



The Law Society

PII Buyers' Guide

June 2012



Pll buyers' guide

The solicitors' professional indemnity insurance (PII) market is changing. With the imminent demise of the assigned risks pool (ARP), new insurers may look to enter the market. The Law Society has lobbied for and welcomes these changes as it considers that these reforms will create a more stable and competitive PII market. This may provide greater consumer choice and better scope to 'shop around' for affordable quotations from a variety of insurers.

Ultimately, it is a business decision whether or not you change brokers or insurers this renewal. There are advantages and disadvantages to continuity in service which are outlined in this guidance. In order to access the full market that is available for your type of firm and assess any quotations received in a meaningful way, it is important that you receive quality broking advice. This guidance is designed to ensure that you are using a broker that provides a level of service commensurate to your needs so that you can get the most out of a potentially more competitive PII market and make an informed choice when considering quotations from insurers.

Top Tips

- 1. Know what level of service your broker will provide and expect them to deliver it**
- 2. Know how much your broker will charge you and how much they will receive in commission**
- 3. Understand sub-broking chains and associated costs**
- 4. Ask your broker which insurers they can access directly**
- 5. Know if your broker will be conducting a fair analysis of the market that is available to your type of firm**
- 6. Make sure your broker tells you about insurers' financial security and the availability of compensation schemes**
- 7. Know all the costs associated with the policy – including the annual premium, excess, run-off and extended indemnity period premium**
- 8. Check for penalties if you cancel the policy before 1 October**
- 9. Know your rights**
- 10. If you are not getting the most out of your broker, find another one!**

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Are you getting the most out of your broker?

This guide cover the following topics. To get the most out of your broker, you should:

- Know what type of insurance intermediary you are dealing with and who they represent. [Are you dealing with a broker, underwriting agent or insurer?](#)
- Check if your broker deals directly with qualifying insurers or access insurers through another broker (i.e. [sub-broking](#) and intermediary chains).
- Find out what type and level of [service](#) the broker is offering, for example, will they provide specialist or generalist advice or simply act as an intermediary?
 - Check if they are [knowledgeable about the solicitors' PII market](#)
 - Ensure the level of [advice](#) matches your expectations and requirements
 - Ask [questions](#) about insurers' financial security
 - Ask about the [other costs](#) included in the quotation e.g. run-off, extended indemnity period premium and insurance premium tax
 - Ask about the insurer's [cancellation policy](#) and [acceptance periods](#) for quotations
- Ask about the [commission and/or fees](#) the broker will charge you and what types of other remuneration the broker receives.
- Find out whether the broker will conduct a ['fair analysis' of the market](#) for your type of firm?
 - Which insurers will the broker access 'direct'?
 - Does your broker have any tied arrangements with insurers?
 - Consider the pros and cons of [using multiple brokers](#)
- Consider [changing brokers](#) - How do I [search](#) for a broker?
- Understand [brokers' duties](#) and your rights if you have a [complaint](#)
- Read the [Broker FAQs](#)

The difference between brokers, underwriting agents and insurers

The primary difference between underwriting agents and insurance brokers is that underwriting agents are representatives of the insurance company, whereas brokers are representatives of the insured. Because of the difference in representation, underwriting agents are given different powers in insurance transactions than those afforded to brokers, such as the power to bind coverage.

Insurance brokers advise on and arrange insurance and act as the agent of the insured. Brokers have a [duty](#) to help to arrange PII cover for solicitors and produce the best possible insurance solution for you (*not* the insurer).

A broker or any other intermediary can only give advice on insurance matters if it is authorised by the Financial Services Authority (FSA) either directly or as an appointed representative of another regulated firm. An **appointed representative** is an intermediary that enters into a contract with a principal that is authorised by the FSA. The appointed representative (AR) can only carry out activities within their principal's scope of permission as set out in the AR agreement. You can search the [FSA register](#) to see if a broker/intermediary is regulated.

Different brokers provide different [types of services](#). While some brokers perform underwriting functions on behalf of an insurer (see **underwriting agents** below), the two should not be confused. The insurance contract is between the solicitor and the qualifying insurer, *not* the broker. Brokers without underwriting agency are unable to bind business for an insurer but instead must secure coverage from the insurer or underwriter which is then passed on to you. See also [sub-brokers](#).

