PROFESSIONAL INDEMNITY INSURANCE:
A BUYER'S GUIDE FOR FINANCIAL ADVISERS
FOREWORD

Due to the frequency of negligence allegations made against Financial Advisers and some large instances of fraud since 2011, Professional Indemnity Insurance for the sector has become both increasingly difficult and expensive to secure. Whilst there are some firms that continue to benefit from broadly stable insurance rates, the breadth of cover available may have constricted significantly over the past three years, posing a potentially greater threat than a rising PI premium.

Combining the challenges of securing affordable Professional Indemnity Insurance (PII) that offers an appropriate level of cover with those posed by the impact of RDR, an ever greater regulatory burden, pressure on margins and an uncertain economic climate and it is clear that PII is just another problem which many firms could do without. Whilst the industry has improved its approach to risk management, insurers are handling a growing number of claims arising from historic instructions, for example UCIS and Pension Switching claims. Given this landscape we anticipate that the PII will continue to prove problematic for the foreseeable future.

However, whilst many of the challenges the industry faces are largely outside of its control there are steps, some of them relatively straightforward, that firms can take to positively assist in the management of PII. As providers of PII broking and advisory services to over 45% of the UK’s financial advisers, we have an in depth knowledge of the challenges you face, the claims you are likely to be affected by and the requirements of insurers when it comes to deciding whether or not to underwrite your risk.

We have used that knowledge and expertise to help us write this guide which is designed to provide you with an overview of the steps you can take to help manage your PII, both in terms of premium spend and risk mitigation. We hope you find it useful.

Please don’t hesitate to contact us if there’s anything we can assist with.

Iain Middle
Director, Professional Indemnity
CONTENTS

OVERVIEW.......................................................................................................................... 05
PI REQUIREMENTS FOR FINANCIAL ADVISERS ................................................................. 06
CONSIDERATIONS FOR INSURERS.................................................................................. 07
MANAGING THE RENEWAL PROCESS AND COMPLETING THE PROPOSAL FORM... 08
IMPORTANT FEATURES TO LOOK FOR IN A PII POLICY .............................................. 10
KNOW YOUR INSURER AND BROKER............................................................................ 12
RISK MANAGEMENT ......................................................................................................... 13
NOTIFICATION OF PII CLAIMS AND CIRCUMSTANCES................................................ 15
HOW CLAIMS ARISE.......................................................................................................... 17
RUN-OFF COVER................................................................................................................ 18
LIMITATION ........................................................................................................................ 19
OUR EXPERTISE IN THE FINANCIAL ADVISERS SECTOR .......................................... 20
HOWDEN CLAIMS HANDLING ..................................................................................... 21
ABOUT HOWDEN ............................................................................................................. 22
OVERVIEW

The last five years has seen a significant increase in Professional Indemnity (PI) claims against Financial Advisers as increased FCA scrutiny, with no back stop for retrospective action, continues to unearth matters that ultimately lead to claims.

Whilst the FCA business plan for 2014/15 contains a commitment to revisit the rules on the length of time investors have to take a complaint to the Financial Ombudsman Service (FOS), Financial Advisers continue to face more PI claims than any other industry specialists. Unsurprisingly, this has resulted in a decreasing number of insurers being prepared to provide PI cover for the profession. This constriction in insurance capacity has in turn reduced competition amongst the remaining insurers enabling them to increase rates in order to try and re-coup losses until competition returns. In summary, the laws of supply and demand prevail.

This situation has left many Financial Advisers desperately searching around a few days before renewal trying to obtain suitable cover. In many cases, firms will have suffered a significant increase in PI premium and rate with the negative impact being further enhanced by higher excesses and restricted cover, particularly for higher risk products. In extreme circumstances firms may not be able to secure any cover.

In the newly redefined financial services arena with “Restricted” and “Independent” categories of Financial Adviser courtesy of the Retail Distribution Review, Professional Indemnity Insurance, (PII) specifically its availability and cover afforded, is once again a hot topic. We hope you find this guide to be of valuable assistance to your business in understanding what considerations you should make when buying Professional Indemnity Insurance.
PI REQUIREMENTS FOR FINANCIAL ADVISERS

PI is liability insurance that covers businesses in the event that a third party claims to have suffered a loss as a result of professional negligence. The FCA requires that all firms must carry a specified minimum level of indemnity for both a single claim and aggregate claims per year.

