rating and how do I find out the financial rating of a participating insurer?

- 5.8. Financial ratings are obtained by insurers following assessment of their financial strength through an independent process by a rating agency and it is therefore an objective measure and indication of the financial strength of the insurer. The two major rating agencies for insurers are Standard & Poors and AM Best. A financial rating does not guarantee an insurer's financial solvency.
- 5.9. While insurers, both unrated and rated, are subject to regulation and oversight by the home state regulator, different states have different liquidity requirements and levels of scrutiny and oversight. Participating insurers may be passported in from states with lower regulatory standards or requirements. Therefore, firms are advised not to depend on the assessment of the insurance regulator, but to also seek an independent, objective indication of the financial strength of the insurer.
- 5.10. A financial rating can be thought of as a 'health warning' giving an indication of the financial strength and stability of an insurer, and therefore its likely ability to meet claims under the PII policy. Key factors assessed by the rating agencies include the insurer's liquidity, risk, operating performance, capitalisation, and financial performance, management and flexibility.
- 5.11. Not all insurers obtain, or seek to obtain, a financial rating and are therefore considered to be "unrated insurers". If an insurer is unrated, there is no independent indication of the financial strength of that insurer, other than the judgment of the Home State regulator, which therefore makes such insurers an unknown quantity and risk for firms.
- 5.12. Participating insurers are required to disclose their financial rating, or absence thereof, to firms when issuing quotations. This requirement was introduced in the 2011/2012 indemnity period and will continue to be a requirement for participating insurers for the 2014/2015 indemnity period. Participating insurers are required to make such a disclosure in order to:
 - (a) allow firms to make a more fully informed decision on their choice of insurer;
 - (b) ensure full transparency for the profession in relation to participating insurers meeting, or not meeting, generally accepted published standards of financial strength as assessed by an independent rating agency; and
 - (c) do so in a way that will not restrict the firm's choice of insurer.
- 5.13. In the 2013/2014 indemnity period, which change remains in place for the 2014/2015 indemnity period, the Society introduced a requirement for participating insurers to provide the Society with details of their financial rating, and the jurisdiction in which they are regulated, as at the date the

Participating Insurers Agreement is signed, together with a requirement to notify the Society in writing immediately if any of this information changes. This information is published below for the 2014/2015 indemnity period to enable firms to take such information into account when choosing their insurer.

- 5.14. It should be noted that the guide will only reflect an insurer's financial rating, or lack thereof, at a specific date, and therefore firms are advised to check the financial rating on any quotes provided, and to seek confirmation of the insurer's rating from their broker.

Why should I care about the financial strength of my insurer?

- 5.15. The financial strength of your participating insurer will ultimately determine whether claims made against your firm will be paid and should, therefore, be one of the most important factors when choosing an insurer.
- 5.16. Each principal and partner in private practice is responsible for their own business decisions, including choice of insurer, and must accept the consequences of those decisions for their firm. Each principal and partner of the firm should also consider their duty of care to each employee of the firm and, in the case of succeeding practices, former principals and partners, who will also be exposed to the consequences of loss of indemnity due to the insolvency of the firm's insurer, should it occur.

What are the consequences if my insurer becomes insolvent?

- 5.17. The immediate consequences of the insolvency of an insurer for firms is set out in regulation 13 of the 2014 PII regulations follows:
- (a) any firm insured by the insolvent insurer will be required, within 30 working days of the insolvency, to obtain and pay for insurance with another participating insurer in the market or with the Assigned Risks Pool ("ARP") if the firm is an ARP eligible firm; and
 - (b) if the firm fails to obtain alternative cover within 30 working days, they will be obliged to close.
- 5.18. There are a number of serious financial consequences for the firm that can arise out of this:
- (a) Firms will require access to substantial funds at short notice to continue in practice.
 - (b) There is no guarantee that any participating insurer in the market will offer the firm replacement cover.
 - (c) Firms that are unable to afford the premium for replacement cover will be unable to obtain replacement cover from the market.
 - (d) Firms that are unable to obtain replacement cover in the market may apply to the ARP only if they are ARP eligible firms as defined in the abovementioned regulations. ARP cover will be at a lower level than that available in the market, including no cover for claims by financial institutions and an aggregate limit of €1.5 million.
 - (e) If a firm is accepted by the ARP, they will be required to pay the ARP premium in full. The ARP premium is calculated according to the ARP premium schedule which is available on the Society website [link]. The ARP premium will normally significantly exceed normal market rates reflecting the high level of risk attached to a firm unable to obtain cover in the market. Any firm unable to afford market rates is therefore unlikely to be able to afford the ARP premium.