Underwriting agents provide PII underwriting expertise to insurers. They act as an agent for insurers (*not* you). This is sometimes described as 'holding the pen', which means that as a representative of the insurance company, agents may be given the ability to bind the insurer to certain obligations. For example, an insured may receive a binder of insurance that effects coverage immediately from an underwriting agent. While underwriting agents may have the authority to bind business, they do not carry any of the actual PII risk.

Managing General Agents (MGA) are a type of underwriting agency where the agent is provided with significant authority to underwrite and bind coverage on behalf of the insurer they represent. MGAs serve an important function for insurers who do not maintain internal staff with the necessary technical expertise or administrative infrastructure to complete traditional insurance company tasks. Sometimes referred to as 'wholesalers', MGAs are not brokers and do not deal with clients. Rather, they are authorised to supply brokers with products and accept placements from and often are able to appoint retail agents on behalf of 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.

Qualifying insurers are insurers that are authorised by the FSA to conduct general insurance business in the UK and have signed the Solicitors Regulation Authority (SRA)'s Qualifying Insurer's Agreement (QIA). Most qualifying insurers can only be accessed through a broker. The QIA is a contract that is entered into each year that requires insurers to offer solicitors' PII in accordance with the minimum terms and

conditions in the SRA's Indemnity Insurance Rules. The [list of qualifying insurers](#) for each year is published on the SRA's website. See FAQ: [Does the SRA or the Law Society approve insurers?](#)

Sub-brokers – an added layer of complexity and cost?

Brokers may 'sub-broke' to a larger or more specialist PII broker or brokers with tied arrangements with insurers.

Sub-brokers are another layer in the 'intermediary chain' between you and the insurer or underwriter. Sometimes sub-broking is necessary because of the [tied arrangements](#) that exist within the solicitors' PII market.

FSA industry guidance suggests that commercial customers should have information which indicates the full cost, including the total amount of commission paid to intermediaries throughout the chain.

Each part of the sub-broking chain is likely to charge commission or fees.

You should ask:

- Are you regulated by the FSA or an appointed representative?
- Are you a broker or a sub-broker for the purpose of solicitors' PII?
- Do you place the insurance cover directly with the insurer or do you send it to another broker, underwriting agent or MGA?
- If there is an intermediary chain, you should request disclosure of the total [remuneration](#) in the chain.
- What premium figure did the insurer quote?

What level of service can you expect from your broker?

Brokers offer very different levels of service to clients. Some brokers have bespoke systems for handling proposal forms and claims that impact on the cost. Other brokers perform an advisory role whereby they inform you about market conditions and advise you about how best to apply for PII or making significant changes to your business (e.g. restructuring). Others may only be able to sub-broke into another broker or submit your proposal form to a [tied insurer](#) without approaching other markets.

Brokers, have a duty to inform you of these limitations, however, you should seek clarification from your broker if you are unsure about any of these relationships.

In addition to the [different types of intermediaries](#), there are different types of broker services. These can be confusing to the once a year buyer of PII. There are:

- **Specialist PII brokers** who have expertise in solicitors' PII and may offer a 'complete' specialist service with advisory role depending on your requirements based on the size of your firm. You should consider whether your broker is a [specialist in the solicitors' PII market](#).
- **General insurance brokers** who have a good knowledge of PII and will present a case on your behalf to the qualifying insurers with the intent of getting you the best deal.
- **Other intermediaries or sub-brokers** who may send your proposal form to a specialist PII broker for placing with an insurer. While they may be local to you, they themselves are unlikely to possess specialist knowledge in the solicitors' PII market. It is important to remember that each part of a [sub-broking chain](#) is likely to charge commission or fees.

How experienced is the broker in dealing with the solicitors' PII market?

Brokers have different levels of experience in dealing with the solicitors' PII market. PII is a specialist area of general insurance, not all PII brokers are experienced in the solicitors' PII market. You should therefore ensure that you engage a sufficiently experienced broker. To find out about a broker's level of experience, you should ask the following questions:

- Are you a specialist in the solicitors' PII market?
- How many years experience do you have in placing solicitors' PII?
- What percentage of the solicitors' PII market did you place last year?
What percentage of proposal forms did you see?
- What type and size of firm do you usually look after?

- Which qualifying insurers can you access directly?
- Is your service '[advisory](#) and execution' or 'execution only' with no advice?

WARNING! Online directories may list 'specialist' PII brokers. Some sites will charge you a fee. We recommend careful enquiry about the process these websites use to vet brokers on the list to determine the level of their expertise and quality of service. You should also ask if the brokers pay to be featured in the list.

