

# Freelancer's Guide to Professional Indemnity Insurance

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THE BUSINESS  
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Keeping businesses  
safe and thriving

Caunce O'Hara & Co Ltd

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## Introduction

**Professional Indemnity insurance is there to protect you and your business if a client of yours suffers financial loss as a result of work you have completed for them.**

Working in a profession where your experience and advice is what you build your business on can be extremely fulfilling. It also represents a chance to work with different clients from different industry sectors, by providing them with services that they cannot undertake themselves.

However, no matter how experienced, professional and fastidious you are mistakes still occur. If you are a business professional, or a business owner that provides a service to customers such as: designs, business advice, consultancy, then you should consider a comprehensive professional indemnity insurance policy.

## A sound business investment

It is important to view PI insurance cover as a sound investment for your business and its ongoing and future success.

Premiums are relatively inexpensive and start from as little as £7.00 per month depending on your profession and level of risk.

# PROTECTING FREELANCERS & CONTRACTORS THROUGH INSURANCE



# WHAT IS PROFESSIONAL INDEMNITY INSURANCE?

**Professional Indemnity Insurance (PI)** – sometimes referred to as Professional Liability Insurance – is a type of business insurance that will cover the costs of your legal defence and any appropriate rectification costs (the costs of making a mistake right) if a client you have done work for takes legal action against you for a financial loss due to an alleged mistake or negligence.

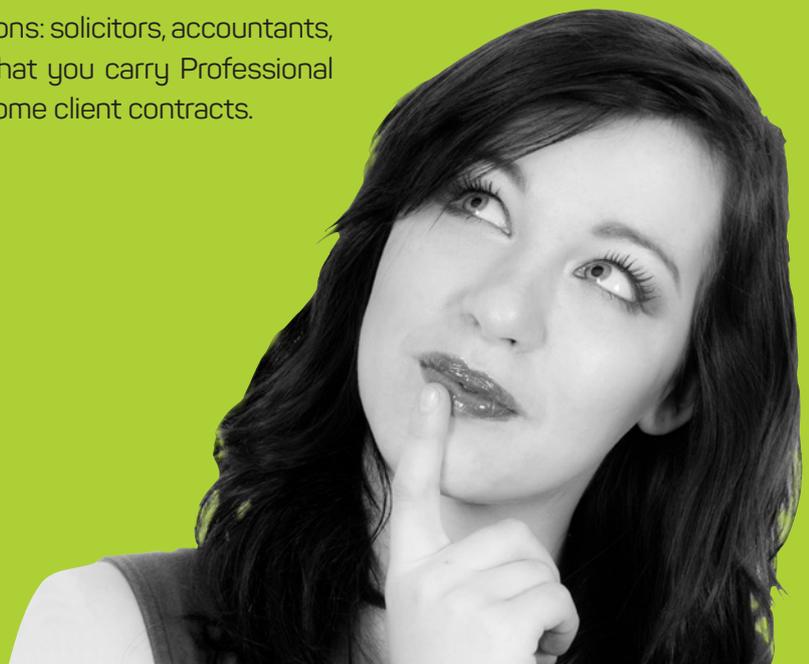
PI Insurance is not a legal requirement. Yet it is often a mandatory requirement for members of professional bodies or required by regulators.

## Essential insurance

Even if you are not bound by this requirement, for professionals in the UK who offer services including: advice, consultancy, design services, it is an essential insurance policy which will safeguard you against anything going wrong.

If you make an error in your work, or omit something essential, having professional indemnity will ensure you are covered.

The governing bodies of the following professions: solicitors, accountants, financial advisers and architects, will insist that you carry Professional Indemnity Insurance. It is also stipulated by some client contracts.



## What does PI insurance cover?

Professional Indemnity insurance can cover you for mistakes, including: professional negligence, unintentional breaches of copyright and/or confidentiality, data protection prosecution defence costs, loss or damage to documents.

## Which professions benefit from PI insurance?

Professional Indemnity insurance is not required by law for all professions in the UK.

However, for some professions including accountants, architects and solicitors it is a mandatory requirement which is set by their respective regulatory and professional bodies.

For other professions, including those that can be members of a chartered institute, it may not be a mandatory requirement yet they may need it to meet a contractual requirement.

Even if you are not required to carry this cover by your regulator or professional body, it is still worthwhile considering if you provide a service or services to clients.