- (f) Any firm that does not obtain replacement cover from the market, or any firm accepted by the ARP that does not pay the ARP premium in full will be declared a defaulting firm and will be required to close.
- (g) If the firm does not close, the Society will apply to the High Court for an order compelling the firm to close.
- (h) Claims made against the firm will not be fully covered with potentially devastating financial consequences for the principals of the firm who will directly liable for any uncovered claims with possible consequential judgments and bankruptcy. It should be noted that the practising certificates of bankrupt solicitors are immediately and automatically suspended in accordance with the provisions of section 50 of the Solicitors Act 1954.

If my insurer goes insolvent, won't the Society or the Insurance Compensation Fund pay the claims?

- 5.19. The Society does not vet, approve or regulate insurers and has absolutely no legal responsibility for unpaid claims by either an insurer or an uninsured firm. The Society will not provide any compensation or meet the claims of insurers or firms that are unable to honour their claim payments. The choice of insurer is a business decision for the principals and partners of each firm, and they alone are responsible for the consequences of that decision.
- 5.20. The Insurance Compensation Fund was established under the Insurance Act 1964 for the purpose of providing a fund from which certain liabilities of insolvent insurers can be met. Should a participating insurer become insolvent, Irish policyholders should be able to benefit from the Insurance Compensation Fund should the need arise, subject to certain limitations. These limitations include:
 - (a) a cap per claim on the amount of any payment which must not exceed 65% of the amount due under the policy or €825,000, whichever is the lesser; and
 - (b) normally, no compensation where the client is a body corporate.

- 5.21. Consideration should be given to the restrictions in place on payments from the fund when considering the protections that may be afforded to your firm and clients in the event of an insolvency of a participating insurer, in particular due to the direct liability of each partner and principal of the firm for any unpaid claims.

Have such difficulties arisen in other jurisdictions?

- 5.22. In England and Wales, over the past 6 years, a number of unrated insurers have experienced difficulties including insolvency, administration and withdrawal from the market with resulting serious personal and financial consequences for some firms covered by such insurers, including serious financial losses, bankruptcy, closure of firms and loss of livelihood. The fact that the dangers being warned of have already occurred a number of times in a neighbouring jurisdiction should highlight the dangers of failure by firms to conduct financial due diligence on insurers and the dangers of relying solely on the view of the insurance regulator regarding the solvency of insurers..

What factors should I consider when choosing an insurer?

- 5.23. Firms should obtain quotes from all insurers willing to offer cover and then assess these quotations based on a range of factors including the following:

- (a) Financial rating of insurer – this is an indication of the financial strength of the insurer, which determines the ability of the insurer to meet its obligations to pay claims against your firm. This should be one of the foremost factors when choosing an insurer due to the devastating financial and personal consequences of your insurer becoming insolvent and the recent financial collapses of unrated insurers in England and Wales. While financial ratings are not a guarantee of solvency, they do give an indication and objective measure of the financial strength of the insurer. The financial stability of an unrated insurer is unknown and untested.
- (b) Price – The Society understands that there are commercial pressures on firms to choose the ‘cheapest’ quote for their PII. While the price of insurance is an important factor, firms are strongly advised to weigh the cost of a quote against the financial stability of the insurer, given the grave consequences of insurer insolvency for a firm. Opting for a lower premium is false economy if the insurer becomes insolvent and the firm is required to pay a second premium for the year.
- (c) Fitness for purpose – Firms should consider, and obtain advice from their broker, whether any insurer, both rated and unrated, has the required level of knowledge of the specialised requirements of the solicitors’ PII market.
- (d) Advice from brokers – Firms should have a robust discussion with their broker regarding the insurers they are proposing to place your business with and, in particular, the capacity of that insurer and their willingness to pay claims which, in many cases, may take years to resolve. Firms should ask brokers to provide some guidance on the insurer’s financial condition and ability to meet its obligations. In the case of unrated insurers, firms should be extremely diligent in their dialogue with their broker and pay particular attention to any disclosure or disclaimers by the broker in relation to advice provided and the placement of your cover. Firms should be wary of any attempt by brokers to provide reassurance by reference to an insurer’s reinsurance arrangements, in particular in relation to unrated insurers, as the firm will not have direct access to these reinsurers in the event of the insurer’s insolvency. In most cases, reinsurance arrangement simply constitute an asset for distribution to creditors in the event of an insolvency.

