

Frequently asked questions about the solicitors' professional indemnity insurance market

We have provided the answers to some of the more frequently asked questions about this complex topic. The answers to these questions were written in the context of the 2011 renewal. We will provide updated FAQs prior to the 2012-13 renewal.

The solicitors' PII market

What has been happening recently in the solicitors' PII market?

Since moving to the open market system in 2000, the solicitors' PII market has remained fairly steady and most solicitors have experienced little difficulty in obtaining insurance. In recent times, however, the market has hardened, meaning that a growing number of solicitors' firms have seen a significant increase in their annual insurance premium or have been unable to obtain insurance at all. As a result, some firms have either been forced to close down or to enter the Assigned Risks Pool (ARP) — a last resort for firms that are unable to obtain cover on the open market.

According to the results of the Law Society's annual **PII survey**:

- About a third (36.5%) of firms experienced difficulty in the 2010-11 renewal period, compared with 26% and 21% of solicitors' firms in 2008-09 and 2009-10 respectively. The extent to which firms found the process difficult was related to the size of the firm in that the smaller the firm, the greater the difficulty. This may also be a reflection of the problems incurred by the withdrawal of Quinn—the insurer with the largest market share last indemnity year and the insurer of many small firms—from the PII market and other insurers reducing their capacity to offer terms to small firms.
- 70% of firms reported an increase in premiums from last year, 20% decreased, 10% stayed the same. The figures for the 2009-10 indemnity year were 62%, 14% and 17% respectively.

Why has the solicitors' PII market hardened?

The Qualifying Insurers' costs of participating in the solicitors' PII market have increased. This is due to a significant increase in the number and size of claims arising from solicitors' firms, particularly from those in the ARP. This increase is partly attributable to the economic downturn and the associated collapse of the property market. To help minimise their future losses, many insurers have increased their premium levels (it is estimated that between 15-20% of premiums is attributable to ARP in 2010/11) and limited their exposure to future risk

either by reducing the number and type of firms to which they offer cover, or by withdrawing from the market altogether. During this 'hard' part of the market cycle, many solicitors' firms will pay more for their cover, while firms that the insurers perceive to be a high risk are less likely to obtain cover at all. This is to be contrasted with the 'soft' part of the market cycle, when insurers enter the market as they think that profits can be made. This increases the supply of insurance and level of competition, which leads to a fall in prices.

For this reason, the Law Society supports the [SRA's plan](#) to transition from the ARP to an Extended Indemnity Period (EIP), which largely adopts the alternative that the Law Society proposed as part of its consultation response. We consider that removal of the ARP will encourage new entrants and greater competition which will hopefully soften the solicitors' PII market.

How does the role of the SRA differ from the Law Society?

The **Solicitors Regulation Authority (SRA)** is responsible for administering [the SRA Indemnity Insurance Rules](#) (the Rules), with which all Qualifying Insurers and solicitors must comply. The SRA is the independent regulatory body of the Law Society and acts in accordance with the regulatory objectives and principles in the Legal Services Act 2001. It sets, promotes and secures standards of behaviour and professional performance necessary to ensure that consumers receive a good standard of service and that the rule of law is upheld.

The Law Society represents the interests of solicitors. While we cannot dictate to the SRA how it should administer the Rules, we regularly lobby the SRA about the content and enforcement of the Rules to help promote solicitors' interests. This is not, however, a straightforward task. While all solicitors share a similar interest in obtaining PII at a reasonable price, the best way of achieving this will differ according to a firm's individual circumstances. For instance, while many larger firms are content with the current arrangements and would like them retained, a number of smaller firms would like to see significant reforms made to ease the current difficulties that they are experiencing.

[Read more about our PII campaign work](#)

What is the difference between a broker, underwriter and insurer?

Solicitors must obtain their compulsory PII cover from a [Qualifying Insurer](#). A Qualifying Insurer is an insurer that is authorised to conduct insurance business in the UK and that has signed the Qualifying Insurer's Agreement, which states the conditions that the insurers must comply with in providing PII to solicitors. It is often mistakenly thought that the Law Society and/or SRA approve the insurers. In reality, however, regulation of the Qualifying Insurers is undertaken by the Financial Services Authority (FSA), or, where an insurer from another jurisdiction is passported into the UK system, the financial regulator of that jurisdiction. The Qualifying Insurers enter the solicitors' PII market for a year at a time. The [list of Qualifying Insurers](#) is published on the SRA's website and below is further information on how to select an insurer.

