

Professional Indemnity Insurance

Guide to Brokers

Brokers

- 1.1. 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?

- 1.2. 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.
- 1.3. 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

- 1.4. Generally there are two types of broker in the market, namely “execution only brokers” and “advisory role” brokers.
- 1.5. Execution only brokers only place your cover and do not advise you on the market or how best to present your firm to insurers.
- 1.6. 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

- 1.7. 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.
- 1.8. 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.
- 1.9. 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.

1.10. 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) advice 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

1.11. Firms should try to access the widest possible range of insurers and obtain as many quotes as possible. This may require the firm to approach multiple brokers in order to access the full range of insurers in the market.

1.12. When using multiple brokers, firms should ensure that their common proposal form does not go to the same insurer more than once.

1.13. If using a single broker, you should ask for information on which participating insurers the broker has access to, and which insurers the broker has sent your common proposal form to.

Questions for brokers

1.14. 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.
- (j) **Brexit** – Firms should ask their broker to provide information on, and advice regarding, the no-deal Brexit contingency plans that your insurer has in place, in the case of a U.K. based insurer, including the date on which your policy will transfer, the mechanism of transfer, and the contact details of the EEA branch of the insurer.

Advice from brokers on financial strength of insurers

1.15. 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 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.
- 1.16. 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.
- 1.17. 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.
- 1.18. 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 covered by an insurer where the broker is deliberately taking no legal responsibility for placing cover with that insurer.
- 1.19. Firms should be wary of any attempt by brokers to provide reassurance by reference to an insurer's reinsurance arrangements 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

- 1.20. 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; and
- (j) whether the insurer or broker provides risk management support.