List of Participating Insurers 2014/2015

- 6.1. The following participating insurers have signed the PIA and will therefore be participating in the market in the next indemnity period. There is one new insurer in the market, namely Pembroke Managing Agency Ltd Syndicate 4000.
- 6.2. Please note that no participating insurer deals directly with solicitors and all must be contacted through brokers. Full contact details for brokers can be found in the Guide to Brokers section.
- 6.3. The information in the table below is as provided to the Law Society by the participating insurers.
- 6.4. Please contact the PII Helpline at 01 879 8707 or piihelpline@lawsociety.ie, if you have any queries relating to any insurer not noted on the following list.

Participating Insurer	Financial Rating	Country of registration	Home state regulator	Brokers	Firms type
AIG Europe Ltd 30 North Wall Quay IFSC Dublin 1 Tel: 01 208 4966 Fax: 01 283 7775	A+ [Standard & Poors] A [Fitch] A [AM Best]	United Kingdom	Central Bank of Ireland	Not specified	Not specified
Allianz Global Corporate & Speciality AG Allianz House 60 Gracechurch Street London EC3V 0HR Tel: 0044 203 451 3015	AA [AGCS] A+ [Standard & Poors] A+ [AM Best]	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	Miller (and local panel brokers) JLT Ireland [All exclusive arrangements]	Allianz applies no restriction to firm type. All risks will be viewed and underwritten on a case-by-case basis

Participating Insurer	Financial Rating	Country of registration	Home state regulator	Brokers	Firms type
AmTrust at Lloyds Ltd (Formerly Sagicor) 1 Great Tower Street London EC3R 5AA Tel: TBC Fax: TBC <i>Providing cover through the Allianz-led Facilities</i>	A+ [Standard & Poors] AA- [Fitch] A [AM Best]	England & Wales	Prudential Regulation Authority & Financial Conduct Authority	JLT Millers	All types
AmTrust International Underwriters Limited 40 Westland Row Dublin 2 Tel: 01 775 2900 Fax: 01 775 2915	"A" Excellent [AM Best Company]	Ireland	Central Bank of Ireland	AON JLT	All types
Axis Speciality Europe SE Mount Herbert Court 34 Upper Mount Street Dublin 2 Tel: 0044 207 877 3800 Fax: 0044 207 877 3840	A+ Strong [Standard & Poors] A+ Superior [AM Best]	Ireland	Central Bank of Ireland	Not specified	Not specified

Participating Insurer	Financial Rating	Country of registration	Home state regulator	Brokers	Firms type
Elite Insurance Company Limited Newton Chambers Newton Business Park Isaac Newton Way Grantham Lincolnshire NG31 9RT Tel: 0044 203 713 5151 Fax: 0044 207 929 1831	None	Gibraltar	Financial Services Commission of Gibraltar	Not specified	Not specified
Liberty Mutual Insurance Europe Ltd Kestrel House Clanwilliam Place Dublin 2 Tel: 01 818 0505	A [Standard & Poors] A [AM Best]	Ireland	Central Bank of Ireland	O'Leary Insurance Locktons Crotty Marsh LEC	2+ partners
Pembroke Managing Agency Ltd Syndicate 4000 Second Floor South 3 Minster Court Mincing Lane London EC3R 7DD Tel: 0044 207 337 4552	A+ [Standard & Poors] AA- [Fitch] A {AM Best}	England	Prudential Regulation Authority Financial Conduct Authority	Cooper Gay (exclusive arrangement))	Dublin-based operations of international firms

Participating Insurer	Financial Rating	Country of registration	Home state regulator	Brokers	Firms type
QBE Insurance (Europe) Plantation Place 30 Fenchurch Street London EC3M 3BD	A+ Stable [Standard & Poors]	England	Financial Conduct Authority	O'Leary Insurance Willis Marsh Lockton [All exclusive arrangements]	All firms, subject to minimum ratio of one principal and one full time solicitor
UK General Insurance (Ireland) Limited Alexandra House The Sweepstakes Ballsbridge Dublin 4 Tel: 01 667 4800 Fax: 01 667 4801	None	Ireland	Central Bank of Ireland	All brokers, via Precision Underwriting	All firms

6.5. The following facilities are providing professional indemnity insurance on a co-insurance basis, where each participating insurer shares a portion of the risk.