Insurance brokers help to arrange PII cover for solicitors. Most Qualifying Insurers can only be accessed through a broker. Depending on their business model, brokers can also

provide a useful source of advice on how best to obtain cover and on the insurance implications of making significant changes to firms, such as restructuring. While some brokers perform underwriting functions on behalf of an insurer, the two should not be confused. The insurance contract is between the solicitor and the Qualifying Insurer, not the broker. The Society has also published a [guide on how to select a broker](#) (PDF). This guide is currently being updated for the 2012 renewal.

How does the solicitors' PII market operate and what are the alternatives?

The solicitors' PII market operates on an open market system. This means that solicitors' firms negotiate their own cover with a Qualifying Insurer, provided that the [minimum terms and conditions](#) (MTCs) in the Rules are met. Any insurer that is authorised to conduct insurance business in the UK is able to sign the Qualifying Insurer's Agreement to become a Qualifying Insurer.

There are two alternatives to the open market system under the Rules:

The first alternative is a master policy. From 1975 until 1987, the Law Society operated a master policy scheme whereby it placed insurance on the open market for the benefit of the profession and collected premiums from the profession to cover its cost. After difficulties in obtaining sufficient cover from the market, however, it was decided that the master policy was no longer feasible.

The second alternative is a mutual fund. After the master policy and prior to moving to the open market system in 2000, the solicitors' PII market operated on the basis of a mutual fund, called the Solicitors' Indemnity Fund (SIF). This involved the Law Society establishing an indemnity fund under which the profession became its own insurer. SIF provided PII to all firms in private practice regardless of their practice area, size or claims history. The difficulty with a mutual fund is that the entire risk of PII claims is borne by the members of the scheme. Due to the perception that premiums were excessively high, the profession voted to move to the open market in the late 1990s to avoid the costs associated with this risk.

A seemingly obvious way around the current issues would be to create a dual system, whereby some firms enter a mutual fund and others remain on the open market system. A discretionary scheme such as this, where firms are free to join or not, constitutes a significant risk. The firms that are likely to opt in to the mutual fund are those that are experiencing difficulties obtaining PII, often because the insurers perceive them as a high risk. Like all insurance markets, a mutual fund requires both high and low risk firms to be effective so that the low risk firms can subsidise the price of the high risk firms.

The Law Society's current policy position is that we should retain the open market system. In light of the reasons for the hardened market outlined above, there is no reason to think that an alternative system would have prevented the recent difficulties that some solicitors have experienced in obtaining PII. Furthermore, in our 2010-11 renewal survey, more solicitors wanted to retain some form of an open market system than return to a mutual or master policy.

This is not to say, however, that we consider the open market system to be perfect. The Society recognises that there is a need for reform of aspects of the PII system. For this reason, our response to the [SRA's consultation](#) outlined preconditions for a fairer PII system,

including minimum periods for acceptance of quotations and maximum processing times. We support the removal of the single renewal date which may, in time, alleviate some of the pressures faced by small firms. We also consider that the [SRA's plan](#) to remove the assigned risks pool (ARP) and transition to an extended indemnity period (EIP) by 2013 will encourage greater competition and new entrants (i.e. more insurers/brokers) into the solicitors' PII market.

Why haven't other professions experienced similar problems?

It is often stated that we should adopt the systems of other professions that are not experiencing difficulties obtaining PII, such as accountants and architects. There are, however, a number of possible reasons for the differences. These professions may represent a lower level of insurance risk, especially if they are not exposed to the property market or do not have access to client funds. Their insurance market may be in the 'soft' part of the insurance cycle or their PII arrangements may be very different and require, for example, a much lower level of cover.

When are claims paid by the Solicitors' Compensation Fund?

The Solicitors' Compensation Fund provides compensation to applicants who have suffered or are likely to suffer loss due to a solicitor's (or their employee's or manager's) dishonesty, or those who have suffered or are likely to suffer loss and hardship due to a failure to account for money which has come into the hands of a solicitor (or the solicitor's employee or manager). Unless it is proved that all partners in a firm were complicit in the dishonesty or failure to account, the firm's PII policy will cover any losses incurred by the firm's other partners.