For firms that fall under the Insurance Mediation Directive (IMD), the minimum levels are set out in Euros and are as follows;
- €1,120,200 each and every claim, and
- €1,680,000 for claims in the aggregate.

For UK based firms, these minimum requirements are translated into Sterling and must be met at the date of taking out the policy and at the date of renewal. Firms are required to have continuous cover from the date of their authorisation.

Unlike other professions, such as solicitors and surveyors, financial advisers are not mandated to buy a specific policy (more commonly known as minimum terms) and as a result there are varying levels of coverage offered in the PII market.

There are additional capital adequacy requirements if you have an excess of over £5,000 or if you have any exclusions in your policy for activities that your firm is or has been involved in. For those firms that “passport” their services and have to meet the PII requirements of the Markets in Financial Instruments Directive (MIFID), there are further requirements regarding the limit of indemnity or capital adequacy that you must carry. Please see the FCA passporting fact sheet for further information.

TAKE NOTE

As PII policies are written on a “Claims Made” basis, the policy will only cover claims notified during the policy period, regardless of when the work was undertaken. The FCA requires that a policy must offer fully retroactive cover all the way back to the authorisation date. If a retroactive date is specified, it is important that this meets all your cover requirements and does not expose you to an uninsured period.
CONSIDERATIONS FOR INSURERS

Individual firms cannot control the general state of the PII market but there are several factors concerning a business that insurers will take into account when determining what premium to charge.

Total Commission/Fee Income
The amount of gross commission/fee income is one of the clearest signs as to how much business the firm transacts and therefore best reflects the exposure to insurers. Insurers look for how the firm has performed in the last few years as well as the estimated income for the current or next financial year and will query any unusual spikes, or drops in turnover. A steadily growing firm or a firm with a fairly consistent level of turnover is usual but a sharp drop or increase may be a sign of an underlying issue within a firm.

Of course, a blip in turnover is not always an issue so if your income does show unusual activity you should provide a brief narrative to explain why.

Business Split
Some activities that a firm conducts are deemed to be higher risk than others and are therefore rated accordingly by insurers. If two firms have a similar turnover but one focuses on higher risk investments (e.g. tax mitigating products, unregulated collective investment schemes) and the other on lower risk investments (e.g. ISAs and Unit Trusts) then it is likely that the former firm will have to pay a higher premium. Alternatively, insurers may impose a higher excess to those products or exclude them from cover altogether.

That is not to say that the higher risk areas should not be conducted or should necessarily be a problem to cover. Firms conducting these activities need to be able to provide sufficient information and supporting documentation on how they advise their clients in these areas, what risk management they undertake and the procedures they adhere to.

Complaints and Claims History
Claims are sometimes inevitable, especially in the current climate. Insurers will want to know the nature of any circumstances that may give rise to a claim and how they came about. Any measures taken to prevent a recurrence of the situation, changes to procedures that may have been implemented, such as internal reviews and introducing sign-offs, are all steps that will be well received by insurers.

Client Documentation
Insurers may require sight of the standard documentation that a firm uses, such as engagement letters, Terms of Business, fact finds and reports. These documents can help show how well defined your services and audit processes are and whether they can be relied upon to help defend a claim.

Compliance
The insurer will consider the internal compliance functions within a firm. Your position may be further strengthened if you have an external compliance provider who conducts regular reviews on your business.

Personnel
Quality of the firm’s personnel is considered and experience, qualifications and training are all very important. If a firm is part of a quality group or network, then this will also be viewed positively as it normally indicates a higher set of standards.

Once the insurer has settled on a rate, after taking into consideration the rest of the underwriting factors, they will apply this to the total income. This normally means that the larger the income, the larger the premium, although size discounts are usually available.
MANAGING THE RENEWAL PROCESS AND COMPLETING THE PROPOSAL FORM

Start the process early. As concerns regarding the financial adviser sector have risen, insurers have requested more and more detailed information in order to help correctly identify all areas of risk that a firm may pose.

Completing your proposal form can be something of a challenge. Many of the short forms that have appeared from time to time have been replaced by lengthy forms asking for detailed information from over a ten year period and sometimes even further back.

