Professional Indemnity Insurance renewal

Chore or opportunity?

by Peter O'Malley MRIAI

You are looking through the papers on your desk and there, in your in-tray, is the Professional Indemnity Insurance (PII) annual renewal form. Whether you see the completion of the renewal as a chore or an opportunity will probably reflect in your premium. After wages and premises costs, your annual PII cost is substantial, and will usually increase over time. PII is an essential insurance for those practising in the profession, to protect you, your business, and your clients.

Understand the concerns of your insurer

The most important consideration in completing the annual renewal is to place yourself in the shoes of the insurer and underwriter. PII policies are different to most other forms of insurance as they are written on a 'claims-made basis,' covering liability both retrospectively and cumulatively. In return for your payment of the annual premium, the underwriter will have assessed the past professional history of your business, the liabilities, and risk of a claim arising in the current year of your insurance cover. This assessment of risk, arising from your activities, past, present, and future, for a claim made against you or your business, is primarily based upon the information you provide at renewal. It therefore follows that it is in your interests to ensure that the information submitted at renewal is realistic, honest, accurate, and comprehensive. To an underwriter, your renewal submission reflects the way you run your business and whether you consider and fully appreciate the risks involved in the practice of architecture.

A lesson from an underwriter.

Some time ago, after persuading our insurance broker, I had the benefit of meeting with our underwriter over lunch at the Lloyds building in London. As an underwriter of architects' and engineers' policies for over twenty-five years, he expressed concern for practices that obviously prepared PII renewal submissions in haste, including arithmetic errors, bad grammar, and being limited solely to the renewal form. The submission of solely the renewal form was, he considered, the bare minimum, and indicated a neglection in taking the opportunity to fully detail the activities and risks of the business. He explained that the onus was on architects to explain why they represented a good risk, thus minimising the liability for the underwriter in return for a lower annual premium than would otherwise be the case. In contrast, and as a word of caution, the underwriter explained that he had occasionally been asked to consider practices that were, in his opinion, less than competent, where he simply sought to price them out of the market through increasing annual PII premiums.

Return of only the form is the bare minimum

The renewal form is, by its nature, generic and limited to a summary of the basic factual considerations. The form cannot reflect your practice's attitude to business risk as a critical indicator to an insurer. You can, of course, provide a copy of your marketing collateral, which will usually be available on your website in any event, but this will be of limited interest to your insurer. Bear in mind PII is about assessing risk, where if you can demonstrate you understand the risks in your practice, it is likely you will be considered a lesser risk, or at least a better manager of risk. The easiest way to demonstrate this understanding is through the preparation of supplementary information, with the renewal form.

The importance of supplementary information

Within the supplementary information you can detail material issues such as joint ventures, differing jurisdictional risk, limited partnerships, acting as lead consultant, design and build work with fitness for purpose obligations, consultancy advice, bespoke appointments, collateral warranties, involvement in high-risk projects and your commitment to QMS (Quality Management Systems) as examples. Having established a supplementary information submission means that each year you can simply update it, explaining where previously identified issues, such as notices, are no longer current, or otherwise. You should use the process of developing the supplemental information to consult with your team, to review the sectors in which you work and the differing levels of risk, together with identifying areas where you may have inadvertently exceeded your cover. Schedule your agreements that include terms requiring you to have PII in place into the future and note the end dates. It is not unusual to have twelve-year obligations or bespoke contractual terms, where listing these will re-affirm an understanding and awareness to your insurers.

Always highlight your fees earned in low-risk areas such as feasibility studies that have not progressed, non-structural interior design, and commercial fit-out. Explain that you ensure you have a suite of cover-level letters to address the differing levels of liability in projects. Consider any work you may have undertaken on a pro bono basis as it is unlikely to be free from liability.

Emphasise that while you may have insurance cover of €5m, €10m or higher on an 'each and every' basis, this is a confidential matter between you and your insurers where you use discretion in advising your policy cover to clients. If you seek to limit your exposure through net contribution clauses or a cap on liability, ensure that you explain this. Where you have a policy of advising a lower level of cover where appropriate, to minimise the risk of a client viewing you as a potential target for a claim, ensure you explain this policy.