What type of advisory service should I expect from my broker?

For those brokers that do more than 'execute' PII and provide an advisory role in helping to organise your PII, depending on the size of firm and your individual requirements, you may be able to request some or all of the following:

- information about market conditions
- advice on the types and level of insurance cover that may be required for your firm
- assistance in deciding on the appropriate level of PII for your firm (including whether you should consider purchasing cover above the minimum terms and conditions)
- advice on how best to present the information in your proposal form
- an evaluation of existing standards of loss control and advice on risk management measures that will positively influence insurers' view of your firm
- the broker discussing your proposal directly with the insurers/underwriters
- assistance in obtaining your qualifying insurers' claims summary that details any existing claims or notifications
- provision of details of the insurers approached and quotes received
- provision of information relating to the reputation, suitability and solvency of possible insurers (see [financial security](#) below)
- advice on whether to accept an offer for PII (see [specific issues to raise](#) below and the Law Society's [practice note](#))
- a visit to your office to help the broker understand your business and risks (usually for medium-large size firms only)
- ensure that the following is undertaken in good time:
 - pursue the insurer to ensure prompt issue of policies
 - ensure that all documents are sent to the insurers and to you, and
 - issue you with renewal notices and reminders.

Under FSA regulations, your insurer and broker must take reasonable steps to ensure that you are given appropriate information about a policy in good time and in a comprehensible form, so that you can make an informed decision about the arrangements proposed. This includes details of the premium and fees to be charged. The Association of British Insurers' Contract Certainty Code of Practice requires insurers to forward policy documentation within 30 days. All material terms and conditions should be set out in your quotation documentation.

- advice on your retention of insurance documents and keep all relevant records relating to your insurance arrangement, and
- support during the indemnity period if you have to make a claim or notify circumstances to your insurer. Some brokers may even provide claims handling and management that monitors claims activity and pursue claims recoveries on your behalf.

You should determine what level of service you require from a broker and choose a broker who will give you the type of advice and service that best meets your demands and needs.

The type of service that a broker provides may affect the fee they charge. Some brokers will limit availability of certain services based on firm size. However, the *standard* of service you receive from a broker should not depend on the size of your firm, whether they receive a commission from your qualifying insurer or charge you a direct fee.

A broker has a [duty](#) to work for you under agency and contract law. The FSA requires brokers to pay due regard to the interests of its customers and treat them fairly. While your broker is not bound to provide any of the above services, the terms of business that you enter into with a broker is a contract between you and your broker. It may be advantageous for you to agree, as part of these terms, that your broker will perform some or all of the above advisory services.

The Law Society has drafted a model retainer letter that embodies some of these service standards that you may wish to request from your broker:

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

How much is your broker charging?

The Law Society encourages transparency in brokers' commission and other fee arrangements. We suggest that you ask your broker how much and what forms of remuneration they will receive from the transaction. You have a right to request this.

You should use this information to make an informed decision about whether or not your broker is delivering you the [level of quality service and value](#) that you would expect for that level of remuneration.

Your right to request disclosure

FSA regulations only require brokers to disclose the amount of commission they receive from insurers if a client asks them to do so. Once asked, a broker must disclose all types of remuneration from any arrangements it may have.

Types of remuneration

Insurance agents and brokers are commonly compensated by the insurer in the form of a commission on the premiums paid to the insurer. Commissions are generally a specified percentage of the insurance premium generated in each transaction. Some brokers may also be compensated by a fee arrangement that has been agreed with you that is not driven by the volume of premium.

Brokers and other intermediaries may be remunerated in any or all of the following ways:

- Commission **paid by the insurer**;
- Fees **paid by you** (usually in lieu of commission);
- Contingent payments **paid by the insurer** based on the volume or profitability of the business placed by the broker;
- Payment for facilitating premium finance **paid by the finance company**; and
- Work transfer or 'market services commission' **paid by an insurer** for services performed by the intermediary on behalf of the insurer (e.g. administrative work, presentations, data, premium collection or parts of the underwriting process as an underwriting agent or MGA).
- **Commission**

As a general rule, where premium is less than £50,000, commission is taken by the broker. As commission forms part of premium, insurance premium tax (IPT) is applicable.

FSA regulations only require brokers to disclose the amount of commission **if a client asks them** to do so. Before you enter into an insurance contract, we recommend that you always ask your broker for full details of their remuneration, including commission they receive and the total commission received within any intermediary chain.

