



The Law Society

Frequently asked questions

Professional Indemnity Insurance

March 2013



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The following FAQs have been compiled to assist solicitors better understand the complex area of professional indemnity insurance (PII).

Market outlook for 2013

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

The Law Society continues to have a positive outlook for the market this year. We consider the trend from last year will continue and hopefully there will be new insurer entry. We do, however, have concerns that some of our members are not using the market to their full advantage and are not giving sufficient weight to an insurer's financial security when making purchasing decisions.

The results of our 2012-13 survey of renewal experiences suggest that the renewal process is becoming easier for the profession. There is a significant improvement in previous years in firms reporting that they found the process not difficult. This year only 17% of firms reported that renewal was 'very' or 'fairly' difficult compared to 34% in the 2011-12 renewals).

There is evidence, however, that there remains a degree of confusion about the extent to which individual brokers are tied to insurers or cover some or all of the market. Larger firms were also more likely to ask their broker, if not already aware, than smaller firms. Help is available for small firms (see [Law Society's guidance](#) at the end of these FAQs).

Unrated insurers have written 12.5% of the total solicitors' PII market by share of premium. The 2012-13 survey findings suggests that this equates to 16% of the overall market by firm number. The majority of these were small firms with 1-4 partners. The Law Society is increasingly concerned about the number of solicitors relying on unrated insurers, particularly this renewal, where there was increased availability of rated insurers within the market. This suggests both that, in some fundamental respects, the market in its current form is not working for a segment of the profession and that a proportion of firms continue to make a purchasing decision based purely on price. Hence, our revised guidance to emphasise the [importance of an insurer's financial security](#) when selecting a PII provider within our member guidance.

As there will be no longer any liability for the assigned risks pool (ARP), new insurers may look to enter the market for the 2013-14 indemnity year. We saw this trend begin in the 2012 renewal season. For up-to-date information about insurers prepared to write your type and size of firm, see the Law Society's [Insurers' Guide](#). Make sure you keep checking this guide throughout the renewal season as it will be updated as new market intelligence comes to light.

When will the insurance market open this year?

Every year there is a requirement for insurers to sign an agreement with the SRA before they can finalise terms with solicitors. The 2013 agreement is not yet finalised but once it is it will be uploaded on the [SRA's website](#).

Whenever the market opens, it is important not to miss out. You should commence preparing for renewal early so that when insurers start to offer quotations, your proposal form is in the front of the queue and is viewed in a favourable light.

Should I accept offers for early renewal?

Some insurers have already commenced offering solicitors early quotations (even though they cannot formally bind business until the QIA is signed). This is likely to be an indication that the market is in transition and that insurers are seeking to renew terms to retain their market share. If you receive an early quotation, this is likely to be a sign that you are considered to be a 'good risk' by your current insurer and suggests you will be able to obtain quotations from other insurers.

You should consult with your broker about whether or not to accept an early offer. Factors that you may want to consider are outlined in the Law Society's [PII practice note](#) and the [PII buyers' guide](#).

Financial security of insurers is important

What is the Law Society's policy position on financial security of insurers?

The Law Society is increasingly concerned about the number of solicitors relying on unrated insurers, particularly in the 2012-13 renewal, where there was increased availability of rated insurers within the market. This suggests both that, in some fundamental respects, the market in its current form is not working for a segment of the profession and that a proportion of firms continue to make a purchasing decision based predominantly on price. This is not to ignore the economic pressures faced by the profession, but it is vital that decisions made are well informed.

In light of the recent insolvency of unrated insurer Lemma, the Society will continue to emphasise the importance of an insurer's financial security when selecting a PII provider within our member guidance. The Society has already embarked on a strengthened awareness campaign. We are advising solicitors to seek out an insurer's rating before selecting their provider because unrated insurers are an unknown quantity. An official rating from an independent ratings agency is an important objective measure of an insurer's financial security. While it is for the Solicitors Regulation Authority (SRA) to address the systemic risk of insurer failure, which, if it occurred, could result in client detriment and exposure for principals, the Law Society is working hard to mitigate this risk and provide a stable market for solicitors.

What does it mean to be a ‘qualifying insurer’?

A ‘qualifying insurer’ is authorised by the FSA to conduct business in the UK and has agreed to write solicitors’ PII policies. This is the only requirement that the [SRA places](#) on insurers. The Law Society has asked the SRA to change the name to ‘participating insurer’ for the 2013 renewal as this is more reflective of insurer’s actual role.

Doesn’t the SRA vet or approve ‘qualifying insurers’?