Given the challenging insurance market conditions, allow sufficient time for your broker(s) to negotiate with insurers. If your broker has not contacted you eight weeks ahead of renewal, chase them or ask another broker to provide a quotation.

Think twice before asking multiple brokers to quote. The range of primary layer insurers available to the IFA profession is severely restricted and you are unlikely to benefit if the same insurer is approached by multiple different brokers.

Ensure the proposal form is neatly completed and accurately represents your business. This is particularly important where a business has acquired another firm that has operated in higher risk areas. If you fail to declare any activity that you have been involved in previously, insurers may avoid claims, or even worse, void your policy from inception. Many of the issues we encounter are a result of unintentional inaccuracies in reporting past activities.

Clearly show your activities in the boxes provided on the form and attach any additional notes or clarifications on headed paper. Presentation is key here, so try to avoid sending activity splits in different formats or lists of individual investments. Remember, renewal trail commission needs to be split up too.

If your firm has operated in traditionally high risk areas e.g. UCIS or tax mitigation products, be prepared to release comprehensive data including products sold, original investment amounts, current values and a percentage that this investment represents of the client’s overall portfolio and provide supporting documentation.

Insurers expect all Financial Advisers to have robust procedures in place for identifying, assessing and controlling risk so it is vital that the renewal submission clearly and accurately sets out the firm’s approach to risk management and highlights areas where a firm feels they exceed their peer group. This might, for example, include reference to membership of organisations such as the Association of Professional Financial Advisers (APFA), the Personal Finance Society (PFS) or networks where the firm is actively encouraged to adhere to a risk management framework over and above that normally used.

If you have had claims or notifications, provide as much information to your broker as possible including date of notification, amount claimed, a brief summary of the work undertaken, and the alleged wrong doing, accompanied by solicitors’ reports on any claims paid. It is always very important to provide reassurance to insurers that there will not be a reoccurrence and that there is not a
systemic issue, so be prepared to provide
details of any steps that have been taken
to prevent the same problem reoccurring.

Ensure that you have your quotations well
before your renewal date, especially if you
are moving insurer. You need to familiarise
yourself with all the terms and conditions
before your policy incepts and ask your
broker to explain any conditions where
you are uncertain as to the meaning or any
changes to the policy, generally, that have
been made since the last renewal.

Ensure the person in charge of buying
insurance understands the business
and appreciates how insurers pay close
attention to FCA reviews and ombudsman
decisions. As a result the questions asked
at renewal will be adapted accordingly.
A recent example of this can be seen
by numerous insurers asking about advice
on underlying assets with regards to
Self-Invested Personal Pensions (SIPPs)
following the recent ombudsman decision
against a SIPP provider.

### WHAT CAN GO WRONG?

A firm of Financial Advisers
acquired another firm of Financial
Advisers. The acquired firm had
been involved in advising on
unregulated collective investment
schemes (UCIS) which are
considered by insurers to be
particularly high risk.

The acquiring firm was unaware
of this and subsequently failed to
disclose the information on their
proposal form when they renewed
their PI insurance.

The firm has recently been
the subject of an allegation of
negligence in relation to failing
to advise customers of the risks
associated with investing in UCIS.
Insurers are attempting to ‘avoid
the claim’ on the basis that they
were unaware that they were
providing cover for liabilities
arising from UCIS.
IMPORTANT FEATURES TO LOOK FOR IN A PII POLICY

What level of coverage do you have? The narrowest form of protection provides cover for negligence with wider cover being afforded by a Civil Liability wording or the broader Legal Liability policy wording.

Are there any exclusions for any of the activities that you conduct?
If there are any exclusions for work that you intend to do or have undertaken in the past this will leave your firm exposed should a claim arise. You may also be required to carry additional capital as set out by the FCA.

Are Defence Costs payable in addition to the Limit of Indemnity?
This is the best form of cover. If you see that Defence Costs are included in the Limit of Indemnity this will actually reduce the sum available to settle any claims.

Are Defence Costs subject to any excess?
If you see Defence Costs applicable to the excess, insurers can appoint solicitors to defend you but you will be responsible for the excess applicable.

Does the policy have an Insolvency or Failed Fund Exclusion?
This type of exclusion is present in numerous policies and can exclude claims that arise from the failure of a financial institution or suspended fund such as Keydata, Brandeaux and Arch Cru. The extent of these exclusions can vary greatly and some policies do not contain this exclusion as standard. Sometimes this exclusion can be in the wording itself, rather than highlighted by endorsement.