On your request, a broker must promptly disclose the commission that it and any associate receives in connection with the policy. Disclosure must be in cash terms and in writing. If this is not possible, the firm must give the basis for calculation.

- **Other types of commission**

Market services commission is variable dependent on the broker in question but will normally add 3% to premium and is in addition to other types of commission or fees. Where the broker has the ability to control and organise the underwriting process on behalf of insurers this figure may be more.

Where an intermediary receives an enhanced remuneration for a work transfer, this must be disclosed as part of the total remuneration, although the intermediary may choose to break down the total disclosure into standard commission plus the work transfer element.

This type of commission increases the IPT levels and the cost of insurance. You should seek transparency from your broker in respect of these costs.

- **Fees**

A fee is negotiated directly with you, the client, for performance of broking services. As this is independent of any premium charge, IPT does not apply.

Brokers are required to provide you with details of the amount of any fees other than premium monies for an insurance mediation activity¹. For example, arrangements for sharing profits, payments relating to the volume of sales and payments from premium finance companies in connection with arranging finance.

Under FSA regulations, these details must be given before you incur liability to pay the fee, or before conclusion of the contract, whichever is earlier. We recommend that you ask for disclosure prior to signing the terms of business with the broker, although the ultimate answer may depend on the particular insurer with which the broker places your business. If the extent of the actual fee cannot be given, a firm must provide you with details of the basis for its calculation.

¹ 'Insurance mediation' means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

Specific questions to ask your broker

The following is a non-exhaustive list of issues that the Society considers to be an important part of the advice and service that a broker can give solicitors. We recommend that you ask your broker specifically about these areas to help you assess the quotations that you receive from insurers.

You should ask about:

- **Insurers' financial security**

You should request information about the financial stability of a qualifying insurer before accepting a quote.

Your broker should be able to explain what it means if an insurer has any financial or credit rating or is 'unrated'. Depending on the level of service they provide and their specialist knowledge, your broker may provide further analysis about the quality and the liquidity of the assets supporting liabilities, the reputation of the insurer's underwriters/managers and other general market intelligence. You should use this information to inform your decision on whether or not to accept a quote.

The reason the financial security of an insurer is important is that if an insurer becomes insolvent it may be unable to meet its obligation to pay claims under your insurance policy.

Some of the larger brokers have their own financial security committee that forms an assessment on the solvency of an insurer and will prevent that broker from recommending insurers that do not meet relevant criteria. These committees are likely to have a minimum financial size, solvency ratios and rating criteria that may filter out less stable insurers.

While no broker can guarantee the solvency of the insurers, they should provide you with information so you can evaluate offers about whether or not an insurer is likely to be able to pay claims over the long term. This may be more rigorous than the assessment that either the FSA or SRA undertakes. See FAQ: [does the SRA or the Law Society approve brokers?](#)

What is the Law Society doing to help?

The Law Society has published a [practice note](#) that contains further information about the implications if an insurer becomes insolvent. The SRA has now introduced requirements to make all qualifying insurers disclose their financial security and credit rating (including if they are 'unrated'). The Law Society supports these transparency measures and will provide additional guidance to its members prior to renewal.

Follow us on twitter at LSRegAffairs to find out when our Insurer's Guide is updated for 2012.

- **Is the insurer covered by the FSCS?**

In the event that your insurer does become insolvent, you may have recourse to the FSA's Financial Services Compensation Scheme (FSCS).

You should ask your broker if the insurer offering you the quotation is covered by the FSCS. Alternatively, you can search the [FSA's register](#) to see if the firm is covered. You can also consult the Law Society's Insurers' Guide (see LSRegAffairs at twitter for updates).

The Law Society's insolvency of a qualifying insurer [practice note](#) outlines the criteria that your firm will have to meet to be eligible for the FSCS. The FSA also provides additional [consumer information](#) about the compensation scheme.

- **Run-off costs**

You should ask what the insurer charges for run-off premium, even if you are not considering closing down your practice during the indemnity year.

If a firm ceases without a successor practice, the SRA requires insurers to provide six years' run-off cover in accordance with the minimum terms and conditions. This will cover claims made against a business after it closes. Insurers typically charge between 200% and 300% of your annual premium in run-off premium.