There remains a misconception that because the SRA publishes a list of ‘qualifying insurers’ these insurers are vetted or approved by the SRA in some way. This is not the case. Neither the SRA nor the Law Society vets, approves or regulates insurers. Regulation of insurers is undertaken by the FSA, or, where an insurer from another jurisdiction is passported into the UK system, the financial regulator of that jurisdiction. As a matter of conscious policy, the SRA does not undertake solvency checks on insurers and does not require a minimum level of financial security for participation in the solicitors’ PII market. Any insurer authorised to write insurance in the UK and agrees to provide solicitors’ PII policies, can write this business.

For this reason, the Society has urged the SRA to change the term ‘qualifying insurer’ and replace it with ‘participating insurer’, a term that is more reflective of the reality of the situation as the SRA does not, rightly in our view, conduct an assessment of the financial strength of insurer participating in the solicitors’ market. The Law Society also considers that the SRA should take measures to address the systemic risk of insurer failure, which poses a significant future threat to firm viability and client protection.

What advice can the Society give our members about unrated insurers?

The recent financial collapse of two insurers, Quinn and Lemma, should make solicitors think twice before accepting a quote without checking an insurer’s financial stability and seeking the advice of their broker on the financial strength of insurers they recommend.

An objective measure of a firm’s financial security is the rating of the firm. The existence of a rating is indication that the firm has been assessed by an independent rating agency. It is not a guarantee of solvency, but at least it provides an indication. Unrated insurers are an unknown quantity. They have not been subject to independent scrutiny from a ratings agency.

The Law Society understands the commercial pressures on firms that may tempt them to choose the cheapest quote for their professional indemnity insurance. However, we want our members to understand the true cost of this cover in the event that an insurer becomes insolvent.

The Law Society strongly advises its members to think about the true cost of ‘cheap’ insurance. If your insurer is unable to meet its obligations, there will be a high price to pay.

How do solicitors find out an insurer's rating?

The Law Society publishes a [list of insurers](#) and their rating.

This guide is updated regularly throughout the renewal season. For this reason, solicitors are strongly encouraged to check the Law Society's website <http://www.lawsociety.org.uk/pii/> throughout the renewal season to ensure that they are using the most up-to-date version of this guide. You can also follow us on Twitter at LSRegAffairs and Practice Update to keep updated.

What impact does insurer insolvency have on solicitors?

You may end up paying more

If your current insurer becomes insolvent in the middle of your policy term, you must find alternative cover within four (4) weeks.

This will require you to pay double premium, that is, a further premium to a new insurer.

Your new premium may be higher than your previous one, so you may end up paying more than double the cost of that 'cheap' quote.

You may have to close your practice

If your insurer becomes insolvent after 1 October 2013 and you cannot obtain alternative cover within 4 weeks, you will have to cease practice.

For this reason, the financial security of your firm's insurer should be a matter of importance to everyone within the firm, not just partners or the person who deals with PII for the firm.

You may have no insurance to pay or defend claims

In the unfortunate event that a claim is made against your firm, you will need an insurer with sufficient resources to assess and if appropriate defend it. If your insurer is in administration, claims handling will, at best, suffer delays. There is also a high probability that your outstanding claim will not be met in full.

The SRA relies on the availability of the Financial Services Compensation Scheme (FSCS) to provide protection against uninsured loss. The FSCS only covers small businesses and does not pay the entire claim.

Practices that are not eligible for protection could find themselves wholly uninsured.

You may have to pay a claim out of your own pocket

Depending on your firm's business structure, uninsured loss can have devastating personal consequences. Principals of a partnership are jointly and severally, and sole practitioners are personally, liable for uninsured losses.

This could lead to bankruptcy and closure of your practice.

For further real life case examples, see the Law Society's [guide to the importance of insurer solvency](#).

But my insurer is not likely to become insolvent: how does this affect me?

The Irish Compensation Fund which is meeting claims (not all of them PII claims) arising out of Quinn's failure, has paid out €1,058 million (as at 15 December 2012). Given the high level of claims, there is now a 2% levy imposed on all insurance policies sold in the Irish Republic.

The UK equivalent, the FSCS, is funded by FSA-regulated entities. Your insurer will pay a levy towards this scheme. If there are substantial amounts levied, insurers may pass these costs onto policyholders, which may impact on premiums.

Preparing for renewal

What is an insurer claims summary?

An insurer claims summary is a record from your insurer of any claims or circumstances reported to that insurer for a particular indemnity year.


As part of the renewal process, you will be required to produce a copy of this claims summary from each insurer that has insured your firm in prior years. Most insurers require between five or six years of claims histories, however, some require up to ten years.

