

# Professional Indemnity Insurance

## Important points to note

### Indemnity period and coverage period

- 1.1. The indemnity period is a period of one year, from 1 December to 30 November annually. The 2020/2021 indemnity period runs from 1 December 2020 to 30 November 2021.
- 1.2. The coverage period is a period for which the insurance held by a firm affords cover, and it must not exceed 24 months.
- 1.3. In the case of the Assigned Risks Pool (“ARP”), where a firm applies to join the ARP prior to the start of an indemnity period, the coverage period shall run from 1 December to 30 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 30 November in that indemnity period.
- 1.4. 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. Your coverage period should be clearly set out in your policy. Firms with variable renewal dates may have a coverage period that is longer than the indemnity period, and their cover may not expire on 30 November 2020. Such firms are still required to reconfirm cover to the Society within 3 working days of 1 December 2020.

### Renewal date

- 1.5. The mandatory PII renewal date is **1 DECEMBER 2020**. This date is not negotiable.
- 1.6. All cover under the current indemnity period will expire on 30 November 2020, with the exception of firms with variable renewal dates, as the coverage period for such firms may extend past 30 November 2020. All firms, including those with variable renewal dates, are responsible for ensuring that confirmation of cover is provided to the Society on or before **FRIDAY 4 DECEMBER 2020**.
- 1.7. 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.
- 1.8. As your firm has a statutory obligation to ensure such confirmation of cover is provided to the Society on or before **FRIDAY 4 DECEMBER 2020**, you are responsible for ensuring that your broker provides the Society with confirmation of cover by that date.
- 1.9. 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 1 December 2020.
- 1.10. It is noted that some firms who have confirmed PII cover to the Society during 2020 have a coverage period that extends past 30 November 2020. Such firms are still required to reconfirm cover for 2019/2020 with the Society by **FRIDAY 4 DECEMBER 2020**.

- 1.11. 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, processed same and updated the system. It may take 24 hours or more for the system to be updated with your information.
- 1.12. This online PII confirmation system will close shortly for 2019/2020 indemnity period confirmations.

### **Variable renewal dates**

- 1.13. 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 upcoming indemnity period.
- 1.14. 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**

- 1.15. 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 1 December 2019 and 30 November 2020 (both dates inclusive) should be notified by the firm to their insurer by 30 November 2020.
- 1.16. 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.
- 1.17. 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 2020/2021, 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 30 November 2020 is in place with regard to notification of claims and circumstances to your insurer.

### **Quotes**

- 1.18. 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 upcoming indemnity period.

## Terms of cover

- 1.19. Firms, rather than individual solicitors, are covered by PII.
- 1.20. The PII regulations prescribe only the minimum level of cover required for firm, which is €1.5 million for each and every claim.
- 1.21. 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.
- 1.22. Cover for legal defence costs for the insurer dealing with the claim are not limited.
- 1.23. 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.
- 1.24. Statutory compensation or restitution to clients, such as may be ordered by the Solicitors Disciplinary Tribunal, is covered.

### “Double trigger” – claims made and notified

- 1.25. 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 if 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.
- 1.26. 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.
- 1.27. 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.
- 1.28. From the 2013/2014 indemnity period onwards, the double trigger provisions were amended so that, for claims and circumstances arising after 1 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. Again, 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.

- 1.29. 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 circumstances are notified to their insurer before 30 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, should ensure that all claims or circumstances are notified to their insurer by the end of the coverage period, or within 3 working days thereafter.
- 1.30. 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 30 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**

- 1.31. 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**

- 1.32. Your firm should consider whether the value and nature of work carried out by your firm requires "top-up" cover and, if so, your firm should ideally seek to have top-up cover on the same minimum terms and conditions as mandatory cover, if possible and available.
- 1.33. Your firm should also consider 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.
- 1.34. 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.
- 1.35. 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

- 1.36. 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.
- 1.37. It should be noted that an Irish practising certificate only entitles the holder situated in the Irish State to provide legal services in this jurisdiction, with the exception of permissions granted by the European Services and Establishment Directives.
- 1.38. An exemption for in-house solicitors providing legal services only to their employer applies.

## Defaulting firms

- 1.39. Any firm who has not provided the Law Society of Ireland with online confirmation of cover on 1 December 2020 will be a “defaulting firm” until such confirmation is obtained and notified to the Society through the Society’s online portal.
- 1.40. 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 2019 (that is by **FRIDAY 4 DECEMBER 2020**) will be classified as “defaulting firms” until such time as the required notification is provided to the Society.
- 1.41. 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.
- 1.42. The Assigned Risks Pool (“ARP”) will provide defaulting firms with very limited PII cover (see Special Purpose Fund section for more information).
- 1.43. 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.
- 1.44. 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

- 1.45. 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**

- 1.46. 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.
- 1.47. Quotations from insurers must remain in effect for 10 working days or until the expiry of the previous coverage period, whichever date is earlier.
- 1.48. 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.
- 1.49. Guidance on what factors should be considered when choosing which quote to accept can be found the 'Guide to Brokers' section.

## **PII Helpline**

- 1.50. 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](mailto:pjihelpline@lawsociety.ie).

