

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. Cover under this section is given on an each and every claim or loss basis unless otherwise specified.

Special definitions for this section

Advertising or branding	Advertising, branding, including your company name, trading name and any web domain name, publicity or promotion in or of those of your products or services that expressly fall within your business activity .
Applicable courts	The courts of competent jurisdiction in those countries stated as the applicable courts in the schedule.
Business activity	The activities stated in the schedule, which you perform in the course of your business .
Client	Any person or entity with whom you have engaged or contracted to provide services or deliverables that expressly fall within your business activity .
Computer or digital technology	Any programs , computer network, hardware, software, operational technology, internet-connected device, network-connected device, electronic device, information technology, communications system, including but not limited to any internet-of-things devices, email system, intranet, extranet, website or cloud computing services.
Computer or digital technology error	Any negligent act, error or omission by anyone in the: <ol style="list-style-type: none"> 1. creation, handling, entry, modification or maintenance of; or 2. on-going operation, maintenance (including but not limited to installation, upgrading or patching) or development of; any computer or digital technology .
Cyber attack	Any digital attack or interference, whether by a hacker or otherwise, designed to: <ol style="list-style-type: none"> 1. gain access to; 2. extract information from; 3. disrupt access to or the operation of; or 4. cause damage to: any data or computer or digital technology , including but not limited to any: <ol style="list-style-type: none"> a. programs designed to damage, disrupt, extract data from, or gain access to any data or computer or digital technology including, but not limited to, malware, wipers, worms, trojans, rootkits, spyware, dishonest adware, crimeware, ransomware, crypto-jacking and other malicious software or viruses; or b. denial of service attack or distributed denial of service attack.
Defence costs	Costs incurred with our prior written agreement to investigate, settle or defend: <ol style="list-style-type: none"> a. a claim against you; or b. any complaint about you referred to arbitration or an ombudsman.
Hacker	Anyone, including an employee of yours , who gains unauthorised access to or unauthorised use of any: <ol style="list-style-type: none"> 1. computer or digital technology; or 2. data held electronically by you or on your behalf.

Personal data	Any information about an individually identifiable natural person, including any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual, including but not limited to any information protected by the Data Protection Act 2018, General Data Protection Regulation (EU) 2016/679, or any related, similar or successor legislation or regulation in any jurisdiction.
Pollution	Any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
Retroactive date	The date stated as the retroactive date in the schedule.
Social engineering communication	Any request directed to you or someone on your behalf by a person improperly seeking to obtain possession or the transfer to a third-party of virtual currency, money, securities, data or property that such person or third-party is not entitled to.
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

	A.
Claims against you	If during the period of insurance , and as a result of your business activity for a client on or after the retroactive date within the geographical limits , any party brings a claim, including any injunctive proceedings, against you or refers a complaint to arbitration for:
Negligence	a. negligence or breach of a duty of care;
Negligent misstatement	b. negligent misstatement or negligent misrepresentation;
Intellectual property infringement	c. infringement of intellectual property rights including copyright, trademark or moral rights or any act of passing-off;
Breach of confidentiality	d. breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use;
Defamation	e. defamation;
Dishonesty	f. dishonesty of your individual partners, directors or employees, or sub-contractors or outsourcers directly contracted to you and under your supervision; or
Other civil liability	g. 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, including any liability for claimants' legal costs and expenses. 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 , A. Claims against you , which is brought as a result of any 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 , 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.

Avoiding a potential claim against you

- If:
- a. **your client** has reasonable grounds for being dissatisfied with the work **you** have done or which has been done on **your** behalf and 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;
 - b. **your client** threatens to bring a claim against **you** for more than the amount owed and **we** are satisfied that the threatened claim has reasonable prospects of success; and
 - c. **we** believe that it may be possible to settle the dispute with the **client** by **your** agreeing not to press for the disputed amount,

we may, in **our** discretion, pay **you** the amount owed to **you** over and above the **excess**. If **we** do, **you** must agree not to press **your client** for the disputed 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** may pay the amount owed to **you** at that time, over and above the **excess**.