### services can include:

- advice or guidance
- designs or plans
- data handling and/or processing data
- intellectual property.



# WHO NEEDS PROFESSIONAL INDEMNITY INSURANCE?

**Professionals that can benefit from a comprehensive Professional Indemnity insurance policy includes:**

## **Business Consultants**

You could be a management consultant, marketing consultant, education consultant, or a design consultant. Whatever your specific area of consultancy, a key part of your service is to provide advice and guidance. Therefore, professional indemnity insurance would be a wise investment.

## **Self-Employed IT Contractors**

If you are an IT contractor or consultant, a programmer or a developer you may require PI cover. In many cases it may be a contractual obligation. Potential claims could include dissatisfaction with your work, including hardware or software recommendations and/or programming.

They could also include the use of rights managed imagery that result in a fine levied against the client. Many stories exist of people using imagery they have taken from the internet for their own promotions, only to find out later that the image was protected by licence. Then the client owes the licence holder a fee for unauthorised use of the image. This last point is also relevant to design professionals.

## **Teachers and Tutors**

If you teach or tutor people as a part of your business, then you are open to a potential 'failure to teach' claim against you. You may not be a teacher, but instead deliver seminars, training events and podcasts as a part of your profession.

## **Architects and Surveyors**

Two highly respected professions. Mis-calculations and measurement errors can result in incorrect and dangerous construction projects that can cost £000's to correct.

### **Freelance or Self-Employed Designers and Web Designers**

Design is subjective and because of this your design work may not be everyone's cup of tea. You could meet a client's brief exactly to the letter, but if the client isn't satisfied with your work they could still decide to make a claim against you.

Some professions that work with subjective content include: graphic designers, web designers, interior designers, landscape designers and clothing designers. All of which would benefit from professional indemnity insurance.

### **Recruiters**

Your client could be dissatisfied with your recommendation of a new employee that causes the business to suffer a financial loss. In this instance the recruiter could be subject to a claim.

### **Social Workers**

As a social worker you may need to impart advice, or you may be responsible for handling sensitive information about a client. In this instance a PI policy would certainly be worth considering.

### **Engineers**

As an engineering contractor your clients trust you to get things right. They will be putting their business in your hands and this could also include the interests of external investors.

In engineering mistakes happen and errors can occur due to the exacting nature of the engineering industry where measurements and tolerances can be measured in fractions of millimetres, percentages and degrees. Therefore, PI insurance is one of the key insurances required by engineers and engineering businesses.

### **Construction Contractors**

The construction industry is a key sector where insurance is a crucial investment. PI insurance can insure you against claims for negligence. If, for example, a completed project does not match the original plans and prior approval for changes cannot be proven.



# WHAT ARE THE RISKS OF NOT CARRYING PI INSURANCE?

Operating without PI insurance leaves your business open to claims brought against it. This means that you are solely responsible for both the legal costs in defending the claim and the cost of making the matter right. Even if you successfully defend an action against you the costs in doing so can often be crippling.

Your PI cover can protect you against any civil liabilities including: contractual liabilities, tort liabilities and breach of statutory duties.

## **1. Contractual Liabilities**

PI cover is essential if you have a contractual relationship with any of your clients. Many commercial contracts will stipulate a clause relating to deliverables and duties to be carried out with 'reasonable care and skill'. If a client makes a claim against you, they will attempt to prove a failure to carry out their project with care and skill to a reasonable level.

## **2. Tort Liabilities**

If you do not have a contractual agreement with your client, they may bring a claim against you under Tort Law. Torts cover intentional and accidental acts and usually occur of tort negligence and a tort of defamation. Tort (or Civil) law can concern the compensation for a party's reputational or economic interest and usually requires a payment to 'right the wrong'.

## **3. Breach of Statutory Duties**

Professional Indemnity insurance may cover you for breach of statutory duty, breach of intellectual property and breach of fiduciary duty.

- Breach of statutory duty is relevant to industries including: architecture, accountancy and quantity surveying.
- Breach of intellectual property rights can include: copyright, media rights, patent, plagiarism and trademark
- Breach of fiduciary duty is when your client believes you are not acting in their best interests.

## How much are the premiums?

Firstly, it is important to view business insurance as an investment in your business and its future success, and not as a cost.

Premiums are available from as little as £7.00 per month, depending on your profession and level of risk. Your final premium will depend on the level of cover you need and the amount of excess you opt for.

