

Professional Indemnity Insurance

Notaries Policy wording



JLT Professional Risks

Notice to Policyholders

IMPORTANT INFORMATION

The following changes apply to your policy -

1 Complaints

The following wording is deleted from the Complaints Procedure -

The FOS will only consider your complaint if you have given us the opportunity to resolve it and you are a private policyholder, a business with a group annual turnover of less than £1million, a charity with an annual income of less than £1million or a trustee of a trust with a net asset value of less than £1million. If, however, we do not resolve your complaint within 40 working days, the FOS will accept a direct referral.

2 Financial Services Compensation Scheme

The Compensation Scheme wording is restated as follows -

Financial Services Compensation Scheme

We are members of the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from this scheme if we cannot meet our obligations, depending on the type of insurance and the circumstances of your claim.

Further information about the scheme is available from the FSCS website www.fscs.org.uk or write to Financial Services Compensation Scheme, 7th floor, Lloyds Chambers, Portsoken Street, London, E1 8BN.

This Notice forms part of your Policy and should be attached to it.

Aviva Insurance Limited. Registered in Scotland No. 2116.
Registered Office: Pitheavlis, Perth, Scotland PH2 0NH.
Authorised and regulated by the Financial Services Authority.

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Definitions

Each time We use one of the words or phrases listed below, it will have the same meaning wherever it appears in this Section unless We state otherwise. In this Section the singular includes the plural and vice versa. A defined word or phrase will start with a capital letter each time it appears in this Section, except for headings and titles.

Bodily Injury

Bodily injury including death, illness, disease, sickness, psychological injury, emotional distress or nervous shock.

Business

The provision of advice or services by You or on Your behalf as declared to Us in the Proposal or as shown in the Schedule as the Business. Claim Demand made against You consisting of or arising from any:

- (1) demand, whether oral or in writing, for damages or compensation;
- (2) notice of intention, whether oral or in writing, to commence legal proceedings;
- (3) communication invoking any Pre Action Protocols;
- (4) notification of arbitration or adjudication proceedings.

Computer System

Any:

- (1) computer, data processing equipment, media or part thereof;
- (2) system of data storage and retrieval, or communications system, network, protocol or part thereof;
- (3) storage device, microchip integrated circuit, real time clock system or similar device;
- (4) computer software (including but not restricted to application software, operating systems, runtime environments or compilers), firmware or microcode;
- (5) electronic documents utilised in the ownership, security and management of Your electronic communication system, world wide web site, internet site, intranet site, extranet site, or web address.

Documents

Any:

- (1) project models or displays,
- (2) deeds, wills or agreements,
- (3) maps, plans, records, photographs, negatives, calculations, drawings
- (4) written or printed books, letters, certificates, documents or forms of any nature whatsoever
- (5) computer software, files, documents and systems records.

which are Your property or are under Your custody or control.

This definition shall not include bearer bonds, evidence of share ownership (whether in electronic or other form), coupons, bank or currency notes and other negotiable paper.

Employee

- (1) Any person who is or has been under a contract of service or apprenticeship with You.
- (2) Any person who is or has been:
 - (a) self employed;
 - (b) a voluntary helper;
 - (c) engaged under a work experience or training scheme;
 - (d) seasonal or temporary personnel;
 - (e) agency staff;

while working under Your control in connection with the Business.

Excess

The first part paid in respect of a Claim or loss, regardless of the effect of any aggregation of Claims for the purposes of the Limit of Indemnity, which is payable by You rather than Us. The amount of the Excess is stated in the Schedule.

The Excess does not apply to the Additional Clauses section.

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Limit of Indemnity

The maximum amount, stated in the Schedule, which We will pay in respect of any one Claim or loss and in total for all Claims or losses arising first made during any one Period of Insurance. But note that all Claims or losses arising directly or indirectly from one source or originating cause shall be treated for the purposes of the Limit of Indemnity as a single Claim or loss.

Any dishonesty or fraud committed by a person or persons acting in concert shall be treated as one Claim or loss.

Other Costs

All costs and expenses incurred in the investigation, defence or settlement of any Claim in so far as those costs and expenses have been incurred with Our written consent.

Period of Insurance

From the effective date until the expiry date shown in the Schedule.

