

Professional indemnity for estate agents and letting agents

Policy wording

The General terms and conditions and the following terms and conditions all apply to this section.

Special definitions for this section

Advertising	Advertising, publicity or promotion in or of your products or services.
Business activity	The activities shown in the schedule, which you perform in the course of your business .
Defence costs	Costs incurred with our prior written agreement to investigate, settle or defend: a. a claim against you; b. any complaint about you referred to arbitration or an ombudsman.
Retroactive date	The date stated as the retroactive date in the schedule.
You/your	Also includes any person who was, is or during the period of insurance becomes your partner or director or senior manager in actual control of your operations.

What is covered

Claims against you	If during the period of insurance and as a result of your business activity or advertising on or after the retroactive date within the geographical limits, any party brings a claim against you or refers a complaint to arbitration for: a. negligence or breach of a duty of care; b. negligent misstatement or negligent misrepresentation; c. infringement of intellectual property rights including copyright, trademark or moral rights or any act of passing-off; d. breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use; e. defamation; f. dishonesty of your individual partners, directors or employees, or sub-contractors or outsourcers directly contracted to you and under your supervision; g. negligence or breach of duty of care in connection with the transmission of a computer virus or a denial of service attack; h. any other civil liability unless excluded under What is not covered below; we will indemnify you against the sums you have to pay as compensation. We will also pay defence costs but we will not pay costs for any part of a claim not covered by this section.
Sub-contractors or outsourcers	We will indemnify you against any claim falling within the scope of What is covered. Claims against you, which is brought as a result of business activity undertaken on your behalf by any sub-contractor or outsourcer.
Complaints referred to an ombudsman or arbitration	If during the period of insurance and as a result of your business activity within the geographical limits for clients, any party refers any complaint arising directly from your breach of a duty of care to any ombudsman including The Property Ombudsman or to arbitration including arbitration through the National Approved Letting Scheme, we will indemnify you against the sums you have to pay as compensation, provided that the ombudsman or arbitrator has operated within any terms of reference or rule applicable to their appointment. We will also pay defence costs but we will not pay costs for any part of a claim or complaint not covered by this section.

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Avoiding a potential claim against you

If **your** client has reasonable grounds for being dissatisfied with the work **you** have done or which has been done on **your** behalf, refuses to pay for any or all of it, including amounts **you** legally owe to sub-contractors or outsourcers at the date of the refusal, and threatens to bring a claim against **you** for more than the amount owed, it may be possible to settle the dispute with the client by **your** agreeing not to press for the disputed amount. If so, **we** will pay **you** the amount owed to **you** at that time if **we** believe that this will avoid a legitimate claim for a greater amount and **we** have given **our** prior written approval to settling in this way and for this amount.

Alternatively, if it is not possible to reach agreement with the client on this basis but **we** still believe that by not pressing for the disputed amount **you** will avoid a legitimate claim or counterclaim for a greater amount, **we** will pay the amount owed to **you** at that time. If a claim is still brought, **we** will deal with it but **our** total payment, including what **we** have already paid **you** or on **your** behalf, will not exceed the applicable limit of indemnity shown in the schedule. **You** must return the amount **we** have paid if **you** eventually recover the debt, less **your** reasonable expenses.

Once **we** agree to make this payment **you** will assign to **us** such rights as **you** have in relation to the amounts owed to **you**.

We will not make any payment for any part of a claim not covered by this section.

Your own losses

Breach of statutory obligations If proceedings are brought against **you** during the **period of insurance** under:

- a. the Property Misdescription Act 1991; or
- b. the Estate Agents Act 1979; or
- c. the Consumers, Estate Agents and Redress Act 2007; or
- d. the Data Protection Act 1998;

or any similar or successor legislation or regulations, **we** will pay the reasonable costs incurred with **our** prior written consent to defend **you** if, in **our** opinion, a successful defence may avoid a claim being made against **you** which would be covered by this section.

Loss of documents

If during the **period of insurance**, any document, information or data of **yours** which is necessary for the performance of **your business activity** is lost, damaged or destroyed while in **your** possession, **we** will pay the reasonable expenses **you** incur with **our** prior written consent in restoring or replacing it. The most **we** will pay for the total of all such expenses is the relevant amount shown in the schedule.