Does the policy allow Inadvertent Non-Disclosure protection?
This is where insurers will not exercise their right to avoid the policy in the event of an inadvertent, material non-disclosure, misrepresentation of facts or untrue statement. It has to be demonstrated to insurers that such inadvertent non-disclosure, misrepresentation or untrue statement was innocent and free of any fraudulent conduct or intent to deceive.

Is there an extended reporting period for claims/circumstances?
This is a clause whereby insurers will accept notice of circumstances during a limited period of time after expiry of the policy, provided always that the matter being notified first came to your attention during the period of the policy.

The importance of ‘May’ vs ‘Likely’
You should ensure you are familiar with and understand the implications of all aspects of your policy wording, specifically in relation to the notification of circumstances/claims. For example, if your policy wording states that you are required to notify ‘information of which you are aware which may give rise to a claim or loss,’ you are benefitting from the broadest definition of circumstance available in a PI policy wording. ‘May’ provides a wider threshold which effectively admits the notification of matters which might give rise to a claim and, therefore, there is less of an onus to provide detail or predict the nature of any subsequent complaint. It is in favour of insureds as opposed to insurers.

If, however, your policy wording refers to a requirement to notify ‘information of which you are aware that is likely to give rise to a claim or loss’ then the definition is somewhat narrower and the notification needs to be more probable than not. In order to make a notification, under this definition, you will need to be aware of information which suggests a claim by an identified claimant is more likely than not to be made. It is also likely that you will be asked to identify the potential claimant(s). In short the more information you can provide the better. If you are unable to provide information to demonstrate that a claim is ‘likely’ to occur you will be able to notify the matter but Insurers may reject it and may well exclude the matter at renewal, leaving your business exposed if the matter subsequently develops into a claim or loss on expiry.

You should be aware that policy wordings are increasingly using the term ‘likely’ as opposed to ‘may’. Our own policy wording uses the term ‘may’.

Further reading:
Norton Rose Fulbright, ‘Blanket notifications not be rejected out of hand’ July 2013, McManus and Others v European Risk Insurance Co (2013) EQHC 18

BE AWARE!
The most important rule is to be sure that you are fully aware of what you are buying. That is to say that you should be completely clear as to what is, and is not, being covered.

You should also be aware of the implications this has to your business. Ensure that your limit of indemnity is adequate and meets all the FCA requirements. If you are being offered higher excesses for certain lines of work, make sure that you are fully aware of the implications on capital adequacy and your exposure, should you have any claims in these areas.

Likewise, be aware of exclusions as these should be shown and explained in your policy. It is the unfortunate truth that many policies, as good as they seem on the face of it, contain exclusions and features, that the buyer is not necessarily aware of, within the wording rather than being specifically endorsed and highlighted. It is normally only when there is a claim that this is realised, and then of course, it is too late.
A good insurance broker is one that understands the needs of your business and delivers the relevant insurance with as little disruption as possible. You need to be confident that you have the correct policy and that you will be able to contact someone and they will have the expertise to help if a problem occurs and/or you need to make notification.

I have dealt with Howden for a number of years and they have always been able to deliver on these promises in a very professional and friendly way. I would not hesitate to recommend them.

DIRECTOR
Independent Financial Adviser
KNOW YOUR INSURER AND BROKER

Whilst price is important, it is also worth bearing in mind the following points.

**Check the range of insurers that your broker has access to.** Those brokers who can only deal with a restricted range of insurers may struggle to secure cover in challenging market conditions.

**Ensure your broker and insurer have a strong and experienced claims team to provide you with assistance should you have a notification.** Ask about the experience the insurer and broker have in dealing with Financial Advisers. An insurer and/or broker with a long standing presence in the Financial Advisers’ sector and a large portfolio of clients may have more expertise of handling claims than newer entrants to the market.

**Check the scope of coverage on offer.** Wordings between insurers can vary a great deal and there are a number of key features that directly relate to the financial services industry which you should look for.

**Be sure you are happy with the solvency and strength of your insurer** by looking at their financial rating and any additional backing they may have. Details can normally be found on the insurer’s website and your broker should be able to assist you with your enquiries.