You will need to provide a claims summary for each year requested by the insurer, even if it is simply to confirm that no claims or circumstances have been made. You should review the claims summary to make sure that reserves shown are accurate. If you disagree with the values shown you should ask the insurer and/or broker for an explanation of the figures and seek revision if appropriate.

If there have been circumstances notified or claims made, you should provide additional supporting materials that provide your own views on their merits and outlines any remedial action that your firm has taken to prevent recurrence of the issues that caused the claim. Any summary provided should be relevant and succinct.

An example of a claims summary is provided below. Please note, however, that different insurers record different information. The Law Society has been campaigning for all insurers to provide the same information on a commonly

accepted claims summary as part of its move to bring about a common proposal form. See www.lawsociety.org.uk/commonprop to find out more.



ZURICH

Individual Claim Report
13 July, 2009

Zurich

Company Name
Address

Policy Number

THERE ARE CURRENTLY NO REPORTED CLAIMS OR CIRCUMSTANCES FOR YEAR: 2008
THERE ARE CURRENTLY NO REPORTED CLAIMS OR CIRCUMSTANCES FOR YEAR: 2005

Claimant	Claim ID	Policy Year	Date Notification	Claim Type	PMO £	Claim Paid £	Claim Reserve	Claimant's Costs Paid	Claimant's Costs Reserve	Defence Costs Paid	Defence Costs Reserve	Claim Status
	2	2001	18/07/2002	Commercial Property & Charges	N/A	0	0	0	0	0	0	Closed
	2	2002	31/08/2003	Other Litigation and Dispute Resolution	N/A	0	0	0	0	0	0	Closed
	2	2003	15/12/2003	Residential Property & Re-mortgages	N/A	750	0	0	0	0	0	Closed
	2	2004	27/03/2005	Residential Property & Re-mortgages	N/A	4,833	0	0	0	0	0	Closed
	2	2006	27/04/2007	Residential Property & Re-mortgages	70,000	0	45,000	0	6,000	400	2,000	Open
	2	2007	04/12/2007	Landlord and Tenant	N/A	0	0	0	0	0	0	Closed

Zurich Professional & Financial Lines, London Underwriting Centre, 3 Minster Court, Mincing Lane, London, EC3R 7DD
Zurich Insurance plc, A public limited company incorporated in Ireland Registration No. 13460. Registered Office: Zurich House, Ballsbridge Park, Dublin 4, Ireland. UK branch registered in England and Wales Registration No. BR7985. UK Branch Head Office: The Zurich Centre, 3000 Parkway, Whiteley, Fareham, Hampshire PO15 7JZ. Authorised by the Irish Financial Regulator and subject to limited regulation by the Financial Services Authority. Details about the extent of our regulation by the Financial Services Authority are available from us on request.

Can I use last year's claims summary?

No. Past claims and trends form a large part of the underwriting process and it is vital that your underwriter has up-to-date information. Open claims shown on prior summaries may have developed and the picture may have improved or deteriorated which is why you will need to provide recent claims summaries.

This means that unless your previous year's claims summary shows no claims or circumstances notified for the indemnity period, then you will need to make further requests from insurers to obtain up-to-date claims summaries.

Does disclosure of a possible claim as opposed to an actual claim affect the premium?

You have an obligation to notify your insurer of circumstances that may give rise to a claim. This means you need to tell insurers if you become aware of an occurrence or problem, which may give rise to a third party claim even if no formal claim has been made. For further information about the difference between a claim and a circumstance, see the Law Society's [PII practice note](#).

Mere notification of a circumstance is unlikely to have any significant effect on your premium level unless it results in an actual claim. Most insurers from whom you are seeking a quote will not be concerned with circumstances notified, if payments and reserves are recorded as nil. Insurers view notification in these circumstances as a sign of a firm adhering to good risk management practices and taking its obligation to notify seriously.

Will my current insurer be suspicious if I ask them for my current claims summary?

You have the right to request a claims summary from your insurer and/or broker at any time. If your insurer or broker delays in complying with your request for a claims summary then you should be proactive and chase them for this information.

Do insurers value loyalty?

Your broker will be able to advise you whether, in the light of the prevailing market conditions, for example, depending on the movement of the market, it may be worth accepting a premium increase from your current insurer, especially if you have a long standing relationship with your insurer or outstanding claims. More established insurers suggest that if a firm changes insurers too often it may raise concerns about its long-term management strategy (for example, a firm that has had a different insurer every year for the last three years may be perceived to lack continuity).