From 1 October 2012, the Compensation Fund will also provide cover for 'non-applied' firms who operate without any insurance. This role is akin to the Motor Insurers' Bureau for uninsured drivers and was previously provided by the ARP. The SRA is planning further work on the Compensation Fund in 2011, including reviewing the basis on which claims are made against non-applied firms and reducing the scope of compensation payments. As such, the SRA does not consider that this additional role will greatly increase fund contributions.

Obtaining PII

Which Qualifying Insurer should I use?

You should first ascertain which Qualifying Insurers are willing to underwrite your type of firm. The Law Society's [Guide to Insurers](#) (PDF, 155kb) lists the insurers that have indicated they intend to apply to become Qualifying Insurers for this indemnity year and the types of firms that they are willing to underwrite according to partner number and other key criteria. You should ensure that you approach the full range of insurers that are willing to underwrite your type of firm.

Do I need to use a broker and if so, which one should I use?

Most of the Qualifying Insurers are only accessible via a broking firm. Some Qualifying Insurers have exclusive arrangements with one or more broking firms, which means that solicitors can only access that insurer via that broker(s) and/or sometimes that broker can only refer solicitors to that insurer. Therefore you may have little choice in the broker that you engage.

You should be aware that brokers can provide important advisory roles and offer very different types and levels of service to solicitors. You should refer to our [guide to brokers](#) (PDF) for further information on the factors to consider when selecting your broker. You may want to consider negotiating a [retainer letter](#) (Word) with your broker to set out your expected level of service standards.

What factors determine whether a firm receives a quote and the price of that quote?

Often solicitors complain that they experience difficulties obtaining PII at a reasonable price even though they do not possess any high risk factors. For instance, they have no claims record, conveyancing only accounts for 5% of their gross fee turnover, or their turnover or risk exposure has decreased in recent years.

There are a number of possible explanations. First, as stated above, the solicitors' PII market operates on a '[claims made](#)' basis. In assessing a firm's insurance risk, therefore, the Qualifying Insurers will be considering the risk arising from both its past and future activities. Second, there are a number of risk factors that insurers use when assessing a firm's proposal form. The Law Society's [PII practice note](#) provides further information. Third, in a hardened market, insurers are likely to increase the premiums of most, if not all, policyholders to recoup losses or expected losses arising from increased claims levels. Finally, in recent times, the rising cost of the ARP has caused insurers to increase premiums.

Why can't the insurers be required to underwrite more firms and broader types of firms?

Some solicitors have stated that the Qualifying Insurers should be required to underwrite more firms and a broader range of firms at a lower price. There are a limited number of Qualifying Insurers that are willing to underwrite certain types of firms on the basis that they perceive these firms as posing a high insurance risk due to past claims data. Consequently, these firms often experience the most difficulties obtaining PII.

The Law Society is cautious about lobbying the SRA to increase the obligations on Qualifying Insurers in the ways suggested above. The Qualifying Insurers are private companies that are seeking to maximise their profits for the benefit of their shareholders. They are entitled to employ their own risk strategies in deciding how to underwrite solicitors' firms. The SRA should not dictate how the Qualifying Insurers operate their businesses, as it would risk deterring insurers from the solicitors' PII market altogether. This would reduce competition and, in turn, likely cause premiums to rise further. There are already a limited number of Qualifying Insurers that are willing to underwrite small practices. We therefore do not think it would be in our members' best interests to risk limiting this further.

The Law Society has sought to address this problem by putting in place an agreement with Travelers, one of the Qualifying Insurers. Pursuant to this agreement, Travelers will consider proposal forms from all parts of the profession, regardless of the type of firm they are or the type of work they perform. The agreement does not, however, prevent Travelers from refusing to provide quotes to firms that fail to meet other underwriting criteria nor does it stipulate the size of the quotes.

We also consider that the [removal of the ARP and introduction of the EIP](#) will create a more competitive market.

What should I do if my Qualifying Insurer becomes insolvent?

The Law Society published a [practice note](#) to provide our members with greater certainty about the implications if your insurer becomes insolvent. Most importantly, existing policyholders must arrange replacement Qualifying Insurance as soon as reasonably practicable and in any event within 4 weeks of the relevant insolvency event. The practice note also refers to potential avenues for redress and compensation. We recommend requesting information about the financial stability of a Qualifying Insurer from your broker before accepting a quote.

What should I do if I am dissatisfied with the service of my insurer or broker?