Pollution

Any pollution or contamination by naturally occurring or man-made substances, forces or organisms or any combination of them, whether permanent or transitory and however occurring.

This definition shall not include pollution or contamination by asbestos.

Proposal

Any signed proposal form, renewal declaration, statement of fact and any additional information supplied to Us by You or on Your behalf.

Schedule

The document which specifies Your details and details of the Excess, Limit of Indemnity and endorsements applying to this Section.

Territorial Limits

The United Kingdom (including the Channel Islands and the Isle of Man) and any other EU member country.

Terrorism

Any act or acts including but not limited to:

- (a) the use or threat of force or violence;
- (b) harm or damage to life or to property (or the threat of such harm or damage) including but not limited to harm or damage by nuclear, chemical, biological or radiological means;

caused or occasioned by any person or group of persons, or so claimed, in whole or in part for political, religious, ideological or similar purposes.

We/Us/Our/Aviva

Aviva Insurance Limited

You/Your/The Policyholder/The Insured

- (1) Any individual, partnership, limited liability partnership, company, or limited company named in the Schedule or any predecessor in business of such individual, partnership, limited liability partnership, company or limited company as declared to Us.
- (2) Any person who is or has been or who becomes a director, partner, member, principal or Employee of any person or body referred to in (1) above but only in respect of work undertaken for or on behalf of any person or body referred to in (1) above.
- (3) The estate, heirs, executors, legal or personal representatives of any person or body referred to in (1) or (2) above in the event of their death or incapacity.

Cover

- (1) We will indemnify You in respect of any Claim arising out of the conduct of Your Business, first made against You and notified to Us during the Period of Insurance, for any civil liability including claimants costs and expenses arising from:
 - (a) any negligent act or omission committed by You;
 - (b) any dishonest or fraudulent acts or omissions committed by any of Your past or present partners, directors or Employees.

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- (2) We will indemnify You for reasonable costs and expenses incurred by You in respect of any reasonable action taken to mitigate a loss or potential loss that would otherwise be the subject of a Claim under this Section provided that
- (a) We give prior written consent to You incurring such costs and expenses and
 - (b) You prove to Our satisfaction that the amount of the costs and expenses to be incurred are less than any likely award of damages arising from the same potential Claim.

Our total liability under this Section shall not, save in the circumstances stated under the Additional Clauses section, exceed the Limit of Indemnity.

- (1) We will not provide indemnity:
- (a) in respect of any defamation unless you can show that it was committed by You in good faith,
 - (b) to any person committing or conspiring to commit or condoning any dishonest or fraudulent act or omission,
 - (c) for any Claim arising from any dishonest or fraudulent act or omission committed by any person after the discovery, in relation to that person, of reasonable cause for suspicion of any dishonest or fraudulent act or omission.
- (2) We will not provide indemnity for any Claim arising from any dishonest or fraudulent act or omission unless:
- (a) at Our request You shall take all reasonable steps to effect recovery from the person committing or condoning such dishonest or fraudulent act or omission or from the personal representatives of such person;
 - (b) Your annual accounts are prepared or certified by an independent and properly qualified accountant or auditor.
- (3) The following will be deducted from any amount payable:
- (a) any monies which, but for such dishonest or fraudulent act or omission, would be due from You to the person committing or condoning such act or omission;
 - (b) any monies held by You and belonging to such person;
 - (c) any monies recovered following action as described in (2)(a) above.

- (4) We shall not be liable for the amount of the Excess or any lesser amount for which a Claim may be settled.
- (5) We will not provide indemnity where Your Business is conducted outwith the Territorial Limits.

Additional Clauses

In addition to the Limit of Indemnity

1 Accountants Fees

We will pay on Your behalf any accountants fees, incurred with Our prior written consent, to substantiate the amount of any loss referred to in Additional Clause (3) of this Section.

Our total liability under this clause shall not exceed £10,000 in all in any one Period of Insurance.

2 Documents

We will pay all reasonable costs and expenses incurred by You in replacing, restoring or reconstituting Documents, lost or damaged in the conduct of Your Business provided the loss or damage is suffered and first discovered by You and notified to Us during the Period of Insurance.

Our total liability under this clause shall not exceed £50,000 for any one occurrence and £200,000 in all in any one Period of Insurance.