Therefore, continuity may be valued, provided that you are with the right insurer for you. It is important to assess quotations you receive and ensure that you are getting value. Value may not necessarily equate to the lowest premium or 'no claims' discount, the [financial security of your insurer is of utmost importance](#). There are also other factors to consider when assessing quotations, such as the insurers' ability to provide quality claims handling or risk management services: see the Law Society's [PII practice note](#) and the [PII buyers' guide](#).

Do insurers share information with each other?

Insurers are commercial entities and are unlikely to share information with their competitors. It is for this reason, there has been no industry-wide source of data since the profession moved from the Solicitors Indemnity Fund onto the open market.

Do insurers retain previous years' proposal forms if they do not offer you a quotation or if you do not accept a quotation?

Yes. According to the declaration on many insurers and brokers proposal forms, they are entitled to retain this information subject to the data protection requirements. Whether or not they use this information depends on the individual insurer or broker, however, some market participants find it useful to analyse this information to obtain a high-level overview of the claims development of their risk portfolio as compared to the wider solicitors' market.

I act for large international clients to organize and coordinate advices given by other specialists. How do I qualify this activity on my PII proposal form?

A specialist PII broker is best placed to help you complete your proposal form and present the work that you undertake to insurers. For niche or novel work areas, you should detail the work that is being undertaken fully, address any risks that it might entail, explain how you have dealt with these risks and demonstrate your expertise, experience and track record in this area.

There are a number of questions on PII proposal forms that ask about work splits and requiring solicitors to provide detail of any work undertaken in other jurisdictions. Instead of simply 'ticking a box' for these questions, you should attach supplementary information that provides sufficient detail to give the insurer a clear picture of the type of work that is actually being undertaken and the risk being insured.

Do in-house lawyers need PII?

The practice framework rules allow in-house lawyers to act for clients other than employers in certain circumstances. Depending on the circumstances you may need to have PII in place. See: [when do in-house lawyers need PII?](#) and the Law Society's [PII practice note](#).

Using brokers and insurers

What is the difference between a broker and an insurer?

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 shareholders. Insurers enter the solicitors' PII market for a year at a time. The list of participating insurers is published on the SRA's website: www.sra.org.uk/solicitors/code-of-conduct/professional-indemnity/qualifying-insurers.page and further information is available in the Law Society's [Insurers' Guide](#).

Insurance brokers help to arrange PII cover for solicitors. Most 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. 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 insurer, *not* the broker. See the Society's [PII buyers' guide](#) for further information about the relationships that exist in the market including the difference between underwriters and managing general agents.

Why doesn't the Law Society or the SRA approve brokers?

Neither the Law Society nor the SRA vets, approves or regulates brokers. This is not an appropriate role for the Law Society or the SRA as this is the responsibility of the Financial Services Authority. The Law Society does, however, regularly meet with brokers as part of its industry consultation in order to provide assistance to its members. The Law Society has published [guidance](#) to assist its members to 'get the most' out of the broking relationship.

Which insurers should I use?

This is predominately a question for your broker. You should first ascertain which insurers are willing to underwrite your type of firm. The Law Society's [Insurers' Guide](#) lists the insurers that have indicated they intend to apply to become 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. You should also consider the [financial security of the insurer](#) that you are placing your business as you want to ensure that they will be able to satisfy their obligation to meet any claims you make.

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

The Law Society does not regulate or vet brokers and cannot advise which broker is best for you as your choice of broker will depend on your individual circumstances.

Most insurers are only accessible via a broking firm. Some insurers have exclusive arrangements with one or more brokers, which means that solicitors can only access that insurer via that broker (or another broker that 'sub-brokers' into that broker). Sometimes exclusive arrangements may mean that broker can only refer solicitors to that insurer. Therefore, some brokers may only be giving you a single quote, rather than conducting a full market exercise.

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 the Law Society's [PII buyers' guide](#) for further information on the factors to consider when selecting your broker.

Do brokers have a list of all the insurers they are approaching on our behalf?

Yes. Brokers should tell you which insurers they can access and will be approaching on your behalf. If they do not disclose this upfront, then you should be proactive and ask them for this information. For more information about managing and maintaining your relationships with brokers, see the Law Society's [PII buyers' guide](#).

Is it possible to approach underwriters directly?

Many insurers can only be accessed via a broker. The Law Society's [Insurers' Guide](#) lists whether an insurer can be accessed directly.

Even if you can access underwriters or insurers directly, there may still be merit in using a broker to manage these relationships. A specialist PII broker will help you present your firm in the most attractive light to increase your chances of obtaining a favourable quote from insurers. For further information about getting the most out of your broker, see the Law Society's [PII buyers' guide](#).