- **Extended indemnity period costs**

Neither your broker nor your insurer are under an obligation to provide you with renewal terms either now or for future indemnity periods. The 2012-13 indemnity period is the last time that firms unable to obtain open market insurance will be able to enter the assigned risks pool (ARP).

In the event that you are unable to obtain renewal at the end of the 2012-13 indemnity period, your insurer will have to provide you with an extended indemnity period (EIP) and then six years of run-off cover. It is likely that insurers will charge additional premiums for the EIP and you should be aware of the costs prior to entering into the insurance contract this year.

Due to the changes to the ARP for 2012, you should also ask your broker what level of premium your insurer will charge if your firm is unable to obtain insurance at the end of the 2012/13 indemnity year and must enter the extended indemnity period.

The Law Society supports the introduction of the EIP and will provide additional guidance to its members once the Legal Services Board approves the SRA Indemnity Insurance Rules 2012. The Law Society has also published further information about [run-off costs](#) and the regulatory requirements of [closing down your practice](#).

The Law Society has published further information about the [ARP changes](#) on its website. This will be updated to reflect the SRA Indemnity Insurance Rules 2012. Follow us on twitter at LSRegAffairs to find out when this guidance is updated.

- **Insurance Premium Tax (IPT)**

You should ask if the quote includes insurance premium tax (IPT). You should not be charged IPT on any [brokers' fees](#).

- **Paying premium**

Most insurers will require you to pay the whole premium before they will confirm cover. You may be able to pay your premium by instalments or obtain finance to pay your premiums. You should ensure that these arrangements are in place before the policy incepts on 1 October 2012. You should ask your broker about which insurers accept instalments, or approach your insurer directly to negotiate payment options. Alternatively, you may be able to obtain finance from a premium finance company and pay off the loan by instalments. For further information see the Law Society's [practice note](#).

- **Will the insurer impose any acceptance periods on quotations?**

Under FSA regulations, your insurer and broker must take reasonable steps to ensure that you are given appropriate information about a policy in good time, so that you can make an informed decision about the arrangements proposed.

The Law Society considers that the FSA's 'treating customers fairly' provisions require quotations to remain open for a reasonable period to allow for proper consideration.

Given that brokers know that 1 October is an immovable deadline and that failing to meet it could lead to harsh professional outcomes, there is even more of a requirement for brokers to obtain and present quotations in good time prior to this deadline. For this reason, the Law Society advocates minimum acceptance periods (in addition the abolition of the single renewal date).

We accept that some 'deals' are necessarily time limited. We also appreciate that some insurers opt to impose acceptance periods of less than 21 days to help ensure that the value of active quotes does not exceed their premium income limit. Nevertheless, we would expect that until this limit is reached or until the time remaining before the renewal deadline makes it impossible, insurers should be willing to reinstate quotes for a further period of time upon request from a solicitor. This should be without increasing the level of premium, assuming no underlying change in the circumstances underpinning that individual proposal form. A number of qualifying insurers have been prepared to do this in previous renewals.

The Society recognises that pressuring solicitors with unreasonable time limits is not a widespread practice and that the majority of the insurance industry demonstrates a high level of commitment to customer care. However, we are concerned that some market participants may unfairly exploit the pressures associated with the single renewal date for solicitors' PII.

The single renewal date will be abolished from 1 October 2013 and this may alleviate some pressures. However, we recognise that it is likely to take some time before solicitors and insurers move away from annual 1 October policies.

Please [contact the Law Society](#) if you feel unduly pressured by your broker, see also [Making a complaint about your broker](#).

What is the Law Society doing to help?

During last renewal period, the Law Society wrote to all industry participants expressing our concern about certain practices that we considered hampered the proper operation in the market. This was in response to reports that we received from our PII helpline that, early in the renewal season, as little as 24 hours were given to some solicitors to consider a quotation. We were also aware that several solicitors received ten or fewer days in which to accept quotes. We also lobbied for inclusion in and [responded to the SRA's consultation](#) on client financial protection arrangements urging the SRA to introduce minimum acceptance periods for the 2012 renewal. However, the SRA has decided to not regulate this area.

- **Is it possible to cancel a policy if I receive a better offer prior to the renewal deadline?**

This depends on the wording of the offer of insurance from your insurer. Once you have accepted a quotation from an insurer, and the broker communicates this on your behalf, a binding insurance contract is created. The [minimum terms and conditions](#) only allow for cancellation of policies in limited circumstances (clause 4.3).