We will not provide indemnity in respect of any loss or damage to Documents which are stored on a Computer System, unless such Documents are duplicated with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the Documents to their original status.

3 Fidelity

We will indemnify You for any loss of Your own money or property (other than Employees' money or property) as a result of any dishonest or fraudulent act committed by any Employee acting alone or in collusion with others

Provided that any loss is first discovered by You and notified to Us during the Period of Insurance.

Our total liability under this clause shall not exceed £50,000 in all in any one Period of Insurance.

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We will not provide indemnity:

- (1) unless You prove to Our satisfaction that any dishonest or fraudulent act was committed with the intent of causing You loss;
- (2) to any person committing or conspiring to commit or condoning any such loss;
- (3) for any loss arising from any dishonest or fraudulent act committed by any Employee after the discovery, by You, in relation to that Employee, of reasonable cause for suspicion of any dishonest or fraudulent act;
- (4) for any loss of a consequential nature, including but not limited to, potential income, profit, interest or dividends, not realised by You;
- (5) for any loss of or damage to, proprietary information, trade secrets, confidential processing methods, intellectual property or confidential information of any kind;
- (6) for any costs, fees and expenses incurred by You in establishing either the existence or amount of any loss other than as specifically indemnified under Additional Clause 1;
- (7) in respect of any loss caused by any Employee or in which any Employee colluded whose normal place of employment or services is outside the United Kingdom (including the Channel Islands and the Isle of Man);
- (8) unless Your annual accounts are prepared or certified by an independent and properly qualified accountant or auditor.
- (9) in respect of the first £500, or any lesser amount for which a loss may be settled under this clause.

(3) Other Costs

We will pay Other Costs. Provided that if the amount paid to dispose of a Claim exceeds the Limit of Indemnity, Our liability for Other Costs will be only the proportion which the Limit of Indemnity bears to the total amount paid to dispose of such Claim.

(4) Payment for Court Attendance

We will compensate You, subject to our prior written consent, if You are attending court as a witness in connection with a Claim for which You are entitled to indemnity under this Section.

The maximum we will pay is £300 per person per day. Our total liability, under this clause, shall not exceed £15,000 in all in any one Period of Insurance.

(5) Representation Costs

We will pay on Your behalf any reasonable costs and expenses incurred by You for representation at properly constituted hearings, tribunals or proceedings provided that:

- (a) such costs and expenses are incurred with our prior written consent and
- (b) the subject of the hearing, tribunal or proceeding may become a Claim under this Section.

Our total liability under this clause shall not exceed £15,000 in all in any one Period of Insurance.

Exceptions

We will not provide indemnity in respect of:

- (1) any Claim arising directly or indirectly from or caused by any dispute between You and any present or former Employee or any person who has applied for or been offered employment with You.
- (2) any Claim arising directly or indirectly from or caused by:
 - (a) any Bodily Injury of any Employee whilst in the course of their employment with You;
 - (b) any other Bodily Injury or loss of or damage to property unless arising from any actual or alleged breach of duty in the performance of Your Business.
- (3) any Claim arising out of or caused by any:
 - (a) representation, promise or warranty given by You as to the outcome of Your conduct of the Business;
 - (b) express guarantee;
 - (c) express contractual penalty;
 - (d) acceptance of liability for liquidated damages; unless such liability would have attached to You in the absence of the features listed above.
- (4) any fines or penalties or any punitive, multiple, aggravated or exemplary damages where such can be identified separately within any award of any court or tribunal.

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- (5) any Claim arising directly or indirectly from or caused by the supply of any goods by You or any products manufactured, constructed, altered, repaired, treated, sold, supplied or distributed by You.

This exception does not apply to

- (a) project models or displays.
 - (b) any Claim arising from Your negligent advice or specification of any software, hardware, firmware or other computer equipment supplied or installed by You when providing consultancy services.
- (6) any Claim arising directly or indirectly from the conduct of Your Business where You contract to manufacture, construct, erect or install or supply materials or equipment.

This exception does not apply to any Claim arising from Your negligent advice or specification of any software, hardware, firmware or other computer equipment supplied – or installed by You when providing consultancy services.