Is there a list of brokers?

No. In the past, a list was provided. While the Law Society did not have the resources to vet all the brokers on a brokers list, we were 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.

Instead we have updated our [PII buyers' 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 are also 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. These firms are regulated in their home countries and must meet standards which have been agreed across all EEA states. See FSA website: <http://www.fsa.gov.uk/register/firmSearchForm.do> for further information.

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: <http://www.biba.org.uk/consumerhome.aspx>, 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 sub-categories 'indemnity commercial' and 'professional indemnity - solicitors' to process your request.

Is there a minimum number of insurers that sole practitioners or small firms should always obtain quotes from?

You may need to use more than one broker to gain access to the full range of insurers that are willing to offer PII to your firm. A good broker should give you independent professional advice and assistance in preparing the best package to send to an insurer, in addition to telling you if you should contact any other brokers in order to access the entire market.

Whether you need to use multiple brokers depends on the size of your firm and your area of practice. It also depends on the broker you choose and the number of insurers that they can access.

Large firms are usually able to obtain insurance with the assistance of a single broker. However, due to tied arrangements that exist between some brokers and insurers at the smaller end of the solicitors' PII market, smaller firms may need to approach multiple brokers in order to access the full range of insurers that are willing to offer PII to their firm.

You should not need to approach more than three brokers to ensure adequate access. If you do use multiple brokers please ensure that they do not approach the same insurer more than once. For further information about managing broker relationships to ensure full access to markets, see the Society's [PII buyers' guide](#).

Are brokers prepared to disclose commission payable? What is reasonable?

Brokers are required to disclose what commission they receive if you request disclosure.

As a general rule, when premium is less than £50,000 commission is taken by brokers. The level of commission depends on the arrangements between brokers and insurers and the type of work the broker undertakes on the insurers' behalf. For further information, see the Law Society's [PII buyers' guide](#).

The Law Society is encouraging all solicitors to ask their broker what they will receive in commission from insurers this renewal. The significant lack of transparency surrounding broker remuneration in the market is unacceptable and requesting this information can be used as a 'conversation starter' about the level of service the broker is providing for that remuneration. More information about the Society's transparency campaign is available at: <http://www.lawsociety.org.uk/representation/articles/broker-transparency-campaign/>

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 with your broker to set out your expected level of service standards. You should refer to our [PII buyers' guide](#) for information about brokers' obligations the avenues for making complaints.

PII difficulties

Why have some solicitors experienced difficulties obtaining PII?

The solicitors' PII market undergoes cycles of 'soft' and 'hard' conditions. In recent times, the following combination of factors have resulted in a 'hard' market:

- some insurers exiting the market
- some insurers narrowing the types of firms to which they offered cover
- the ability of some insurers to minimise their ARP exposure by adopting methodologies to reduce the amount of declared premium
- the collapse of the housing market and an increase in mortgage-related fraud leading to concerns amongst insurers about an imminent increase in conveyancing-related claims, and
- an increase in the amount and value of claims insurers are receiving from solicitors

Many insurers now scrutinise proposal forms more carefully and are more selective in the firms to which they offer cover. During hard cycles, some parts of the profession have had to accept significantly increased premiums or have been unable to obtain PII from a insurer at all. Among those most affected have been:

- sole practitioners
- firms with fewer than five partners, and
- firms that perform conveyancing work.

Even some firms with a clean claims history have experienced difficulties. However, the 2011/12 renewal saw signs that the market may be easing for some solicitors and signs of a 'softer' market are evident in the 2012/13 renewal experiences. While the market seems relatively 'soft' at present, the Law Society is concerned that the small firms market (1-4 partners) have suffered disproportionate price increases during hard markets.

We are also aware that this segment has historically attached a significant proportion of poorly rated or unrated insurers and that it is dominated by broker exclusive arrangements that reduce choice of insurer. These conditions cause instability in the market. Rated insurers consider the small firms segment of the market to be 'underpriced' and do not wish to compete with, what they consider to be, unsustainable pricing of unrated capacity.

What should I do if my 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 insurance as soon as reasonably practicable and in any event within four (4) weeks of the relevant insolvency event. The practice note also refers to potential avenues for redress and compensation. We recommend considering the [financial stability of an insurer](#) before accepting a quote. Further information about the credit rating of individual insurers is available in the [Insurers' Guide](#).

Understanding the PII system

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 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*. 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 and ensuring a competitive and stable market, 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: www.lawsociety.org.uk/professionalindemnity

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 insurers, provided that the minimum terms and conditions (MTCs) in the Rules are met.