---

**THE TRUE VALUE OF OUR SERVICE**

One of our clients was required by the FCA to undertake a S166 past business review into investment suitability within a specific division of the business. This review resulted in multiple claims, all originating from the same cause.

Despite insurers initial attempts to apply a per claim excess of £50,000 per investor, we succeeded in persuading Insurers to apply a single excess of £50,000.

Insurers have subsequently paid out in excess of £1.4m, a cost which if multiple excesses had been applied would have been largely borne by the insured.
RISK MANAGEMENT

Having a strong internal risk management system in place can protect you from a successful claim as it puts you in a stronger position to defend it. Insurers look favourably on a strong system.

Key areas

- Have an appropriate, well documented compliance policy in respect of your advisory and sales process in all areas of your business.
- Maintain a Risk Register and have systems of control in place to manage risks.
- Ensure all clients sign a Terms of Business agreement together with a letter setting out the scope of the services provided by your practice.
- Have systems in place to ensure that key dates are controlled and backed up. A high quality diary system should be in place for all staff.
- Ensure that a good proportion of post sale activity is reviewed, especially in higher risk categories.
- Minimise and have controls against conflicts of interest.
- Ensure there are supervisory controls in place that also extend to all Partners/Directors.
- Ensure staff are qualified for the work they do and appraised regularly.
- Ensure instructions from clients are evidenced in writing.
- Where you have a complaint, ensure that you have systems in place to go back through the process to identify if there are any weaknesses or training requirements.
The Howden team is comprised of highly skilled individuals who manage to combine technical excellence in handling claims with the ability to communicate cogently and credibly with underwriters when coverage issues arise. The team has a wealth of experience and is highly regarded in the insurance market and beyond. In the provision of support and in advocating the cause of its clients, the team is second to none, in my experience.

“PARTNER
Leading law firm”
NOTIFICATION OF PII CLAIMS AND CIRCUMSTANCES

There can be some confusion over what actually constitutes a claim or circumstance. A ‘circumstance’ is an occurrence that ‘might/could/may/is likely’ to give rise to a claim. The words ‘might/could/may/is likely to’ are variously used by different insurers and have different practical meanings but there is no uniformity of practice in the PII market.

Every Financial Adviser needs a clearly defined procedure for identifying, assessing and controlling claims and circumstances that may give rise to a claim. The procedure must be able to detect and identify potential claims and circumstances as early as possible. It must also determine exactly when and how the matter is reported to insurers and what details must be included in that report. This is essential. If it fails to achieve this, the firm may be left exposed.

Why is it important?
Firstly, the earlier a problem is identified and brought under control, the greater the chance of minimising its impact and cost. Secondly, insurers insist upon prompt notification and reporting to avoid being prejudiced by the actions of the insured who tries to take the matter into their own hands. Issues arise when the insured believes that a notification will not go anywhere or where they believe that they can “do a deal” with the claimant. If the matter escalates, then by trying to do so they have caused prejudice to the insurer, thus entitling the insurers to avoid dealing with the claim.

When should you notify claims?
As soon as possible after you become aware of the issue. PII policies require the insured to give notice as soon as possible upon awareness of any claim or circumstance which ‘may/might/could/is likely’ to give rise to a claim; the expressions differ from policy to policy and so does the trigger point of policy response, so you should seek guidance from your broker. Some policies may even state a specific number of days in which any claim or circumstance must be notified after you become aware. Failure to do so can nullify and invalidate the policy cover.

What should you report?
As a rule of thumb, if you have to ask yourself whether a matter should be reported, it probably should be. Insurers would rather see you as proactive than reactive. You should report:
- Any actual allegation or claim made against you, whether spoken or in writing.
- Any suggestion, intimation or indication that a claim against you is being considered, however remote you believe this to be.
- Any circumstance, situation or problem that you recognise to be a potential issue for you, your client or any third party with whom you are dealing, which could result in dissatisfaction, a complaint or refusal to pay fees or other monies.

What about claims which fall within the excess?
All claims should be reported, even those which are likely to fall within your excess. Failure to do so can nullify and invalidate the policy.