If you receive a 'better offer' after you have entered into an insurance contract, you can only cancel a policy **with the consent** of the insurer. Any cancellation charges from the insurer to the firm for termination after formal inception will be a feature of the terms of the insurance contract.

Some brokers will charge a 'cancellation fee' in these situations for the services that they undertook on your behalf in order to facilitate the initial offer and cover.

A broker is entitled to charge administrative fees to a client in the event that a policy is not formally inceptioned. However, any such potential charges fees must be clearly stated up front in the brokers' terms of business, be transparent and in line with industry guidance on disclosure and clarity. As this is a contractual matter it is, of course, open to negotiation between you and the broker.

You should ask your broker what, if anything, they charge in these situations.

What is the Law Society doing to help?

The minimum terms and conditions are set by the SRA. The Law Society asked the SRA to consider include a 'cooling off' period in its second stage consultation on client protection arrangements, however, the SRA did not include this in its proposed amendments.

- **Other factors**

If you receive multiple offers of insurance or early renewal offers, your broker should be able to advise you which is the better offer for your firm. This will **not** necessarily be the cheapest offer. There are a number of factors to consider including:

- any terms and conditions or caveats attached to the offer (e.g. acceptance windows or claims amnesty)
- whether the insurer will be able to provide a quotation later in the renewal and on what terms. Most insurers have a limited capacity to write solicitors' PII and may reach this and stop writing business before the renewal deadline. You could also expect the quotation to change if there has been a change to your firm's circumstances later in the renewal period.
- whether there are any other insurers that write firms of your size and type which may be interested in providing you with a quotation later in the renewal season (you may want to refer to the Law Society's Insurers' Guide which is updated throughout the renewal season).
- whether the insurer is offering a commitment to renew for future periods
- the financial security of the insurer
- the benefits of continuity of insurance for the avoidance of coverage disputes, understanding of your business and claims history and 'loyalty' discounts
- the insurer's experience, commitment to and likely longevity in the solicitors' PII market
- the level of excess payable by you in the event of a claim - you should consider carefully the policy terms of any infill policy that is designed to cover a large excess to ensure that you understand the scope of the cover
- the cost of run-off cover
- the claims handling service and support the insurer provides, and
- whether the insurer or broker provides risk management support.

Is your broker able to access all available insurers?

In order to determine whether or not your broker can access a sufficient number of qualifying insurers willing to insure your type of firm, you should ask the following questions:

- Which insurers are prepared to offer cover to my size and type of firm?
- Which insurers do you place business with directly?
- Are there any qualifying insurers that underwrite firms with a similar risk profile to my firm that the broker is unable to place business with? If yes, what is the reason for this?
- Does the broker have any tied arrangements with insurers?

- Will the broker be conducting a fair analysis of the market that is available to my type of firm?

By asking these questions, you may realise that you need to [use a different broker](#) to gain access to a wider range of qualifying insurers that are willing to offer PII to your size and type of firm.

- **Which qualifying insurers are prepared to offer cover to my size and type of firm?**

You can ask if your broker will give you advice about which insurers to approach that are suitable for your firm based on a fair analysis of the market. This is why it is important that you fully understand which [insurers your broker will be able to approach](#) on your behalf and if they have any [tied arrangements](#).

To gain some idea of the available market for your firm size and type, you can look at the Law Society's [Insurers' Guide](#). This is updated throughout the renewal based on our market discussions, however, it is also recommended that you consult a broker for more comprehensive information and advice about the most appropriate insurer for your practice.

- **Which insurers your broker can approach?**

You should consider a broker's access to the qualifying insurers. While some brokers deal directly with a number of different insurers so they can best cater for all types and sizes of firms, some brokers have a commercial agreement with a single qualifying insurer, known as a ['tied arrangement'](#).

Under FSA regulations, before the conclusion of an initial contract of insurance, a broker must advise you as to whether:

- it gives advice on the basis of a fair analysis of the market
- it is under a contractual obligation to conduct business exclusively with one or more insurers, or
- it is not under a contractual obligation to conduct business exclusively with one or more insurers but does not give advice on the basis of a fair analysis of the market.

We recommend that you ask this question before you decide whether or not to engage the broker's service, so that you fully understand which insurers your broker will be approaching on your behalf.

- **Does your broker have any tied arrangements with insurers?**

Some brokers have a tied commercial agreement with a single qualifying insurer for certain segments of the profession. This may mean that the broker can place business with only one qualifying insurer.