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.

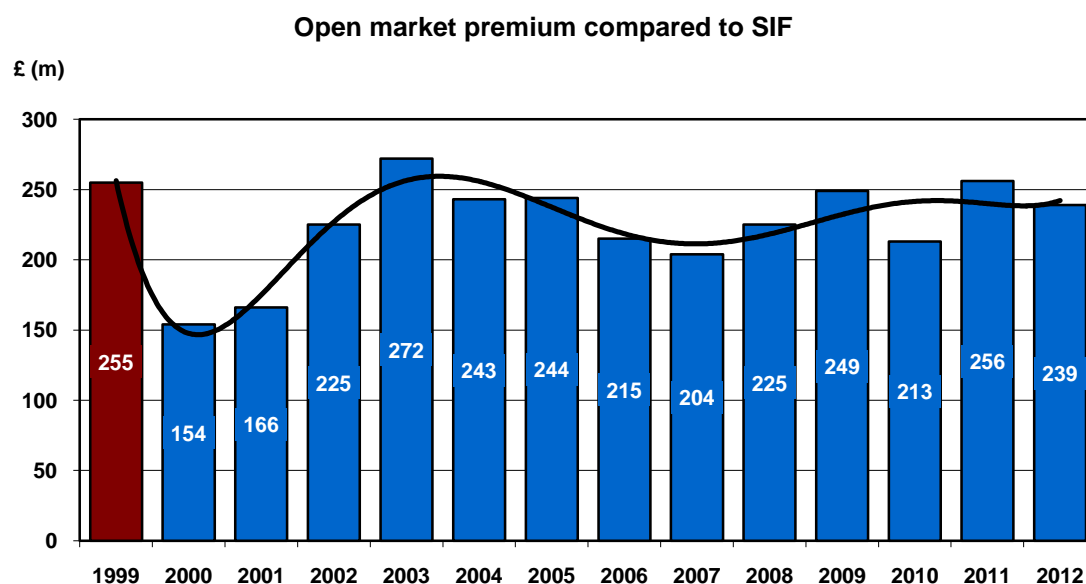
The second alternative is a **mutual fund**. After the master policy and prior to moving to the open market system in 2000, the solicitors' PII market operated on the basis of a mutual fund, called the Solicitors' Indemnity Fund (SIF). This involved the Law Society establishing an indemnity fund under 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.

The graph below shows the total premium income declared by insurers for the compulsory layer for each indemnity period since 1999. What is clearly identifiable is the fact that in 1999, the last year of the SIF, the total premium income was approximately £255m. Thirteen years later, that figure has reduced by £16m to £239m. It should also be noted that SIF only provided an indemnity limit of £1m but open market insurers now provide indemnity limits of £2m for sole practitioners and partnerships and £3m for alternative business structures and limited liability partnerships.



Source: *Insurance Matters*, edition 10, available at: www.lawsociety.org.uk/pii

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 and transition to an extended indemnity period 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 than the solicitors' PII policy.

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. It also covers 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, that is, firms who operate without any insurance. This role is akin to the Motor Insurers' Bureau for uninsured drivers and was previously provided by the insurers via the assigned risks pool. The Law Society did not support this transfer and instead called for a comprehensive review of the Compensation Fund, however, the SRA does not consider that this additional role will greatly increase contributions to the Fund.

The SRA is planning a 'root and branch' review of the Compensation Fund due to be completed by 2014: <http://www.sra.org.uk/sra/how-we-work/compensation-fund-review.page#documents>

Factors affecting premiums

What factors determine whether a firm receives a quote and the premium?

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, do not undertake conveyancing work, or their turnover or risk exposure has decreased in recent years.

There are a number of possible explanations. Firstly, the solicitors' PII market operates on a 'claims made' basis. In assessing a firm's insurance risk, therefore, the insurers will be considering the risk arising from both its *past* and *future* activities. Secondly, 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. Thirdly, 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 assigned risks pool has caused insurers to increase premiums.

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

While the Law Society has a more positive outlook for the 2013 renewal than in recent times this does not mean that solicitors should be complacent about PII renewal this year. It is 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/pii

How are conveyancing firms treated by insurers?

There is a considerable amount of evidence that the conveyancing process is causing problems in terms of generating a large number and value of claims within the solicitors' PII market.¹ Conveyancing claims represents around 50% of the value of all claims in the solicitors' market and around 85% of assigned risks pool claims since 2005. The comprehensive breadth of solicitors' PII cover also has the potential to attract claims in times of property collapse. There has been an increase in conveyancing claims stemming from the global financial crisis and the boom/bust nature of the property cycle.