Will this affect the premium?
Claims could affect the premium but this will always depend on the facts. If it is too early to tell then you may be given the benefit of the doubt but if there has been a particularly large payment then you can expect an increased rate. If you can demonstrate that you have taken measures to prevent this reoccurring then this will help mitigate any increase in your premium.

Never allow your potential increase in premium to influence your decision as to whether to notify. The cost of defending a claim can often greatly outweigh the increase in premium, even in cases where you do not expect it to. If you are still in any doubt contact your broker or seek legal advice.

‘CLAIMS MADE’ BASIS OF PII COVER
In the UK, PII policies are always written on a “Claims Made” basis. This means that the policy only covers claims made during the period of the policy, irrespective of when the act, error or omission alleged to have given rise to the claim was actually committed or occasioned. In other words, it is the policy in force when the claim/circumstance is first notified by the insured to the insurer which will cover the claim under the policy, rather than the policy in force at the time the actual act, error or omission occurred.

It is absolutely essential that a complaint or claim is notified to insurers as soon as reasonably possible after first awareness. It is also vital that the matter is notified in a manner that is fully compliant with the claims notification provisions of the policy. These vary from insurer to insurer. Whilst these provisions are all intended to have a similar effect, the wording of each of them differs and it is therefore in the insured’s best interest to have read and fully understood what is required of them upon first awareness of a claim or complaint.

Some claims conditions are Conditions Precedent to Liability. A Condition Precedent must be complied with unconditionally and absolutely. If it is not, the policy or previous policies can be voided ‘ab initio’ (from inception) and therefore there will be no insurance protection offered by the respective policy. All staff should be aware of the notification requirements of their own firm’s PII policy.
Selection of PII cover is one of the most important decisions that an IFA has to make. Is the cheapest premium the most important factor? No. Basically, if you have a claim, you need a head that nods instead of one that shakes. We have received many years of loyal and expert service. Careful assistance in dealing with potential claims has been invaluable. Quality definitely costs less!

CO-FOUNDER AND OWNER
Wealth Management firm
HOW CLAIMS ARISE

Historically, the most common cause of claims against Financial Advisers was a failure to process documents and instructions correctly.

Whilst this continues to be an issue, claims are now more likely to arise because advisers have not ensured clients fully understand the product or they have incorrectly identified the clients’ risk profile and/or failed to consistently adhere to it.

Consequentially, advisers are under greater pressure to develop a comprehensive understanding of the products they recommend and to ensure those products are recommended to appropriate clients. Firms that can demonstrate to insurers that they have the systems and controls in place to enhance performance in both of these areas may find they benefit from a more favourable reaction at renewal.

Example One
The client wished to repatriate £1m part of £7m offshore bonds to invest in a business opportunity. The insured calculated Capital Gains Tax (CGT) on £1m as being circa £150k which was accepted by the clients as worthwhile. HMRC, however, deemed tax was payable on the whole amount which totalled CGT of £2.3m. It was accepted the funds would, at some stage, come onshore and a mediated settlement of £565k CGT was negotiated.

Moral of the story
Check areas outside your knowledge, such as tax, with an expert.

Example Two
A number of clients arranged life/protection policies to go alongside mortgages in joint names. When one half of the couple died, unmarried to the other, the proceeds went to an estranged parent (or other relative) under inheritance laws, leaving the survivor bereaved and without the benefit of the insurance. A claim for £150k was successfully made against an adviser for failing to arrange the policy as instructed.

Moral of the story
Ensure you know your client and the cover does what it is designed to do.

Example Three
The insured advised clients to invest in unregulated property investments. The insured failed to identify the fact that they were geared investments. When the developments dropped in value the lending bank forced the sale of certain properties to recoup their losses as they had first call on funds. There was insufficient money left over for investors. £1.6m loss (the policy limit) was paid by insurers.

Moral of the story
Undertake due diligence and only sell products you understand fully.
RUN-OFF COVER

Unlike some other professions, there are no mandatory requirements for Financial Advisers to take out run-off cover when they retire or sell their business.

Run-off cover is a form of PII policy that offers cover for a firm after they cease to write business (e.g. due to the firm ceasing to trade or selling the firm without previous liabilities to a new owner). Whilst not a mandatory requirement, it is recommended that run-off cover is purchased and we refer you to the Limitation Section on the next page where you can gain insight into the extent of your exposure. Many firms recognise that, because a PI policy is on a ‘Claims Made’ basis, it is wise to buy a policy to cover them should a claim/loss arise in the future for any liabilities that might arise from the work they did in the past.