It can also mean that the broker is the only broker that places business or certain types of business for that insurer. In this case, if another broker wants to place business with that insurer it will more than likely have to [sub-broke](#) through the tied broker. See also Using multiple brokers.

Using multiple brokers

You may need to use more than one broker to gain access to the full range of qualifying 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 qualifying insurers that are willing to offer PII to their firm.

You should not need to approach more than three brokers to ensure adequate access.

WARNING! If you use multiple brokers, you should ensure that your proposal from does not go to the same insurer more than once. This could result in counter-productive negotiations and slow down the entire process. Many insurers work on a 'first come first served' basis and there is a danger if a scatter gun approach is used to proposal forms without proper vetting of the information sent on those firms will result in a declinature and reduce your chance of getting insurance.

See FAQs: [How many proposal forms should I submit?](#)
[Why isn't there a common proposal form?](#)

Should I consider changing brokers?

This is an individual business decision that you should make taking into account all of your firm's circumstances. However, this guide raises some issues and questions that you should consider to see if you are 'getting the most' out of your current broker. If you consider that you are not, then you may want to consider using a different brokers.

We understand that many solicitors have built up a long-standing relationship with their existing broker. This relationship can be beneficial if it means that your broker has insight into how your firm is run, its risk management practices and its claims history. A specialist PII broker will be able to use this knowledge and experience to your advantage by presenting your firm in a way that demonstrates to insurers that your firm represents a 'good' risk.

You should also consider the effect that changing your broker may have on your ability to access insurers, see [available markets](#) above. In order to access the full available market, you may have to change brokers or at least consider using a different broker that may have access to a particular insurer via a tied arrangement.

If your current broker provides you with access to your existing insurer that you may not be able to access through another broker then you should consider the benefits that continuity of insurer can provide, for example, avoidance of coverage disputes that may arise between insurers in different policy years. See [other factors](#) outlined above.

This guide also poses questions that you should ask your existing broker about their [level of remuneration](#) and [service](#). It also asks you to consider whether using a [sub-broker](#) provides the best value for your firm, irrespective of any established relationship.

Remember that the market is changing and the abolition of the ARP may mean that different insurers and brokers enter the market for the 2012 indemnity year. You should ensure that the broker you use will be in a position to advise you of these changes and will 'shop around' for the best quotation for your firm.

If you are considering changing brokers, see FAQ: [How do I search for a broker?](#) and FAQ: [Should I disclose what premium I paid last year if I change brokers?](#)

Your broker has a duty to work for you

Duties owed to you by brokers under agency law

The relationship with your broker is one of principal and agent whereby the broker is your agent and therefore owes you fiduciary duties. A broker is required to use reasonable endeavours to obtain insurance on the best possible terms. This involves discovering the needs of clients and arranging insurance appropriately.

Duties owed to you by brokers and insurers under contract law

Once you have finalised a contract with your broker and/or insurer, the broker or insurer is subject to the terms of that contract.

The broker's Terms of Business will provide you with information about the broker's regulatory status, fees and services.

When selecting a broker, you may wish to agree individual terms and timescales with them. You should agree:

- when they will contact you to give you updates on the progress of your application(s)
- how they will contact you, and
- a final date by which they will inform you of the outcome of your application(s).

You can negotiate specific terms of service with your broker, but you should be realistic. Brokers operate in a market place where price is dominant and the cover is almost identical. The Law Society has drafted a model retainer letter which you may wish to consider when engaging a broker. The model sets out the service standards that you should expect from your broker when organising your PII.

Examples of [additional advisory services](#) that you may request are outlined above.

Making a complaint about your broker

If you have a complaint about the service provided by your broker, you should initially write to them directly before seeking any alternative recourse. They are obliged to provide information about their complaints policy prior to the conclusion of the initial contract. If you are unhappy with the response, or do not receive a response within eight weeks, you should then write to the [Financial Ombudsman Service](#) (FOS). The FOS will consider whether the matter falls within its jurisdiction.

Will the Financial Ombudsman Service consider your complaint?

Whether the FOS will consider your complaint will depend upon whether you meet the following criteria:

1. The type of activity to which the complaint relates

The FOS can consider a complaint if the subject matter is deemed to be a 'regulated activity'. This includes effecting contracts of insurance (See the FSA's [Handbook](#) for full details.)