Facility	Participating Insurers
Allianz-led JLT Facility	Allianz Global Corporate & Speciality AmTrust at Lloyds Liberty Mutual Insurance Europe Limited
Allianz-led Miller Facility	Allianz Global Corporate & Speciality AmTrust at Lloyds Liberty Mutual Insurance Europe Limited

Guide to Brokers

Brokers

- 7.1. Brokers advise on and arrange insurance, and generally act as the agent of the firm unless they explicitly state that they are acting as the agent of the insurer. The insurance contract is between the firm and the insurer, not the firm and the broker. Firms should ensure that they are aware of the details of both their broker and their insurer.

Who regulates brokers?

- 7.2. The Society does not regulate, vet or approve brokers. The Society has no direct relationship with brokers, rather it enters into an agreement with the participating insurers through the PIA to ensure that the insurer provides policies in accordance with the minimum terms and conditions.
- 7.3. Firms are advised to ensure that the broker providing cover is registered with either the Irish Brokers Association, 87 Merrion Square, Dublin 2 or the Insurance Intermediary Compliance Bureau, 39 Molesworth Street, Dublin 2.

Types of broker

- 7.4. Generally there are two types of broker in the market, namely “execution only brokers” and “advisory role” brokers.
- 7.5. Execution only brokers only place your cover and do not advise you on the market or how best to present your firm to insurers.
- 7.6. Advisory role brokers should give you independent professional advice and assistance in preparing the best package to send to an insurer, inform you about market conditions and advise you on how best to apply for PII.

What should you look for from your broker

- 7.7. With advisory role brokers, the broker should help the firm to arrange PII cover and produce the best possible insurance solution for the firm, not for the insurer. Your broker should pay due regard to the interests of your firm and treat you fairly.
- 7.8. Having a long standing relationship with your broker can be beneficial as your broker should then have insight into how your firm is run, its risk management practices and its claims history and, as a specialist PII broker, be able to use this knowledge and experience to your advantage by presenting your firm in a way that demonstrates to insurers that your firm represents a good risk.
- 7.9. If you are not happy with the service being provided by your broker, you should discuss the matter with your broker and consider using another broker. If changing brokers, keep in mind what effect changing your broker will have on your ability to access insurers.
- 7.10. If your broker is an advisory role broker, they may provide some or all of the following services:
 - (a) information on market conditions;
 - (b) advice on the types and level of insurance cover required for your firm, including top-up cover;

- (c) advice on how to best present your information in the common proposal form;
- (d) advice on risk management measures the firm may adopt to make the firm more attractive to insurers;
- (e) the broker may liaise directly with the insurer regarding your firm's proposal, including ensuring that the insurer issues the policy promptly, all documents are sent to the firm and the insurer and issue the firm with renewal notices and reminder;
- (f) assistance in obtaining your claims summary;
- (g) fair and impartial advice on whether to accept an offer of PII, including an assessment of the financial stability and rating of the insurer;
- (h) advise on retention of insurance documents and keep all relevant records relating to your insurance arrangements; and
- (i) provide support during the indemnity period in relation notifications of claims or circumstances to the insurer and any queries that your firm may have in relation to policy terms or minimum terms and conditions.

Multiple brokers

- 7.11. Firms should try to access the widest possible range of insurers and obtain as many quotes as possible. This may mean that firms have to approach multiple brokers in order to access the full range of insurers in the market.
- 7.12. When using multiple brokers, firms should ensure that their common proposal form does not go to the same insurer more than once.

Questions for brokers

- 7.13. Firms should consider raising some or all of the following queries with their broker:
- (a) **Type of broker** – Firms are advised to seek clarification from their broker as to the nature of their relationship and, in particular, if the broker will have an execution only role or an advisory role. Brokers should also be asked to confirm if they will be acting as an agent of the firm or an agent of the insurer.
 - (b) **Market access** - Firms should ask brokers for information regarding the extent of their market access. Some brokers have access to multiple insurers. Some brokers may be involved in “tied arrangements” with insurers. This may involve the brokers having an exclusive arrangement with one insurer where they are the only broker with access to the insurer, although they may still place cover with other insurers in the market. The tied arrangement may involve the broker agreeing to exclusively place cover with one insurer, but the insurer may work with many brokers. A mutually exclusive tied arrangement may exist where the broker may only place cover with one insurer, and that insurer will only work with that broker, to the exclusion of all other. Alternatively, such tied arrangement may exist between insurers and brokers relating to specific segments of the market.
 - (c) **Sub-broking** – Where a broker has a tied arrangement with an insurer which means that only one broker can place insurance with a specified insurer, other brokers will be required to “sub-broke” through this broker in order to place business with the insurer. Firms should check with their broker if the broker places insurance cover directly with the insurer or sends it to another broker, underwriting agent or third party. Firms should

consider whether a more favourable quote may be obtained by going directly to the tied-arrangement broker.