Advisers can remain vulnerable to complaints about advice given any number of years ago and it is up to them to assess how long they should maintain cover. Premiums are normally set at the level of the last annual premium you paid for the first year’s run-off and you should expect a reduction every year, subject to market conditions and claims history.

Further issues arise where an insurer ceases to underwrite Financial Adviser’s PI business as those firms affected can find it extremely difficult to source a replacement insurer. Some insurers are willing to offer terms on a case by case basis, but, alternative providers can be difficult to find.

In addition, coverage is usually only available on an annually renewable basis rather than a single policy to cover you for an extended period.

If you are selling your business, then the buyer may want to exclude taking on responsibility for any claims arising from advice given prior to the date of the sale. This, however, is not always the case so, if you are selling your business or client book, ensure that the previous liabilities of the firm are discussed and agreed on. You will then be in a position to consider purchasing appropriate cover.
LIMITATION

There are a number of different limitation periods for claims, depending on the type of claim. The standard limitation period is six years from the breach.

In claims against professionals, the date of breach will generally be the date of the alleged negligence. For claims against Financial Advisers, it is the date of the completion of the defective transaction, for example the investment (s.2 Limitation Act 1980).

There is a ‘carve out’ from the above position where the negligence is not known about by the non-breaching party. In that case, the limitation period is three years from the date on which the complainant learned of (or should have known of the probability that there had been) the negligence/loss (s.14A Limitation Act, introduced by the Latent Damage Act 1986). This is subject to a long-stop limitation period of 15 years from the negligent act/omission.

For claims where fraud is involved, where the breaching party has deliberately concealed the error, or there has been a mistake (in the legal sense), the limitation period is extended to six years from the date upon which the complainant could reasonably have discovered the fraud, error or mistake and there is not the 15 year long-stop (s.32 Limitation Act 1980).

Whilst the Financial Ombudsman Service (FOS) does have the discretion to waive limitation defences if it feels it is warranted, the jurisdiction of the FOS is broadly subject to the same limitation periods in that the claim should be brought within either the six year rule (as per s.2 Limitation Act) or the three year rule relating to negligence/loss only reasonably discoverable subsequently (as per s.14A Limitation Act). Importantly for the three year rule, there is no 15 year long-stop for claims to FOS. However, FOS has an additional time limitation in that it will not hear claims unless brought within six months of the final rejection of the complaint by the relevant business.
OUR EXPERTISE IN THE FINANCIAL ADVISERS SECTOR

The PI division of Howden is the largest specialist PII broker to the Financial Advisers’ sector, representing annual premium income approaching £20m.

We work very closely with our specialist Financial Institutions team, who specialise in the design and procurement of management liability insurances for the investment industry with clients ranging from Private Equity companies through to Corporate Finance advisers.

We are one of the most respected insurance brokers in the FCA regulated space. That respect extends across insurers, clients, regulators and advisers to the industry. Our specialist focus enables us to keep pace with industry trends and apply our insurance expertise to design bespoke insurance solutions.

Our expertise and presence ensures our clients benefit from:
- Competitive insurance rates.
- Breadth of cover based on an in-depth understanding of the requirements of the sector.
- Proactive service based on an in-depth understanding of the sector’s evolving business, regulatory and operational environment.
- A broker that is respected by your peer group, your regulator and your professional advisers.

- 45% market share in the Financial Advisers’ sector
- Expertise across all operational areas ranging from financial advice to insurance broking through to wealth management and mortgage broking
- We act for a third of the largest 100 IFAs in the UK including three of the largest ten
- 95% numeric retention ratio across Financial Advisers and Investment Managers
- Our bespoke PII policy wording for the IFA sector is one of, if not, the broadest currently available to the profession
- A team of over 25 people dedicated to providing advice, risk management, broking and claims handling services to the IFA sector
HOWDEN CLAIMS HANDLING

The Financial Adviser sector has suffered more allegations of negligence in the past six years than any other professional services sector. It is therefore crucial that firms operating in the sector have access to knowledgeable PI claims experts as and when required.

