Insurance: key issues for consideration

The Professional Indemnity Insurance (PII) Regulations set down the minimum insurance requirements for members in public practice in the UK and Republic of Ireland, and firms and individuals carrying out regulated activity.

The PII Regulations require firms to take reasonable steps to meet claims arising from public practice, and that PII cover is put in place with a ‘participating insurer’, which complies with the minimum limits of indemnity and excess requirements set down in the PII Regulations and the terms of the minimum approved wording.

The demand for, and supply of, PII coverage will vary between members. The insurance-buying process is important, as is the underlying due diligence to support the decision-making process.

Against this background, the PII Committee has provided the following high-level insight into some of the key areas for consideration when looking at the purchase of insurance (recognising, of course, that the ultimate decision rests with the firm based on its specific needs and requirements).

Not all insurers are the same

An insurer may ‘participate’ in ICAEW’s PII arrangements, provided it is an ‘authorised insurer’ (as defined in the PII Regulations) and agrees to provide cover to firms in accordance with the PII Regulations and minimum approved wording.

Currently, there are around 35 participating insurers for 2020/2021 as specified in the list of participating insurers. ICAEW does not recommend or endorse particular insurers and will not involve itself in discussions with insurers over premium.

While you may focus on the level of premium, you also need to take other considerations into account, including:

- the insurer’s security rating, expertise in a particular class and reputation;
- how long your firm has been with the insurer;
- the insurer’s understanding of your firm’s business;
- the insurer’s commitment to the market; and
- the insurer’s claims response and reputation for claims handling (in particular whether claims are handled in-house or outsourced to third party claims handlers).

A specialist advisor (i.e. insurance broker, insurance consultant, legal counsel etc) can guide you through these points and help you to select an appropriate insurer. The PII Committee recommends that you consult with such an advisor as part of the decision-making process, if you do not do so already.

Know what's in your policy

When an insurer signs up to ICAEW's arrangements, they undertake, at a minimum, to provide cover in accordance with the PII Regulations and minimum approved wording. However, some will provide PII cover that exceeds, or is broader, than these requirements. **It remains vital that you read and fully understand the terms, conditions, exclusions and limitations of your firm's policy.**

When you seek cover, you should conduct appropriate due diligence to determine the level and type of cover that is right for you, regardless of the minimum requirements set down in the PII Regulations. Factors you may wish to consider include:

- operational reach, including any cross-border activities and specifically any potential USA nexus, however remote;
- the type of advice, services and business activities provided;
- the level of turnover;
- risk management procedures (including client acceptance and continuances);
- the quality of your firm's accounting, financial and management controls; and
- external factors such as the general economic climate.

While the minimum approved wording generally provides good coverage for third party civil liability claims which may arise in connection with professional services, your firm may wish to reflect on purchasing broader cover in certain areas e.g:

- cover for regulatory and disciplinary fines and penalties and / or defence costs in such proceedings;
- cover for professional services carried out from offices in the US / Canada; and
- cover for any claims brought in the courts in the US / Canada.

Engaging with the insurer and broker

Before a contract of insurance is entered into, the insured must make a fair presentation of the risk to the insurer. Failure to do so could result in the insurer refusing to pay the claim or limiting the level of indemnity available. So it is critical that, in taking out insurance, you disclose an accurate and complete description of your firm's activities to your insurer on the proposal form. You should also keep the insurer / your broker updated if there are significant changes in your firm's business (management, activities or client base) during the course of the policy. This will build trust with the insurer and safeguard against the risk of problems arising in the event of a claim.

Once cover is in place, you must notify any claims, and circumstances which may give rise to a claim, to the insurer in accordance with the provisions set out in the policy. Again, this is to safeguard against the risk that cover could be denied or limited under the policy.

Value of other types of insurance

PII is designed to protect firms against the risk of claims by clients and other third parties, and the costs of defending those claims. Given the ever-changing risk landscape and as part of a pro-active risk management culture, you may wish to adopt a more holistic approach to your insurance-buying strategy and consider other areas of the business, and any strategic, operational and execution risks, where insurance solutions may be relevant. You may wish to consider the following (this list is illustrative and not exhaustive and the scope of insurance needs will vary for different members):

- First-party cyber cover – cover to protect against the risk and costs of a data breach or malicious attack (i.e. cover for the costs of repair / restoration, damage to reputation, costs of regulatory investigations and penalties, crisis containment cover).
- Directors and Officers insurance (designed to protect individuals from personal liabilities incurred in carrying out their duties to the company, not in relation to the provision of professional business to clients).
- Business interruption cover which may extend to loss or revenues or loss of profit.
- Brand / reputation risks, including remediation costs.
- Fidelity insurance (i.e. protection against fraud by a member of staff).
- Office contents.
- Cover for infringements of intellectual property rights.

Again, an advisor can be instrumental in helping you arrange a suite of policies that is right for your business and which meets the dual objective of minimising any uninsured gaps and avoiding unnecessary overlap / duplication.

Of course, insurance cover provides a final defence and it is not a substitute for quality of work and good controls. But it is an essential part of effective risk management and a requirement for firms and members in practice and those engaged in regulated activity.

Because of the high probability that your firm will have other pressing matters to attend to when the need to make a claim on the policy arises, spending time up front understanding the cover that is provided and its appropriateness for the business, rather than focusing simply on the lowest premium, is likely to be time well invested.