

Do I have enough PI cover?

We often get asked whether the limit of indemnity a firm buys is enough, which is an interesting and pertinent question for any law firm.

So, how do you go about assessing how much cover you should have? Below, Rebecca Atkinson, Director of Risk & Compliance at Howard Kennedy discusses the question.

Pushing aside the long running debate about whether minimum PII requirement should be reduced, I explore below the SRA's regulatory requirement of law firms regarding PI cover and how they can assess whether the cover they have is enough.

Regulatory requirements

The SRA requires all firms to carry a minimum level of PII cover in accordance with the Minimum Terms & Conditions at £2m for a partnership or £3m in the case of a limited liability firm or other authorised entity.

Further, Outcome 7.13 in the SRA Code of Conduct 2011 states that:

"You assess and purchase the level of professional indemnity insurance cover that is appropriate for your current and past practice, taking into account potential levels of claim by your clients and others and any alternative arrangements you or your client may make".

"This Outcome has not been fully translated to the new Code coming into effect in November 2019 - though there is a general requirement at paragraph 2.5 which sets out that you must 'identify, monitor and manage all material risks to your business, including those which may arise from your connected practices.'"

As happens when a new Code arrives, solicitors still use prior Codes for guidance when they do not contradict or pull against a new Code.

After all, many of us still use the 1999 Code as guidance (including the SRA!). It is therefore a good idea, in my view, to take note of Outcome 7.13 even after the new Code comes into force.

Where do you therefore start in assessing your firm and risks to determine what level of PI cover is needed?

Assessing your firm

First step is to assess your firm. Some factors to consider are:

- The size of your firm;
- What types of work you do and the values involved. Crime may well be considered low risk by insurers but real estate high. A good broker can help you here and often both brokers and insurers will be able to provide you with statistics on the types of work that give rise to the most claims;
- Your firm's claim history;
- Whether the level of your cover is similar to other firms of your make-up and size. Again your brokers can help you here;
- Your ability to meet uncovered claims. For example if you are an LLP and you were to receive a £3.5m claim and had cover for £3m, could your firm sustain a top up payment to cover what your insurance could not?

Assessing your risk

The level of cover that you need depends on your risk profile. Your risk profile is derived from many factors but there is no magical formula. Questions to ask yourselves include:

- Does your firm conduct work in a high risk area such as real estate or corporate? If so, of that work what is its proportion of your total revenue? A firm that derives 5% of its revenue from real estate is going to be lower risk than a firm that derives 50%, though insurers may say that that 50% makes you a specialist but at 5% you may be dabbling!
- What are the values of the transactions that your firm handles? Are these values over and above your PI cover today? Note, transaction values may not reflect the true exposure which may be higher or lower. The total value of a property deal may not necessarily present the worst case scenario due to the unlikely risk that the whole value of the transaction would be lost. Conversely, a failed commercial deal due to a negligent act may have greater repercussions due to consequential losses.
- Are you coming up against opposition to the limitation of liability that you are placing on your retainers i.e. maybe from banks who ask you to limit your liability to value of the loan they are providing or even to remove a cap entirely?
- How much money do you hold in your client account(s) at any one time? Remember PI covers client monetary loss. Do you regularly hold more in your client account than your level of PI insurance?

Taking the above into account the ultimate fear inducing question to ask is:

- If you/your firm were negligent on a matter what is the maximum possible loss that the firm could cause and does that exceed your insurance cover?'

As this question needs to be asked on a case by case basis (I would suggest factored into your client and matter risk assessment), considering the level of cover is an ongoing exercise and not one that is completed just at renewal time.

Other aspects to note

Remember that PI is underwritten on a 'claims made' basis and so the firm, and its Successors, need to maintain a particular level of cover until the possibility of a claim has passed, say at least 6 years. The reality is that once you have increased cover you are unlikely to decrease unless your practice has changed. So it is important to consider whether you can continue to be able to afford your cover in future years.

Additional excess layer PII insurance will have different terms and conditions to your primary, compulsory layer of insurance. Be careful to check those.

The cost of top up cover will vary depending on size of practice, type of work completed, claims history and so on. It can also vary year to year. Consult your broker for assistance.

The Law Society has a note to assist you further which can be found [here](#).