- (d) **Commission** – Firms should ask brokers to disclose the total remuneration received by the broker (and any other intermediary), including all types of commission, from insurers in relation to each quotation that the broker obtained for the firm's consideration. Firms should be satisfied that the scale of their broker's commission payment represents value for money in terms of the level and quality of service being provided to the firm by the broker.
- (e) **Service expectations** – When discussing terms of business, firms should discuss their service expectations with their broker.
- (f) **Expertise** – Firms should consider the expertise of their broker in placing solicitors' PII and should ask the broker for information on their expertise including:
 - (I) whether the broker is a specialist in the PII market, as PII is a specialist area of general insurance and not all PII brokers have sufficient experience in this area;
 - (II) the number of years experience the broker has in placing solicitors' PII;
 - (III) what percentage of the solicitors' PII market the broker placed the previous year including the number of solicitor firms they have placed PII for and the insurers they have placed the PII with; and
 - (IV) the types and sizes of firms the broker usually looks after, to ensure they have experience with dealing with your type and size of firm.
- (g) **Changes in the market** – Firms should ensure that their broker is knowledgeable enough to advise firms about any changes in the market and be in a position to conduct a full market exercise for your firm.
- (h) **Fair analysis of the market** – Firms should ask brokers to confirm any specific arrangements that they have in place with specific insurers, to ensure that advice being provided is a fair analysis of the market that is not biased by any arrangement between the broker and the insurer.
 - (i) **Advice on financial strength of insurer** – Firms are advised to ask their broker for analysis and advice on the financial strength and rating of insurers before accepting a quote. Further information on this can be found below.
 - (j) **Regulator** – Firms should seek information on who the broker is regulated by, and the broker's duties and requirements as set out by the regulator.
 - (k) **Common proposal form** – Firms should ask the broker to confirm the identity of each insurer to whom the broker submitted the common proposal form and the date the form was submitted, to ensure no overlap and no delay in submitting the form by the broker.
 - (l) **Quote** – Firms should ask the broker to provide the details of each quote received from insurers, a breakdown of the premium figure quoted and the date that the quote was received. It should be noted that insurers are required to leave quotes open for 10 working days.

Advice from brokers on financial strength of insurers

7.14. Firms are advised to seek information from, and have a robust discussion with, their broker on the financial stability and strength of an insurer before accepting a quote. Such information should include:

- (a) the financial rating, or lack thereof, of an insurer;
- (b) the capacity of the insurer;
- (c) the willingness of the insurer to pay claims (which, in many cases may take years to resolve);
- (d) analysis of the quality or liquidity of the assets supporting liabilities of the insurer;
- (e) the insurer's financial condition and ability to meet its obligations;
- (f) the reputation of the insurer's underwriters and managers
- (g) tailored advice on the suitability, or otherwise, of accepting a quotation from a particular insurer;
- (h) any other market intelligence regarding the insurer.

7.15. Some larger brokers have their own financial security committee that forms an assessment on the solvency of an insurer and will prevent the broker from recommending insurers that do not meet the relevant criteria. These committees are likely to use criteria such as minimum financial size, solvency ratios and rating criteria to filter out less stable insurers.

7.16. Firms should consider that the broker may be providing an execution only service and thus advice provided might be tied to an arrangement with a particular insurer.

7.17. In the case of an unrated insurer, firms should be extremely diligent in their dialogue with their brokers and pay particular attention to any disclosure or disclaimers by the broker in relation to advice provided and the placement of your cover. Firms should seriously consider whether they are comfortable being cover by an insurer where the broker is deliberately taking no legal responsibility for placing cover with that insurer.

7.18. Firms should be wary of any attempt by brokers to provide reassurance by reference to an insurer's reinsurance arrangements, in particular in relation to unrated insurers, as the firm will not have direct access to these reinsurers in the event of the insurer's insolvency. In most cases, reinsurance arrangements simply constitute an asset for distribution to creditors in the event of an insolvency.