## PI insurance limitations

The limit of indemnity attached to your Professional Indemnity policy is often one of the following: **Any One Claim** or **Aggregate Cover**.

- **Any One Claim:**

When a policy is on an any one claim basis the insured is entitled to the full limit of indemnity for each claim made.

- **Aggregate Cover:**

On an aggregate basis the limit of indemnity is the total amount the insurer will pay out over a policy term (usually one year) for multiple claims. Expenses are paid out of that limit. Once the limit has been reached the insurance company will not indemnify any future claims for the remainder of the policy term.

## How much PI cover will I need?

The amount of cover you need will depend on the work you do and the level of risk. Some factors to take into consideration include:

- Size of your business, usually including annual turnover.
- Size of the contracts you work on.
- Potential legal costs you could face.

As your business grows you can extend the level of cover needed.

**For further details and a no obligation quotation  
call 0333 321 1403**



# WHAT IS PROFESSIONAL INDEMNITY RUN OFF COVER?

Run Off cover provides you with insurance after your business has ceased trading. It is important to be aware that even though your business is no longer trading you can still be subject to a claim made against you. This can be for up to 6 years after your business closed. See below for details of 'claims in relation to' for timescales.

Run Off is a particularly important insurance for people entering retirement. The cover is usually a fraction of the premium of full PI insurance and in some cases the premium will decrease year on year.

The relevant limitation periods for different types of claims set out in the Limitation Act of 1980 are as follows:

**Claims in relation to:**

- |                                       |          |
|---------------------------------------|----------|
| • recovery of land:                   | 12 years |
| • a contract:                         | 6 years  |
| • awards in arbitration:              | 6 years  |
| • debt arising under statute:         | 6 years  |
| • negligence:                         | 6 years  |
| • breach of trust:                    | 6 years  |
| • tort:                               | 6 years  |
| • personal injury:                    | 3 years  |
| • defamation and malicious falsehood: | 1 year   |

### Defining 'claims made' basis

Professional Indemnity insurance is underwritten on a 'claims made' basis. This gives you cover for claims made and notified within the period of the insurance cover.

If a negligent act or error occurs during the period of insurance, and you inform your insurer, you can expect to be covered.

### When your cover ends

However, if you choose to cancel your insurance, or choose not to renew it, your cover ends. You will not benefit from insurance protection, even if a claim is made for work you carried out during the period you were insured. This is because your policy is no longer active.

This is a very important consideration for contractors who move regularly between projects. If you choose a short-term PI insurance policy for the length of a contract you are working on, but then cancel it once the contract is completed, you will no longer be covered should a claim be made against you for that contract... that's where Retroactive Cover comes in.

### Retroactive Insurance

At Caunce O'Hara we provide Retroactive Cover as an integral part of our professional indemnity insurance policies. This covers you for work you have completed during the period from an agreed retroactive date.



# WHAT IF A PROFESSIONAL INDEMNITY CLAIM IS MADE AGAINST YOU?

Claims arise because a client has suffered financial loss, or is dissatisfied with your work. Also, if there has been a significant mistake made, or you have not delivered what was promised/agreed.

If your client makes a claim against you your insurance provider will want to know about it. Contact your insurer broker immediately to discuss the situation.

Ensure you provide them with accurate information so they can prepare should the allegation progress to a full claim.

The sooner you notify your insurer or broker of a claim, the sooner they can begin to prepare your defence.

To this end, it is imperative that you keep accurate and up-to-date records of all of your contracts.

## Key points

PI insurance is something that all businesses should consider investing in, but it remains the choice of the business owner.

Consider the following points to ensure you make the correct choice for your business:

- Ensure you assess your current business situation prior to purchasing any insurance. You will need this to purchase the right level of cover for your business.
- Keep up-to-date records and have your contracts together in one easily accessible place/file, either paper or digital.
- Check all terms and conditions in depth prior to signing a contract. If you are unsure of anything, seek advice from a legal professional.
- Consider a robust insurance programme that encompasses both Professional Indemnity insurance and Public Liability insurance.

Unfortunately claims and disagreements between businesses occur. Professional Indemnity insurance protects both your clients' interests and your own. It will also help to safeguard your reputation and the financial health of your business.

**For further details and a no obligation quotation call 0333 321 1403 or email [schemes@caunceohara.co.uk](mailto:schemes@caunceohara.co.uk)**



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