Additional cover

Court attendance compensation

If any person within the definition of **you**, or any employee of **yours**, has to attend court as a witness in connection with a claim against **you** covered under this section, **we** will pay **you** the amount shown in the schedule as compensation for each day or part of a day that their attendance is required by **us**. The most **we** will pay for the total of all court attendances is the amount shown in the schedule.

What is not covered

A. **We** will not make any payment for any claim or part of a claim or loss directly or indirectly due to:

Matters specific to your business

1. any investment of, or direct advice on the investment of, client funds.
2. any survey of physical property or valuation of physical property for the purposes of a loan or any construction or erection work.
3. any operation or administration of any pension or employee benefit scheme or trust fund, or the sale or purchase of or dealing in any stocks, shares or securities or the misuse of any information relating to them, or **your** breach of any legislation or regulation related to these activities.
4. any liability for any breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.
5. any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.

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	6. the work of any personnel supplied by you to a client, unless you have breached a duty of care in supplying them.
	7. any computer virus that was not specifically targeted to your system.
	8. any liability under any contract which is greater than the liability you would have at law without the contract.
	9. any infringement, use, or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret.
Matters insurable elsewhere	10. anyone's employment with or work for you , or any breach of any obligation owed by you as an employer.
	11. any discrimination, harassment or unfair treatment.
	12. the death of or any bodily or mental injury or disease suffered by anyone, unless arising directly from your breach of a duty of care in the performance of a business activity .
	13. the ownership, possession or use of any land or building, any animal, any aircraft, any watercraft or any motor vehicle.
	14. the loss, damage or destruction of any tangible property: a. other than documents in your care, custody or control in connection with a business activity for a client; or b. unless arising directly from your breach of a duty of care in the performance of a business activity. This clause does not apply to your own loss under the Loss of documents cover in What is covered.
	15. the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.
	16. the loss or distortion of any data held electronically.
	17. any personal liability incurred by a director or officer of yours when acting in that capacity or managing your business , or a breach of any fiduciary duty, other than when performing a business activity for a client, or any statement, representation or information concerning you or your business contained in your accounts, reports or financial statements.
	18. any supply, manufacture, sale, installation or maintenance of any product.
Deliberate, reckless or dishonest acts	19. any statement you knew, or ought reasonably to have known, was defamatory at the time of publication.
	20. any act, breach, omission or infringement you deliberately, spitefully, dishonestly or recklessly commit, condone or ignore. This does not apply to any claim under the dishonesty cover in What is covered , Claims against you, but we will not in any event provide cover to any party who actually commits, condones or ignores any dishonesty.
Pre-existing problems	21. any shortcoming in your work or your own loss which you knew about, or ought reasonably to have known about, before we agreed to insure you .
Date recognition	22. date recognition .
War, terrorism and nuclear	23. war, terrorism or nuclear risks .
Asbestos	24. asbestos risks .
	B. We will not make any payment for:
Claims brought by a related party	1. any claim brought by an insured within the definition of you or any party with a financial, executive or managerial interest in you , including any parent company or any party in which you have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a claim based on a liability to an independent third party directly arising out of the performance of your business activity .

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Restricted recovery rights	2. that part of any claim where your right of recovery is restricted by any contract.
Lost profit and VAT	3. your lost profit, mark-up or liability for VAT or its equivalent.
	4. any trading loss or trading liability including those arising from the loss of any client, account or business.
Non-compensatory payments	5. fines and contractual penalties, aggravated, punitive or exemplary damages, and also additional damages under section 97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that section.
Claims outside the applicable courts	6. any claim, including arbitration, brought outside the countries set out in the schedule under applicable courts.
	This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts.

How much we will pay

We will pay up to the overall limit of indemnity for this section shown in the schedule unless limited below or otherwise in the schedule. **We** will also pay for **defence costs**. However, if a payment greater than the applicable limit of indemnity has to be made for a claim **our** liability for **defence costs** will be limited to the same proportion that the limit of indemnity bears to the amount paid. **You** must pay the relevant **excess** shown in the schedule.