Factors to consider when the firm receives a quote

7.19. There are a number of factors that a firm should consider, and seek advice from their broker on, when they receive multiple quotes including:

- (a) The financial rating and security of the insurer.
- (b) Any terms, conditions or caveats attached to the offer, such as the acceptance window, and confirmation from the broker that these terms are in line with the minimum terms and conditions that insurers are required to offer.
- (c) Whether the insurer will be able to provide a quotation later in the renewal and on what terms. It should be noted that insurers have a limited capacity to write solicitors' PII and

may stop writing business before the renewal deadline if they reach this capacity. Firms should expect the quotation to vary if there have been any changes in your firm's circumstances later in the renewal period.

- (d) Confirmation from your broker as to whether there are other insurers that may be interested in providing you with a quotation later in the renewal season. Brokers should be confirm if the proposal was sent to every insurer in the market and, if not, the reasons why the quotations were not sought by the broker from specific insurers.
- (e) Whether the insurer would be willing to offer variable renewal dates , extended coverage periods or a commitment to renew for future periods.
- (f) The benefits of continuity of insurance for the avoidance of coverage disputes, understanding of your firm, claims history, loyalty discounts and the variation of the double trigger for continuity of cover with one insurer.
- (g) The insurers' experience, commitment to and likely longevity in the solicitors' PII market.
- (h) The level of self-insured excess payable by your firm in the event of a claim and the standard of your cover including any additional cover over the minimum terms and conditions.
- (i) The claims handling service and support provided by the insurer.
- (j) Whether the insurer or broker provides risk management support.

List of Brokers 2014/2015

- 8.1. The following brokers have expressed their willingness to arrange professional indemnity insurance cover with participating insurers for the 2014/2015 indemnity period. This list will be updated frequently as brokers confirm their participation.
- 8.2. Certain insurers may have exclusive arrangements with certain brokers.
- 8.3. The Society does not regulate, vet or approve brokers. The Society advises you to ensure that the broker providing cover is registered with either the Irish Brokers Association, 87 Merrion Square, Dublin 2 or the Insurance Intermediary Compliance Bureau, 39 Molesworth Street, Dublin 2.
- 8.4. The Society accepts no legal responsibility for any information contained herein or for any transaction which you may have with a broker when obtaining professional indemnity insurance.

Broker	Address	Contact details	Insurers
Aon	Metropolitan Building, James Joyce Street, Dublin 1	Tel: 01 266 6400 Fax: 01 266 6620 Email: solicitors.ir@aon.ie Website: www.solicitors.aon.ie	AM Trust International Underwriters Ltd (exclusive arrangement)
Arachas	The Courtyard Carmanhall Road Sandyford Business Estate Dublin 18	Tel: 01 213 5000 Fax: 01 213 5001 Email: info@arachas.ie Website: www.arachas.ie	Allianz Global Corporate & Speciality AG (exclusive arrangement)

Broker	Address	Contact details	Insurers
Compass Insurance Brokers Ltd	14 Pembroke Street Lower, Dublin 2	Tel: 01 901 7222 Fax: - Email: john@compassinsurance.ie Website: www.compassinsurance.ie	AIG Europe Limited
Crotty Insurance Brokers Ltd	6 Leopardstown Office Park Sandyford Dublin 18	Tel: 01 290 8800 Fax: 01 290 8835 Email: info@crottygroup.ie Website: www.crottygroup.ie	Allianz Global Corporate & Specialty AG Allianz-led Facilities AIG Europe Limited Axis Speciality Europe SE Liberty Mutual Insurance Europe Limited
First Ireland Risk Management	15 Parkgate Street Dublin 8	Tel: 01 410 4903 Fax: 01 881 6999 Email: solicitors@firstireland.ie Website: www.firstireland.ie	Elite Insurance Company Limited (exclusive arrangement)
Frank Glennon Ltd	Charlemont House, Charlemont Place, Dublin 2	Tel: 01 707 5992 Fax: 01 707 5900 Email: solicitorspi@glenmons.ie Website: http://solicitors.glenmons.ie/solicitors_professional_indemnity_insurance_scheme	AIG Europe Limited Allianz Global Corporate & Specialty AG Axis Speciality Europe SE Liberty Mutual Insurance Europe Ltd QBE Insurance (Europe)

