
Liability Briefing

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Professional indemnity insurance – the dangers of changing insurers

Professional indemnity premiums are often substantial and it can be tempting to seek cheaper insurance on renewal. But there are dangers in changing your insurers. Rarely is the cheapest also the best value – for anything. You need to understand any alternatives being offered: are you comparing like with like? There is also a risk that in the future claims will not be covered or will be disputed and may not be paid.

If you are considering changing insurers you are recommended to:

- Use a specialist broker, preferably one who knows you. Ask them to obtain a number of quotations if you wish. Do not confuse salesmanship with advice!
- Be clear about the identity of any proposed insurers and check the veracity of any alternatives put forward. Only place your cover with insurers who have experience of this type of business, and a demonstrable commitment to it. Insurers new to the market will probably not have the detailed claims experience required to properly price risks. If premiums are set at unsustainable levels, insurers might be difficult when claims start to come in.
- Check the terms (wording) of any new policy on offer. For example, does it cover civil liability or only negligence? How much is the excess, and is it payable towards defence costs and expenses? Check, too, the conditions, exclusions and any endorsements. You may be happy to accept more restricted cover but you need to know what you are getting. Take your broker's advice. You cannot buy a good policy by looking at price alone.
- Remember that the new insurers will know nothing about you at all (even if your brokers do). Insurers must be told all about your firm, the scope of work you do, the nature of contracts entered into etc. If they are not, claims may be turned down on the basis of non-disclosure of material facts.

- In the past, you may have agreed a number of matters with your old insurers, for example, cover for joint ventures or overseas contracts. You need to agree all these matters afresh with new insurers – before your old policy expires.
- Give a full and accurate disclosure of all claims, both ‘closed’ and ‘open’ files. Do not be tempted to paint your claims experience in a favourable light.
- Notify all circumstances which may give rise to a claim before your old policy expires (and do not forget circumstances that arise after you submit your proposal form). If a claim is made later, arising from circumstances of which you were aware before the change, the likelihood is that you will not be covered. PI operates on a claims made basis (meaning that it is the cover in place at the time the claim is made, not when the work done, that is relevant). The new insurers could quite legitimately argue late notification and the old insurers would not accept the notification as cover would have expired.
- If in doubt: notify – and be insistent if insurers are reluctant to accept the notification.

If differences do arise between you and your insurers, insurers are more likely to give you the benefit of the doubt if you have been with them for some time than if you have only recently gone on risk with them. At the back of their minds will be the fact that they have been taking premiums from you for some time. Insurers are suspicious of insureds who are forever moving their business.

Even if you are very careful, you can find that a claim is not covered by either your old or new insurers. Any claim arising from circumstances notified to previous insurers will be covered by the old policy, as will developments of a claim previously notified. What may be difficult to determine is whether a claim arises from new circumstances, or is a development of an old claim. Say that defects become apparent in a building, and the client alleges that they result from their architect’s negligence; the extent of the defects may only become apparent some time after the claim is first notified to insurers, and there may be some debate as to whether there is a new claim or the problems are all part of a single claim.

Insurers do not usually exclude complete projects where there have been previous notifications. However, they might do so if for example a particular project is messy, with a number of different problems having been notified on the same job. You would then be left with no cover for new claims on that job (unless you could persuade your old insurers that any claim was a development of circumstances already notified).

A frequent cause of problems for consultants is non-payment of fees by contractor clients on design and build jobs. When consultants press for their fees, the contractor (doubtless stretched for cash itself) may accuse the consultants of not

having done their job properly. This may be quite unjustified. However, if and when a formal claim is made by the contractor, questions may arise as to when the consultants should have notified circumstances. Should they have told insurers when the fees were not paid?

If you are with the same insurers, such problems will in practice be a lot easier to sort out. If PI insurance is going to cost you dear, you want to ensure that your money is well spent.

This *Liability Briefing* is for information only, and insurance or legal advice should be taken to cover your particular circumstances.

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