- (7) any Claim brought by any entity:
- (a) in which You exercise a controlling interest;
 - (b) which exercises a controlling interest over Your business by virtue of having a financial or executive interest in You; unless such Claim arises from or is caused by a claim made against such entity by an independent third party.
- (8) any Claim made against You in Your capacity as a director, officer or trustee unless arising out of the professional conduct of Your Business.
- (9) any Claim arising directly or indirectly from or caused by any:
- (a) pension or Employee scheme;
 - (b) trust fund;
 - (c) stocks, shares or securities;
- established or maintained to provide benefits to You or Your Employees.

- (10) any trading losses or trading liabilities incurred by any business managed by or carried on by You.
- (11) any Claim arising directly or indirectly from or caused by Your insolvency or bankruptcy.
- (12) any Claim arising directly or indirectly from or caused by the ownership, possession or use, by You or on Your behalf, of any aircraft, watercraft, hovercraft, motor vehicle or trailer.
- (13) any Claim arising directly or indirectly from or caused by the ownership, possession or use, by You or on Your behalf, of any buildings, structures, premises or land or that part of any building leased, occupied or rented by, or licenced to You or any property (mobile or immobile) of Yours.
- (14) any Claim where You are entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such insurance had this Section not been effected.
- (15) any Claim or circumstance that might give rise to a Claim which
- (a) has been notified under any other policy of insurance attaching prior to the inception of this Section;
 - (b) You were or should, after reasonable enquiry, have been aware of prior to the inception of this Section.
- (16) any Claim instituted or pursued:
- (a) in the United States of America, its territories and or possessions or Canada (including without limitation the enforcement of a judgement or finding of a court or tribunal of another jurisdiction or otherwise);
 - (b) in which it is contended that the laws of the United States of America, its territories and/or possessions or Canada should or do apply;
 - (c) which involves the enforcement or attempted enforcement of a judgement or finding of a court or tribunal of the United States of America, its territories and/or possessions or Canada.

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- (17) any Claim arising directly or indirectly from or caused by Pollution.
- (18) any Claim arising directly or indirectly from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity, whether alleged or actual.
- (19) any Claim arising directly or indirectly from or caused by the transmission or receipt of a computer virus, program or code that causes loss of or damage to any Documents or Computer System or prevents any Computer System from performing or functioning accurately or properly.
- (20) any Claim of whatsoever nature arising directly or indirectly from or caused by the failure or inability or any alleged failure or inability of any Computer System, whether Your property or not, at any time to achieve any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote a date, including without limitation, the failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of:
- (a) recognising, using or adopting any date, day of the week or period of time, other than the true or correct date, day of the week or period of time;
 - (b) the operation of any command or logic which has been programmed or incorporated into any Computer System.
- (21) any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- (22) any Claim or consequence whatsoever resulting directly or indirectly from or in connection with any of the following regardless of any other contributory cause or event
- (a) war, invasion, act of foreign enemy hostilities or a warlike operation or operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of, or amounting to, a military uprising or usurped power;
 - (b) Terrorism;
 - (c) any action taken in controlling, preventing, suppressing or in any way relating to (a) or (b) above.
- In any action, suit or other proceedings, where We allege that by reason of this definition any consequence whatsoever resulting directly or indirectly from or in connection with (a) and/or (b) above regardless of any other contributory cause or event is not covered by, this Section, the burden of proving that any consequence whatsoever resulting directly or indirectly from or in connection with (a) and/or (b) above regardless of any other contributory cause or event is covered shall be upon You.
- (23) any claim arising directly or indirectly from or caused by any work undertaken by You or on Your behalf prior to the retroactive date shown on the Schedule.

Notaries Policy wording

Conditions

Claims Conditions

If in relation to any Claim You fail to fulfil or observe the requirements imposed upon You by conditions (1), (2), or (3) You will lose Your right to indemnity or payment for that Claim.

- (1) If during the Period of Insurance, regardless of any Excess, You:
 - (a) receive any Claim, You shall give written notice to Us as soon as practicable;
 - (b) become aware of any circumstance that might give rise to a Claim, You shall give written notice to Us of such circumstance as soon as practicable. Any Claim subsequently arising from any circumstance notified to Us shall be deemed to have been made during the Period of Insurance in which the notice of such circumstance was first received by Us;
 - (c) discover a reasonable cause for suspicion of any dishonesty or fraud on the part of any past or present director, partner, or Employee of Yours, whether giving rise to a Claim or not, You shall give written notice to Us of such discovery as soon as practicable;
 - (d) discover any loss or damage to Documents, You shall give written notice to Us of such discovery as soon as practicable;

provided always that any such written notice under any part of this condition (1) is received by Us during the Period of Insurance.