Broker	Address	Contact details	Insurers
Hooper Dolan Group	<p>31 The Mall, Waterford</p> <p>Branch offices: Carlow Clane Donegal Derry Galway Killarney Limerick Newtownmountkennedy Sligo Tipperary Tuam Tullow Waterford</p>	<p>Tel: 051 860 620</p> <p>Fax: 051 860 696</p> <p>Email: Solicitorspi@hooperdolan.ie</p> <p>Website: www.hooperdolan.ie</p>	Allianz Global Corporate & Specialty AG Allianz-led Facilities Axis Speciality Europe SE AIG Europe Ltd Liberty Mutual Insurance Europe Ltd
JLT Ireland	<p>Dublin Friends First House Cherrywood Business Park Loughlinstown Dublin 18</p> <p>Warrington House, Mount Street Crescent, Dublin 2</p> <p>Cork Hibernian House Building 5200, Cork Airport Business Park, Cork</p>	<p>Tel: Dublin - 01 202 6000 Cork - 021 4549500</p> <p>Fax: Dublin - 01 237 5200 Cork - 021 4808196</p> <p>Email: solicitors@jlt.ie</p> <p>Website: www.jlt.ie/solicitorsprofessionalindemnity.html</p>	Allianz Global Corporate & Specialty AG Allianz-led Facilities AmTrust International Underwriters Limited (exclusive arrangement for firms of 3 or more partners only) AIG Europe Ltd Liberty Mutual Insurance Europe Ltd

Broker	Address	Contact details	Insurers
Lennon Earley Crotty Insurances Ltd.	8/9 Marino Mart, Fairview, Dublin 3	Tel: 01 833 0056 Fax: 01 526 1059 Email: solicitors@lecinsurance.ie Website: www.lecinsurance.ie	AIG Europe Limited Allianz-led Facilities Axis Speciality Europe SE Liberty Mutual Insurance Europe Ltd (exclusive arrangement) QBE Insurance (Europe) - (exclusive arrangement)
Lockton Companies LLP	Millennium House, 55 Great Strand Street, Dublin 1	Tel: 01 858 5200 Fax: 01 858 5226 Email: aidan.brady@ie.lockton.com Website: www.lockton.com/offices/ireland	Liberty Mutual Insurance Europe Ltd AIG Europe Limited QBE Insurance (Europe) Axis Speciality Europe SE
Marsh Ireland	25-28 Adelaide Road Dublin 2	Tel: 01 604 8100 Lo Call 1890 252 976 Fax: 01 604 8470 Email: - Website: www.marsh.ie	AIG Europe Limited Liberty Mutual Insurance Europe Ltd QBE Insurance (Europe) Axis Speciality Europe plc

Broker	Address	Contact details	Insurers
McGivern Flynn & Co. Ltd.	36 Lad Lane, Dublin 2	Tel: 01 632 1314 Fax: 01 632 1322 Email: eimear@mcgivernflynn.com Website www.mcgivernflynn.com	Axis Speciality Europe SE Elite Insurance Company Limited
Murray & Spelman Ltd	Galway GFSC Tuam Road Galway Kildare 24/25 South Main Street Naas Co Kildare	Tel: Galway - 091 759 500 Kildare - 045 888088 Fax: Galway - 091 759 555 Kildare - 045 888007 Email: insurances@murrayspelman.ie Website www.murrayspelman.ie	AIG Europe Ltd Liberty Mutual Insurance Europe Ltd Axis Speciality Europe SE UK General Insurance (Ireland) Limited
O'Leary Insurance Group	Cork Lough Mahon House Blackrock Cork Dublin 16 Pembroke Road Dublin 4 Galway 13 Liosbaun Business Park Tuam Road Galway Waterford 96 The Quay Waterford	Tel: Cork - 021 4536800 Dublin - 01 6608211 Galway - 091 778677 Waterford - 051 309130 Fax: 021 4536893 Email: solicitors@oli.ie Website: www.olearyinsurances.ie	AIG Europe Ltd Axis Speciality Europe Elite Insurance Co. Ltd Liberty Mutual Insurance Europe Ltd. QBE Insurance (Europe) Ltd (exclusive arrangement 1-4 partners) UK General Insurance (Ireland) Ltd.

Broker	Address	Contact details	Insurers
Willis Risk Services (Ireland) Limited	Grand Mill Quay Barrow Street Dublin 4	Tel: 01 407 4900 Fax: 01 661 4369 Email: salesireland@willis.ie Website: www.willis.ie	Not specified