An insurance broker should not only be measured on their ability to secure a competitive premium and the right level of cover, but their capacity to respond effectively in the event of a claim. This is the ‘moment of truth’ and it’s when your business really needs access to claims expertise to protect your commercial interests.

Many insurance brokers have scaled back, or even outsourced, their claims handling operations in recent years. We do not believe this approach is in the client’s best interest. A strong, technically experienced claims handling team, with individuals prepared to challenge insurers’ initial responses, is at the heart of our business offering and will remain there.

Howden has the UK’s largest in-house PI claims team, including eight people dedicated to Financial Adviser claims. We have handled over £500m of paid claims since 2008. We provide a proven track record that you can trust. Our role is simple; to support you and your business throughout the life cycle of a claim. It is not just our size that sets us apart. It is our approach and service which combine to ensure you get the best achievable outcome.

We oversee and co-ordinate insurers, loss adjusters and/or solicitors throughout the claims process, working closely with them to ensure that wherever possible your commercial interests are upheld, and reducing the pressure that a claim places on you and your colleagues. Our in-depth knowledge of the financial services industry means that we know when it is right to challenge, and where that is not possible, how to ensure that settlement figures and legal costs are minimised.

We understand the impact to the business if a policy does not respond to a claim, so we leave nothing to chance. As your advocate, there to get the best outcome for your business, we help to achieve settlement where insurers take issue with policy coverage.
ABOUT HOWDEN

We believe in building relationships based on trust and respect. We work with businesses that take their Professional Indemnity Insurance seriously and recognise the value that working with a specialist broker can add.

Our Professional Indemnity division is one of the UK’s most respected and knowledgeable Professional Indemnity Insurance (PII) broking teams. We employ over 100 insurance professionals and our business leaders across claims, broking and account management are some of the most experienced in the industry, all with over 25 years’ experience.

Unlike many of our peers we focus on specific industry sectors, rather than attempting to be generalists. We believe the depth of knowledge this enables us to develop is critical to the provision of great quality advice and service across broking, claims and risk management. We are recognised as market leaders in several professional sectors and our client base includes many of the UK’s leading professional services firms.

Established in 1994, Howden employs over 1,400 people around the world. Whilst our size gives us a significant advantage when it comes to negotiating coverage, premiums and claims with insurers, we remain absolutely committed to ensuring our customers continue benefitting from the personal relationships, quality of service and specialist knowledge they have received over the last 20 years.

Our Professional Indemnity expertise
Architects
Accountants
Approved Inspectors
Asbestos testing and inspection bodies
Engineers
Financial Advisers
Insurance Intermediaries
Mortgage Brokers
Psychological Therapists
Solicitors
Surveyors

Combining our in-depth knowledge of the professional sectors we serve with the product expertise and global knowledge of the Howden Broking Group, we are able to handle the most complex global insurance programmes including:

People
Personal Accident
Expatriate Medical
Business Travel
Kidnap, Ransom & Extortion
Employee Health & Benefits
War & Political Risks

Assets
Property
Terrorism
Business Interruption
Construction
Plant & Equipment
Machinery/Electronic Breakdown
Crime
Fleet
Title Insurance

Liabilities
Employers’ Liability
Public & Product Liability
Environmental Liability
Directors’ & Officers’ Liability
Professional Indemnity
Cyber Liability
Intellectual Property Protection
Crime
Transactional Risk
Howden makes no representations or warranties, expressed or implied, concerning the accuracy of the information contained herein. The observations, comments and suggestions made in these documents by Howden or any other party, are advisory and are not intended nor should they be taken as legal, financial or insurance advice. Please contact your specialist broker, legal or financial adviser for an analysis of your specific facts and circumstances. The information contained herein should be understood to be general risk management.

Howden Insurance Brokers Limited
71 Fenchurch Street
London
EC3M 4BS
United Kingdom
T +44 (0)20 7133 1300
F +44 (0)20 7133 1500
E info@howdengroup.com

www.howdengroup.com

Part of the Hyperion Insurance Group

Howden Insurance Brokers Limited is a subsidiary of Howden Broking Group Limited, part of the Hyperion Insurance Group. Howden Insurance Brokers Limited is authorised and regulated by the Financial Conduct Authority; firm reference number 312584. Registered in England and Wales under company registration number 203560. Registered office 16 Eastcheap, London, EC3M 1BD.

Broker of LLOYDS