2. The place where the activity to which the complaint relates was executed

The FOS's 'Compulsory Jurisdiction' only covers complaints about the activities of a firm carried on from an establishment in the UK. However, a complaint can be dealt with by the FOS whether or not you live or are based in the UK.

3. Whether you are eligible

'Private individuals' and businesses which have a group annual turnover of less than £1 million are considered eligible. You should also have established a professional relationship with the broker or insurer.

You should refer to the FSA's [Handbook](#) for further detail as to what constitutes a business and qualifying relationship.

4. Whether your complaint was referred to the FOS in time

The FOS must receive your complaint within six months of the date on which the broker sent its final response.

You should refer to the FSA's [Handbook](#) for further detail regarding time limits and exceptions.

What should you do if the FOS will not consider your complaint?

If the FOS considers that your complaint may be out of jurisdiction, they will give you an opportunity to make representations before they make a final decision. The FOS can also refer your complaint to another complaints scheme where appropriate. Alternative redress should be made through the courts. A remedy might be sought under the [law of agency](#) if you are seeking redress from a broker who has breached his / her fiduciary duties. You may also be able to sue your insurer and / or broker for [breach of contract](#).

Broker FAQs

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 'indemnity – commercial' and in the second box select 'professional indemnity - solicitors'.

This will narrow your search to brokers that provide solicitors' PII services in your postal area.

FAQ: [what happened to the Law Society broker list?](#)

- **Other directories**

There are other online directories available, some of which may focus specifically on solicitors' PII. Before using these websites, you may want to make further enquires to determine how they assess the [level of expertise](#) of brokers.

Does the SRA or the Law Society approve insurers?

No. Other than a requirement to sign the Qualifying Insurers Agreement, neither the Law Society nor the SRA vets, approves or regulates qualifying insurers. This means there is no guarantee about the financial integrity of the qualifying insurers, although the SRA has decided to introduce a requirement that insurers are transparent about financial security ratings for the 2012 QIA.

Regulation of 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. For this reason, you should ask your broker about the [financial security of insurers](#) and whether or not the insurer is covered by the [financial services compensation scheme](#).

Does the SRA or the Law Society approve brokers?

No. Brokers are regulated by the FSA and must comply with a number of obligations designed to protect their clients.

The SRA or the Law Society does not vet, approve or regulate brokers. The SRA has no direct relationship with brokers, rather it enters into an agreement with insurers to ensure that they provide policies in accordance with the minimum terms and conditions in the SRA Indemnity Insurance Rules.

What happened to the Law Society's brokers' list?

The Law Society does not have the resources to vet all the brokers on our List, however, we were concerned that this was 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 had become a free service for brokers with little actual value to our members, which is why we decided to withdraw it.

Instead, we have provided guidance on how to search for brokers using the FSA register and BIBA's search facility, see [searching for brokers](#) above.

How many proposal forms should I submit?

It is never wise to flood the market with proposal forms, however, as outlined above you may have to submit a form to different insurers/brokers in order to access the [full market](#) available to your firm. If you are [using more than one broker](#) it is important to make sure that they do not send multiple forms to the same insurer.

Why isn't there a common proposal form?

The Law Society is working hard to engage with both insurers and brokers to encourage the development of a common proposal form. We consider that a common proposal form would assist solicitors may reducing the number of forms they need to submit in order to access the full market. We have, however, encountered resistance from some parts of the insurance industry therefore we ask

our members to help us put pressure on insurers and brokers to accept the Law Society's common proposal form this renewal.

Should I disclose what premium I paid last year if I change brokers?

Many brokers' proposal forms ask you to disclose your previous year's premium if you did not use that broker's services for the last renewal.

You are not under any obligation to disclose this information. You should be aware that if you or your broker discloses the amount you are currently paying for PII premium to a potential insurer then it is likely that it will be considered by the underwriter when providing you with a new quotation. In a hard market, it may harm your chances of obtaining insurance to fail to answer all questions on a proposal form. Ultimately, it is a decision for you to consider with your broker.

Where can I go for more information?

You can obtain further information relating to brokers and PII in general from the following websites:

Association of British Insurers

www.abi.org.uk

British Insurance Brokers' Association

www.biba.org.uk

Financial Ombudsman Service

www.financial-ombudsman.org.uk

Financial Services Authority

www.fsa.gov.uk

Solicitors Regulation Authority

www.sra.org.uk

The Law Society

www.lawsociety.org.uk/professionalindemnity

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