As such, insurers' view conveyancing (both residential and commercial) as 'very high risk' work and are likely to require detailed information from solicitors about this practice area in their proposal forms. Solicitors who engage in a large amount of conveyancing work should take positive steps to demonstrate to insurers that they are good risks, for example, by providing detailed proposal forms and demonstrating risk management practices by attaining quality marks (e.g. Lexcel, CQS).

¹ Charles River Associates, [Review of client financial protections](#), (CRA report), p.36.

What value do insurers place on Lexcel or CQS accreditation?

Given the current state of the market, in order to place your firm in the best PII position, you will have to demonstrate to insurers that your firm has effective risk management systems in place. The Law Society's accreditation schemes, such as the Conveyancing Quality Scheme (CQS), or Lexcel, its practice management standard, are designed to provide your clients and insurers with increased confidence. It is clear that many insurers will be asking whether you have obtained accreditation in Lexcel or CQS as part of their proposal forms. These accreditation marks are of interest to insurers as they demonstrate a certain level of risk management, which is a key factor to consider in the assessment of premiums.

Do insurers look at financial viability of firms?

The Solicitors Regulation Authority (SRA) is conducting a review on how it supervises conveyancing in the profession, which focuses on the financial viability of firms. It is likely that insurers will also place a greater emphasis on the financial strength and viability of firms in this year's proposal forms. Many insurers will be requesting bank statements, accountant's reports and business plans etc. While this may seem to only affect smaller firms, there are also a number of larger firms on financial watch from banks in the aftermath of recent high profile collapses.

Financial viability of a practice is of concern to insurers who want to ensure that the insured can pay their premium and any excess if a claim is made. Under the minimum terms and conditions provided by all insurers, the insurer is on cover regardless of whether or not a firm pays the policy excess or even its PII premium. Financial strength may also become of greater importance when the SRA introduces the extended indemnity period, as insurers will be liable to provide a 90 day policy extension and provide six year's run-off cover for any firm who is unable to obtain a policy renewal.

There has always been the issue of whether a practice has 'too small' a fee income to be financially viable in an underwriter's eyes. However, some practices' fee income may appear to be low while they may be financially viable due to external sources e.g. independent wealth of partners or partners working from home. If your practice falls within this category, it is important to explain this to insurers and provide this background in your proposal form. It is important that a potential insurer is provided with the 'complete picture' of your business, otherwise they may simply look at the reported fee income on the proposal form and draw adverse conclusions. For this reason, a detailed and professional business plan is essential.

How do insurers view outcomes focused regulation (OFR)?

OFR will make it even more essential for practices to be able to demonstrate compliance and good risk and business management. Currently, it seems that OFR has not made any significant difference to the insurance market. Insurers have been critical in the past about the SRA's regulation of the profession. It is in insurers' interest to ensure that the profession regulates itself more robustly as this will prevent the occurrence of claims. This is also in the profession's interest as robust regulation will reduce the profession's perceived risk and result in reduced PII rates.

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

Some solicitors have stated that insurers should be required to underwrite more firms and a broader range of firms at a lower price. There are a limited number of 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 Society is cautious about lobbying the SRA to increase the obligations on insurers. 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 insurers operate their businesses, as it would risk deterring them 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 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.

We also consider that the removal of the ARP and introduction of the EIP will create a more competitive market. We have already seen a number of new entrants enter the solicitors' PII market prepared to write smaller firms in preparation for the removal of the ARP on 1 October 2013.

PII reforms

It is ultimately for the Solicitors Regulation Authority (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 [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 insurers?

The majority, if not all, of the insurers want the SRA to relax the minimum terms and conditions (MTCs). 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 new 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 client protection and a strong incentive for consumers to use solicitors before other types of legal service providers. 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, we 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?

Variable renewal will be permitted from 1 October 2013. This will mean that insurers and the insured can agree to a different policy length, which may mean that some policies move away from the 1 October start date.

Some 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 supports the abolition of the single renewal date. 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 from 1 October 2013. The SRA considers that any move to variable renewal dates is not possible before this due to the transition to the extended indemnity period.

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

Insurers often refer to the high level and amount of claims arising from the firms in the assigned risks pool (ARP) as a major contributing factor to the increase in PII premium levels. 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 the ARP should be abolished. 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, the Society 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 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 assigned risks pool (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 extended indemnity period (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. In this context, the Society's supported the SRA's proposed layering of liability for the 2012 ARP. Under the SRA's proposal, insurers (not the profession) are responsible for unlimited liability above £50m.