All claims and losses which arise from the same original cause, a single source or a repeated or continuing shortcoming in **your** work will be regarded as one claim. This includes such claims and losses arising after, as well as during, the **period of insurance**.

Special limits

Aggregate limit for dishonesty, physical damage and injury For claims brought against **you** arising from dishonesty of **your** partners, directors, employees, subcontractors or outsourcers and from the physical loss or destruction of or damage to tangible property and from the death, disease or bodily or mental injury of anyone, the most **we** will pay is a single limit of indemnity for the total of all such losses and claims and their **defence costs**.

You must pay the relevant **excess** shown in the schedule.

Paying out the limit of indemnity At any stage of a claim **we** can pay **you** the applicable limit of indemnity or what remains after any earlier payment from that limit. **We** will pay **defence costs** already incurred at the date of **our** payment. **We** will then have no further liability for that claim or its **defence costs**.

Your obligations

If a problem arises

We will not make any payment under this section:

1. unless **you** notify **us** promptly of the following within the **period of insurance** or at the latest within 14 days after it expires for any problem **you** first become aware of in the seven days before expiry:
 - a. **your** first awareness of a shortcoming in **your** work for a client which is likely to lead to a claim against **you**. This includes any criticism of **your** work even though regarded by **you** as unjustifiable.
If **we** accept **your** notification **we** will regard any subsequent claim as notified to this insurance;
 - b. any claim or threatened claim against **you**, or any referral to arbitration, or any complaint or threatened complaint to an ombudsman;
 - c. **your** discovery, or the existence of reasonable grounds for **your** suspicion, that any partner, director, employee, sub-contractor or outsourcer has acted dishonestly.
 - d. **your** first awareness of any actual or threatened proceedings against **you** for breach of a statutory obligation.
 - e. **your** discovery that any document, information or data of **yours** has been lost, damaged or destroyed.

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2. if, when dealing with **your** client or a third party, **you** admit that **you** are liable for what has happened or make any offer, deal or payment, unless **you** have **our** prior written agreement. **You** must also not reveal the amount of cover available under this insurance, unless **you** had to give these details in negotiating a contract with **your** client or have **our** prior written agreement.

Control of defence

This is a duty to defend section. This means that **we** have the right and duty to defend **you** against any claim or part of a claim brought against **you** which is covered by this section and which **we** consider **you** have reasonable prospects of successfully defending.

If **we** do not consider that **you** have reasonable prospects of defending a claim or part of a claim **we** have the right but not the obligation to take control of and conduct in **your** name, the investigation, settlement or defence of the claim or part of the claim. Proceedings will only be defended taking into account the commercial considerations of the costs of defence. **We** may request that an opinion be obtained from a mutually agreed Queen's Counsel, or equivalent in a different jurisdiction, as to the prospects of **you** successfully defending a claim or part of a claim. Such opinion shall be binding on **you** and **us**. The costs of obtaining such opinion shall be met by **us**.

Appointment of legal representation

If a covered or partially covered claim is brought against **you**, then **we** have the right to appoint suitably qualified legal representation to defend **you**. **We** may appoint **your** own solicitor but on a similar fee basis as **our** solicitor and only for work done with **our** prior written approval.

Partially covered claims

If a claim which is only partially covered by this section is brought against **you**, amounts relating to the non-covered parts of the claim will be deducted from **our** final settlement. **We** and **you** agree to use best efforts to determine a fair allocation of covered and non-covered parts of any claim. If **you** and **we** cannot agree on a fair allocation, **you** and **we** agree to refer any such dispute to a single arbitrator in accordance with the Arbitration Act then in force.

Payment of full limit of indemnity

We have no duty to defend **you** against any claim where **we** pay **you** the applicable limit of indemnity as described in **How much we will pay**, Paying out the limit of indemnity.

Payment of excess

Our duty to make any payment under this section arises only after the applicable **excess** is fully paid. The **excess** will only be eroded by the covered parts of a claim.