Although rare, you may on review discover a situation where you have gone beyond your insurance cover; usually this will be from inadvertently providing advice to clients. If this is the case, you can seek advice from the RIAI and discuss the matter with your insurance broker, where you may find that your cover can be extended for individual situations. After submission of your proposal, use the period up to the renewal to negotiate the cover terms. You may want to consider a two-year policy to take advantage of a soft market, which is not the case presently. You can also consider the difference between 'in the aggregate' and 'each and every' policy cover, but always being aware that your past agreement obligations may include a requirement for 'each and every' cover to continue. You may also want to review your policy excess. If you can accept a higher excess, you may be able to reduce your premium, but bear in mind the excess will apply across every claim should more than one claim arise.

Be prepared to conduct research into past projects as it is becoming increasingly common to receive additional questionnaires on specific issues such as high-rise projects including cladding, basements, and fire safety design. Always answer these questionnaires with care and as accurately as possible, as any incomplete data may impact upon or even invalidate your cover. Always check the renewal submission and, in particular, the arithmetic - small points count. Although not obligatory, seek to ensure all the partners or directors sign the proposal documents, confirming involvement across the senior management of the business. The supplementary information will mirror the development and growth of the practice, explaining both the challenges and opportunities. It should be a continuing narrative of your business activity and risk management to assist your insurers to understand and assess the risks of your business.

On receipt of your cover terms

When you receive your cover terms check through them carefully and note the exclusions, where you may be able to negotiate more favourable terms. Do not just assess the cover terms on price but consider the quality of the cover you are offered as policies differ. Beware of restricted cover terms for rectification only with an aggregated sub-limit instead of full cover or a higher specific excess for fire safety claims and check that your cover limit includes legal fees. If you have been involved in a past high-risk project, you may be able to ring-fence the liability to minimise your risk profile. Some policies will contain an unreasonably short notice period of seven days after a notifiable event, but what happens if a key member of your team is on vacation and the period is missed. Be ready to negotiate your policy terms, such as seeking to extend notification periods to fourteen or twenty-eight days. Be always aware that it is your policy you are seeking to agree and remember that any incident requiring notification must be disclosed during the policy term. Remember that any new cover changes, and exclusions on renewal, may require that past and current agreements are reviewed. Be aware that you may have to inform your clients of any change in cover and consider how any changes could affect your practice risk management systems.

Ensure you make timely claim notifications

At our lunch meeting, the underwriter regarded the relationship with the most favourable practices as a long-term mutually beneficial commitment where consistency of relevant disclosure provided greater confidence, resulting in more competitive premiums. To illustrate this point, the underwriter expressed scepticism of practices that had never provided a notice of a potential claim. For some architects, the necessity of issuing a notice of potential claim to their insurance broker is seen as a source of embarrassment. The provision of a notice at the earliest possible opportunity is not an admission of guilt, it is a realistic response to a situation that may escalate to the point of a claim, rightly or wrongly, over which you may have limited control. In contrast, an insurer will consider an early and fully considered notice to be an indication of a well-run business that both recognises and manages risk. The absence of ever having issued a notice is likely to be considered unrealistic and may suggest denial – a material risk in PII insurance.

In conclusion

It is worth ending on a closing comment from my lunch with the underwriter, where I was advised that my request for a meeting, while unusual, would reflect positively on our annual premium. Sometime later, our brokers advised that our practice had consistently benefitted from having one of the lowest turnover-to-premium ratios of all architects and engineers on their books. My advice would be to treat your annual PII renewal not as a chore. Consider your PII renewal as an opportunity each year to review and reflect upon your business, together with its inherent risk. The outcome will be a more considered and comprehensive renewal proposal, being of direct benefit to you, your insurance brokers, and your underwriter. This approach will encourage you to regularly review your PII risk and almost certainly result in reduced annual PII premiums, while making the responsibility of managing a practice a little easier to bear.

PII renewal checklist

- Start early and submit at least a month before renewal.
- Be meticulous about the information you provide.
- Place yourself in the shoes of the underwriter.
- Be honest and objective about risk.
- Demonstrate an understanding of your risk profile.
- Remember the renewal form only is a minimum submission.
- Develop comprehensive supplemental information.
- Actively use the renewal opportunity to review risk.
- Explain how you mitigate risk.
- Detail your Quality Management Systems (QMS).
- Seek to demonstrate that your practice is a good risk.
- Look into the extremities of your business.
- Review your requirements and your excess.
- Consult fully with your senior management team.
- Ensure all partners / directors sign the submission.