The profession will share the liability for the 2012 ARP with insurers. The SRA intends to use the Solicitors Indemnity Fund (SIF) to provide the profession's initial share of ARP funding:

- 0-£10m SIF
- £10-20m Insurers
- £20-30m SIF/profession
- £30-40m Insurers
- £40-50m SIF/profession
- £50m+ Insurers

We recognise that the recent SRA's decision to adopt a tiered approach of £10m tranches for ARP liability in 2012 is in keeping with the agreed position as ratified by the Law Society Council and set out in the SRA's 2011 policy statement. However, the Society is disappointed that we were not able to persuade the SRA to revisit the issue of the liability split in order to maintain the equitable solution that was at the heart of our agreed position. This is particularly the case given the small number of firms within the final ARP.

The Society's support, however, is subject to subject to the SRA being transparent about its ARP management strategy and being open to suggestions about how to better control and manage firms. The Society 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?

The Society considers that the extended indemnity period 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.

Law Society guidance

What guidance does the Law Society provide to members?

Guidance on financial security

Importance of financial security <http://www.lawsociety.org.uk/advice/articles/pii-insurer-insolvency/>

List of insurers and ratings for 2012 <http://www.lawsociety.org.uk/advice/documents/pii-insurers--guide/> (PDF)

Insolvency of an insurer practice note <http://www.lawsociety.org.uk/advice/practice-notes/insolvent-qualifying-insurer/>

Information for solicitors with Lemma policies <http://www.lawsociety.org.uk/representation/articles/firms-claims-outstanding-lemma/>

PII guidance

PII practice note <http://www.lawsociety.org.uk/advice/practice-notes/professional-indemnity-insurance/> – outlines the regulatory requirement to obtain PII and provides an introduction to the application process and market-related issues.

Excess layer / top up cover <http://www.lawsociety.org.uk/advice/articles/pii-excess-layer/> – This guide outlines what should be considered when assessing how adequate your PII arrangements are and highlights situations where it may be prudent to purchase excess layer cover above the minimum required by the SRA.

Setting up practice – regulatory requirements – a guide on the different types of legal practice (from sole practitioner to an alternative business structure) and PII tips for new firms: <http://www.lawsociety.org.uk/advice/practice-notes/setting-up-a-practice-regulatory-requirements/>

Retirement calculator <http://www.lawsociety.org.uk/advice/articles/pii-retirement-calculator/> – a tool to assist solicitors to work out an indicative figure that should be saved each year as part of their retirement planning to prepare for the likely cost of run-off cover under the mandatory PII policy.

PII Buyers' Guide <http://www.lawsociety.org.uk/advice/documents/pii-buyers--guide/> – a useful guide that explains the different types of intermediaries in the market and has tips to help solicitors get the most out of their relationship with brokers.

Transparency campaign <http://www.lawsociety.org.uk/representation/articles/broker-transparency-campaign/> – The Society encourages all solicitors to ask their broker what they are receiving in commission this renewal. This disclosure can be used as part of a 'conversation starter' about what level and type of service brokers are providing.

Insurers' Guide <http://www.lawsociety.org.uk/advice/documents/pii-insurers--guide/> – a non-exhaustive list of those insurers who are participating in the market each year. It sets out the segments of the market they are prepared to write and how solicitors can access them (i.e. directly or via a broker). This is updated throughout renewal so check out professional update or follow us on twitter @ **LSRegAffairs** to make sure you are using the most up-to-date version.

Insurance matters

<http://www.lawsociety.org.uk/advice/regulation/pii/documents/insurance-matters-issue-9/> – a free magazine with latest market intelligence

FAQs <http://www.lawsociety.org.uk/advice/articles/pii-faqs/>

Information for firms ceasing to practice or having difficulties

Assigned risk pool & 2013 changes <http://www.lawsociety.org.uk/advice/articles/assigned-risks-pool/>

Closing down your practice: regulatory requirements
<http://www.lawsociety.org.uk/advice/practice-notes/closing-down-your-practice/>

Run-off cover <http://www.lawsociety.org.uk/advice/articles/run-off-cover/>

Further PII help & support

<http://www.lawsociety.org.uk/advice/regulation/pii/>

Latest news

<http://www.lawsociety.org.uk/representation/campaigns/pii/>

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 hold a webinar and have already published a range of advice and information. The Practice Advice Service (ph: 020 7320 9545) also available to guide our members throughout the year and, particularly, during the renewal period.

The Law Society will take steps to protect solicitors' interests in the PII market wherever possible. We will be monitoring the PII renewal period closely, as well as the transition to the EIP, so that we can raise any concerns with the 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.