Sometimes problems arise from misguided expectations about the service levels of an insurer or broker, while at other times they arise when the insurer or broker fails to meet their regulatory obligations. You may want to consider negotiating a [retainer letter](#) (Word) with your broker to set out your expected level of service standards. You should refer to our [Buyers' Guide to PII](#) (PDF, 200kb) for information about the obligations on insurers and brokers and the avenues for making complaints.

Addressing the problems

It is ultimately for the SRA to decide whether to change the current arrangements. The SRA has recently concluded its review of the future of client financial protection arrangements, including both PII and the compensation fund.

[Read about the SRA's proposed changes](#)

[Read about the Law Society's campaign work](#)

Why doesn't the Law Society lobby the SRA to change the Minimum Terms & Conditions to alleviate the concerns of the Qualifying Insurers?

The majority, if not all, of the Qualifying Insurers want the SRA to relax the MTCs in the Qualifying Insurer's Agreement. They claim that the current MTCs require insurers to provide an extremely high level of compulsory cover to solicitors, which contributes to the difficulties that some solicitors are experiencing in obtaining PII. They state that if there was greater flexibility in the type of cover that insurers could offer to solicitors, they could be more flexible with pricing and offering of quotes, and more insurers would be willing to enter the market.

According to the Law Society's current policy position, we need to carefully consider all of our options before making any changes to the arrangements. The current MTCs provide considerable benefits to consumers and solicitors alike. They provide significant protection to consumers and a strong incentive for consumers to use solicitors before other types of lawyers. They also give solicitors the comfort of knowing that potential claims will be covered. We cannot attribute all of the current difficulties to the MTCs. They have been in place since the beginning of the open market system in 2000, while the market did not harden until 2008-09. Furthermore, any changes will be difficult, if not impossible, to reverse.

Indeed, TLS resisted the SRA's proposed exclusion of financial institutions from the MTC, both in the context of the other changes proposed and in view of the consequential harm, in particular, to conveyancing practitioners and their clients of such a change. The SRA's Policy Statement, however, only provides a reprieve until 2014, postponing any exclusion until that time. The SRA will shortly commence a review of the regulation of conveyancing and the holding of client money. This review will address the reasons why property transactions give rise to such a high proportion of claims arising from negligence and dishonesty. This review is likely to revive the issue of flexibility in insurance arrangements, although the SRA considers that it will not be in the position to implement any further change until 2014.

The Law Society will continue to lobby the SRA to ensure that future proposed changes to the MTC are in the interests of the profession.

Why doesn't the SRA stagger the renewal dates to alleviate pressure on all market participants?

Some Qualifying Insurers claim that the single renewal date system is contributing to the difficulties of some solicitors in obtaining PII. All solicitors' firms are required to renew their compulsory cover by 1 October each year. It is claimed that this single renewal date creates unnecessary pressure for all participants and increases the difficulties in obtaining cover.

The Law Society's current policy position is that the single renewal date should be abolished. While not conclusive, the balance of evidence favours a variable or multiple renewal date system. Since November 2009, the Law Society has been [lobbying the SRA to reconsider its position](#). Subsequent to its review on client financial protections, the SRA has decided to abolish the single renewal date in 2013. The SRA considers that any move to variable renewal dates is not possible before this due to the transition to the EIP.

Why doesn't the Law Society lobby the SRA to close down the ARP?

The Qualifying Insurers often refer to the high level and amount of claims arising from the firms in the ARP as a major contributing factor to the increase in PII premium levels. Qualifying Insurers are required to underwrite the ARP in the same proportion as their share of the premium income from the compulsory PII cover. As the public reports of Capita Commercial Services Limited, the ARP Manager, show, the claims arising from firms in the ARP have increased significantly in recent years and a number of cash calls have been made on the insurers.

The Law Society's current policy position is that we should abolish the ARP. In our response to the SRA's consultation, we proposed an alternative to the ARP, which involves a firm's current insurer providing a policy extension in the event that insurance is not renewed to allow firms to either obtain insurance elsewhere or consider their alternatives. As part of developing this proposal, TLS consulted with and obtained the support of various stakeholders, including insurers.

In its policy statement, the SRA agreed that the Law Society's alternative proposal for the ARP represents the best way forward and will implement the Extended Indemnity Period (EIP) by 2013.

[Read more](#)

Why should the profession have to contribute to the transition from ARP to EIP?

The entire profession is already 'paying' for the ARP through uplifts on PII premiums (estimated between 15%-20% for the 2010/11 renewal). There are also benefits to abolishing the ARP and introducing EIP that may create a more competitive PII market for the benefit of the entire profession.

