

Minimum Terms of Insurance

Paper for meeting of the Advisory Board 13 June 2023

Notaries are required to hold professional indemnity insurance and fidelity insurance and to provide evidence of the same on renewal of their annual practising certificate. Following the introduction of NotaryPRO, notaries must now update their NotaryPRO account during the year when either PII or Fidelity cover expire which enables the FO to be assured that a notary remains insured throughout the year.

The rules applicable to insurance are Rules 6 to 8 of the Notaries Practising Certificate Rules 2012:

6. Insurance

6.1 All Notaries in practice as such within England and Wales (save for those Notaries appointed for Ecclesiastical purposes only pursuant to Rule 4 of the 1998 Rules) shall at all times hold insurance covering their notarial practice for the following:

6.1.1 insurance against civil liability for professional negligence incurred by the Notary in connection with his or her practice as a Notary; and

6.1.2 insurance against financial loss suffered by a third party in consequence of any dishonest or fraudulent act or any omission by the Notary in connection with his or her practice as a Notary.

6.2 The minimum level of insurance cover in respect of 6.1.1 and 6.1.2 above shall be fixed from time to time by Order of the Master and shall come into force on the 1st day of November immediately following.

7. Where a Notary practises also as a member of a Specified Profession and as a member of such profession holds insurance cover in respect of Rule 6.1.1 and

6.1.2 and provided that the Registrar is satisfied that such insurance cover will extend to the holder's practice as a Notary then the requirements of Rule 6 shall have been satisfied.

8. If the insurance cover held by a Notary in accordance with Rules 6 or 7 above ceases at any time after 1st November in any Practising Certificate Year he or she shall forthwith provide the Registrar with details of the replacement policy or policies of insurance and if the Registrar is not satisfied that the replacement insurance cover is sufficient to comply with the said Rules 6 or 7 the practising certificate as a Notary shall cease to have effect immediately.

The current minimum level of insurance is £1m which was set in 2012 (increased from £750k).

The rules place the duty on the Notary to ensure that they have insurance in place “in connection with (their) practice as a notary” rather than specifying a set of minimum terms (other than quantum) which their policy must include. This leaves notaries free to insure themselves against the risks which they feel are appropriate to their practice but which could exclude certain risks (for example, work involving the US or Canada is a common exclusion or carries an enhanced excess – often double). Whilst not having appropriate insurance in place would be a breach of the rules and leave a notary liable to disciplinary processes, that does not provide adequate protection to a consumer in the event of a claim arising from a risk that is not covered. Examples of minimum terms (from the SRA and the BSB for self-employed Barristers) are annexed.

Notarial PII cover is very significantly cheaper than the equivalent cover for firms of solicitors, even where notaries are carrying out higher risk work including conveyancing.

We do not currently have a specific requirement for notaries to hold run-off cover following retirement which potentially leaves both notaries and their clients exposed in the event of a claim being brought post-retirement.

Possible issues:

The principal challenge with introducing minimum terms is likely to be that, unlike the SRA, the Faculty Office might not have the level of influence with the insurance industry to implement standard terms given the size of our regulated community.

We have, in the past, been advised that run-off cover for notaries is difficult as there is no market for it; if we were to require it, a market would be created but it might be too small to be economically viable for the industry and/or the profession.

Questions for discussion:

- Should we consider introducing a set of basic minimum terms which ALL notarial PII policies must include and, if so, what model should this follow/what must be included?
- Should we consider increasing the minimum sum insured for notaries conducting conveyancing and/or probate work (given the average house price increases and the very significant number of properties worth in excess of £1m)?
- Should we require run-off cover to be obtained when a notary retires?

NDT
Faculty Office
June 2023