Any written notice should be sent to:-

The Claims Manager
Aviva Professional Risks
Pitheavlis
Perth PH2 0HN
Tel. 01382 593634
Fax. 01382 561460
Email: delauth@aviva.co.uk

- (2) In the event of a Claim or the discovery of a circumstance that might give rise to a Claim, You must not admit liability for or settle any Claim or incur any related costs or expenses without Our written consent.

- (3) In the event of a Claim or the discovery of a circumstance that might give rise to a Claim, We will be entitled, at Our own expense at any time, to take over and conduct in Your name the defence or settlement of any such Claim.

If We do take over and conduct the defence or settlement of any such Claim You shall give Us all such information and assistance as We may reasonably require and that is in Your power to provide.

Without prejudice to the generality of the above, Your duty to assist Us includes:

- (a) providing all such information, assistance, signed statements or depositions as may be required to facilitate compliance with any civil procedure rules, practice directions and pre-action protocols as may be issued;
- (b) allowing Us to present the best possible defence of a Claim within the time constraints available;
- (c) ensuring ready access to all and any information that We may require in the defence of a Claim or investigation of a loss;
- (d) ensuring the payment, on demand, of the Excess in conjunction with the terms of any settlement agreed by Us.

General Conditions

- (4) If You make any claim for indemnity under this policy knowing the same to be false or fraudulent as regards to the amount or otherwise, this policy shall become void and You shall forfeit all benefit hereunder.
- (5) In connection with any Claim, We may at any time pay You the amount of the Limit of Indemnity (after deduction of any sums already paid as damages or claimant's costs and expenses in respect of such Claim) or any lesser amount for which We believe that such Claim can be settled and thereupon We shall relinquish the control of such Claim and be under no further liability in connection therewith except for costs and expenses incurred prior to the date of such payment and for which We may be responsible under this Section.

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- (6) The Limit of Indemnity and the Excess apply to all of You jointly. If more than one insured is named in the Schedule the total amount We will pay will not exceed the amount We would be liable to pay to any one of You.
- (7) If any settlement is made by Us to You under the terms of this Section, You grant to us all rights of recovery that You would have had against any parties from whom a recovery may be made and You will take all reasonable steps to preserve and not to prejudice such rights.
- (8) A person or company who is not a party to this policy has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this policy but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- (9) This policy is governed by the law of England and Wales and the courts of England and Wales are to have exclusive jurisdiction for hearing and determining any litigation arising out of or in connection with the interpretation of this policy.
- (10) This policy, its endorsements and the Section shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the Section, endorsements or the Schedule shall bear the same meaning wherever it may appear, unless the contrary is indicated.
- (11) You shall not be required to contest any legal proceedings unless a senior barrister (to be mutually agreed upon between You and Us) shall advise that such action has a reasonable prospect of success.

Special Condition

Where there has been non-disclosure or misrepresentation of facts or untrue statements in the Proposal and provided always that You establish to Our reasonable satisfaction that such alleged non-disclosure, misrepresentation of facts or untrue statements were free of any fraudulent conduct or intent to deceive We shall not exercise Our right to avoid this Section.

Where such non-disclosure, misrepresentation or the making of an untrue statement has influenced Our consideration of terms under this Section in that, had we been informed of the true position, We would either have declined the Proposal or offered this insurance on different terms, We shall be entitled to charge an appropriate additional amount so that the total premium paid reflects the premium We would have charged had We known the true position.

However, in any case of a Claim first made against You during the Period of Insurance where:

- (a) You had previous knowledge of the circumstance which might give rise to such Claim
- and
- (b) You should have notified the same under any preceding insurance then where the indemnity or cover under this Section is greater or wider in scope than that to which You would have been entitled under such preceding insurance We will only be liable to afford indemnity to such amount and extent as would have been afforded to You by such preceding insurance.

JLT Professional Risks

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