The Law Society has maintained its position that it is not acceptable for the profession to incur unlimited liability for even a single ARP year. In its consultation, the SRA proposed to place the entire liability for future ARP onto the profession. This was a key driver behind the Law Society's adoption of and support for the EIP policy.

As such, TLS supports the SRA's proposed layering of liability for the 2012 ARP and use of Solicitor's Indemnity Fund (SIF) funds. Under the SRA's proposal, insurers (not the profession) are responsible for unlimited liability above £50m. TLS also considered the use of SIF funds to be appropriate to mitigate the risk of any further levy and minimise the profession's exposure. Our support, however, is subject to the SRA being transparent about its ARP management strategy and being open to suggestions about how to better control and manage firms. TLS is committed to working with the SRA and further lobbying to ensure that the ARP is effectively managed from 2011 to minimise the profession's 2012 exposure.

What are the benefits of the EIP?

TLS consider that the EIP will create a more stable and competitive PII market to the benefit of the entire profession and, importantly, remove the need for the ARP to act as an 'insurer of last resort', which is seen by many insurers as a barrier to a competitive insurance market. A more stable and competitive market will hopefully mean that PII is accessible and affordable to all sectors of the legal profession.

What happened to the Law Society's Brokers List?

While the Law Society doesn't have the resources to vet all the brokers on our List, we have been concerned that this is not the perception within the solicitors' profession.

Despite this lack of quality assurance, a small number of brokers have given the impression that their inclusion on the List made them 'Law Society approved'. The List therefore became a free service for brokers with little actual value to our members.

We are updating our Broker's Guide to provide solicitors with a checklist of factors they should consider when choosing a broker to ensure that they get the best value. For example,

solicitors should ask brokers what commission/fees they receive in the interest of transparency, which brokers must provide on request as per the FSA's rules. There will be tips to ensure that brokers are providing solicitors with a level of service that meets their specific needs, more detail about the different types of intermediaries that are in the market and consideration of the pros and cons of continuity of service.

How do I search for a broker?

There are two websites that are useful if you are looking for a broker.

FSA register

The Financial Services Authority (FSA) register is a public record of all the firms, individuals and other bodies that are regulated by the FSA, including professional indemnity insurance brokers.

You can [search](#) the register for information on all brokers that are authorised by the FSA and that provide products or services in the UK. You should note that the FSA will only tell you whether or not a broker has been given permission by the FSA to carry out regulated activities, or whether they have been 'passported' in from another European Economic Area (EEA) – that is, a firm that is eligible to offer certain products or services in the UK and other EEA countries.

The EEA includes the European Union states, plus Iceland, Norway and Liechtenstein. These firms are regulated in their home countries and must meet standards which have been agreed across all EEA states. See the FSA website for further information on the [regulation of EEAs](#).

BIBA search facility

The British Insurance Brokers' Association (BIBA) is a general insurance organisation representing the interests of insurance brokers, intermediaries and their customers. You can search for brokers on its website, or you may call BIBA directly on 0870 950 1790 to discuss your requirements.

To search for a broker using [BIBA's search facility](#), you should enter your post code and then select the following 'insurance type' options: in the first box select 'liability – commercial' and in the second box select 'general insurance'.

This will narrow your search to brokers that are authorised to provide general insurance, the relevant category for PII, services in your postal area.

How do I improve my prospects of obtaining PII at a reasonable price?

Given that the EIP will not be in place until 2013, it is likely that the hard market will remain for some time, making it now more important than ever that you take steps to minimise your insurance risk and to maximise your chances of obtaining PII at a reasonable price. The Law Society has issued a range of guidance about the PII market and the buying process. You can access this guidance, along with market updates and information on our future initiatives at: www.lawsociety.org.uk/professionalindemnity

What is the Law Society doing to help solicitors to obtain PII?

As it did last year, the Law Society is working to educate and inform its members about PII in the lead up to the next renewal deadline. We will conduct seminars and publish a range of advice and information, including our dedicated PII helpline to guide our members through the renewal period.

The Law Society will take steps to protect solicitors' interests in the PII market wherever possible. We will be monitoring the 2011-12 PII renewal period closely, as well as the transition to the EIP, so that we can raise any concerns with the Qualifying Insurers, brokers and their representative bodies while the process is still ongoing. We will continue to work closely with the SRA to protect our members' interests and create a more stable and competitive PII market.