

Risk Management Briefing

Professional indemnity insurance – changing insurer

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Professional indemnity premiums are often substantial, and it can be tempting to seek cheaper insurance on renewal. But care must be taken when changing insurer. Rarely is the cheapest also the best value – for anything. It is important to understand the 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 insurer you are recommended to:

- Use a specialist broker, preferably one who knows you. Ask them to obtain a number of quotations if you wish.
- Be clear about the identity of any proposed insurer and check the veracity of any alternatives put forward. Only place your cover with an insurer who has 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, an inexperienced insurer 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 (see the CIC RMB: PII for Construction Consultants). You may be happy to accept more restricted cover but you need to know what you are getting.
- Remember that a new insurer may know nothing about you at all (even if your brokers do). An insurer must be told all about your firm, the scope of work you do, the nature of contracts entered into, etc. If such information is not made available,

claims may be turned down or the insurer pay out reduced on the basis of non-disclosure of material facts.

- Reveal everything about yourself. In the past, you may have agreed a number of matters with your old insurer, for example, cover for joint ventures or overseas contracts. You need to agree all these matters afresh with a new insurer – and all this 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. Professional indemnity insurance 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 insurer could quite legitimately argue late notification and the old insurer would not accept the notification as cover would have expired. If in doubt: notify – and be insistent if an insurer is reluctant to accept the notification.

If differences do arise between you and your insurer, an insurer is more likely to give you the benefit of the doubt if you are an established customer. At the back of an insurer’s mind will be the fact that it has 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 a previous insurer 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 the architect’s insurer, and there may be some debate as to whether a new claim exists, or the problems are all part of a single, earlier 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 insurer 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 a consultant presses for its fees, the contractor (sometimes stretched for cash itself) may accuse the consultants of not having done their job properly. This may be quite unjustified but, if and when a formal claim is made by the contractor, a question may arise as to when the consultant should have notified its insurer. Should the consultant have told the insurer when the fees were not paid in the first instance?

If you continue with your same insurer, such problems will in practice be a lot easier to sort out.

This Risk Management Briefing is for general guidance only and legal advice should be sought to cover any particular situation.

This briefing was prepared by the CIC Liability Panel chaired by Professor Sarah Lupton

It is available at www.cic.org.uk

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