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 stated 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 any payment above, **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 money owed to **you** if the claim or threatened claim, or part of the claim or threatened claim, is not covered by this section.

B.

Advertising claims

If during the **period of insurance**, and as a result of **your advertising or branding** on or after the **retroactive date** within the **geographical limits**, any party brings a claim, including any injunctive proceedings, against **you** for:

1. infringement of copyright or moral rights; or
2. defamation;

unless excluded under **What is not covered** below, **we** will indemnify **you** against the sums **you** have to pay as compensation, including any liability for claimants' legal costs and expenses.

We will also pay **defence costs** but **we** will not pay costs 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 Misdescriptions Act 1991;
- b. the Estate Agents Act 1979;
- 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 agreement 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 tangible document of **yours** which is necessary for the performance of **your business activity** is physically lost, damaged or destroyed while in **your** possession, **we** will pay the reasonable expenses **you** incur with **our** prior written agreement in restoring or replacing it. The most **we** will pay for the total of all such expenses is the relevant amount stated 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 stated 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 stated 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:
Investments	1.	any investment advice, financial advice, investment of client funds or any activity regulated by the Financial Conduct Authority, Prudential Regulation Authority or any other similar or successor regulatory body.
Survey and valuation	2.	any survey of physical property or valuation of physical property for the purpose of a loan or any construction or erection work.
Pension schemes	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.
Taxation and competition	4.	any liability for any breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.
Pollution	5.	pollution.
Cyber incident	6.	or contributed to by, resulting from or in connection with any: <ol style="list-style-type: none"> a. cyber attack; b. hacker; c. social engineering communication; d. any fear or threat of 6.a. to 6.c. above; or e. any action taken in controlling, preventing, suppressing, responding or in any way relating to 6.a. to 6.d. above.
Discrimination and harassment	7.	any discrimination, harassment or unfair treatment, unless arising directly from your breach of a duty of care in the performance of a business activity.
Injury	8.	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.
Land, animals and vehicles	9.	the ownership, possession or use of any land or building, any animal, any aircraft, any watercraft or any motor vehicle.
Property damage	10.	the loss, damage or destruction of any tangible property 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.
Negotiable instruments	11.	the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.
Computer or digital technology error	12.	or contributed to by, resulting from or in connection with any computer or digital technology error.
Directors and officers' liability	13.	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.
Product liability	14.	any supply, manufacture, sale, installation or maintenance of any product.
Defamatory statements	15.	any statement you knew, or ought reasonably to have known, was defamatory at the time of publication.
Deliberate, reckless or dishonest acts	16.	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, A. 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	17. anything, including any actual or alleged shortcoming in your work, likely to lead to a claim against you or your own loss, which you knew or ought reasonably to have known about before we agreed to insure you .
Date recognition	18. date recognition .
War, terrorism and nuclear	19. or contributed to by, resulting from or in connection with any : a. terrorism ; b. war ; c. nuclear risks ; d. fear or threat of 19.a. to 19.c. above; or e. any action taken in controlling preventing, suppressing, responding or in any way relating to 19.a. to 19.d. above. If there is any dispute between you and us over the application of clause 19.a. above, it will be for you to show that the clause does not apply.
Asbestos	20. asbestos risks .
Contractual liability	21. any liability under any contract which is greater than the liability you would have at law without the contract.
Employees	22. anyone's employment with or work for you , or any breach of an obligation owed by you as an employer.
Supplied personnel	23. the work of any personnel supplied by you to a client , unless you have breached a duty of care in supplying them.
Patent/trade secret	24. any infringement, use, or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret.
Infrastructure failure	25. contributed to by, resulting from or in connection with any failure or interruption of service provided by an internet service provider, telecommunications provider, utilities supplier or other infrastructure provider.
Trademarks and false advertising	26. any actual or alleged: a. act of passing-off, unauthorised use of another's trademark, name or logo; or b. false or misleading advertising, in relation to your advertising or branding . 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 .
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.
Trading losses	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, tax liabilities or debts, 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 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 .

Personal data claims

7. any claim or loss relating to the actual or alleged processing, acquisition, storage, destruction, erasure, loss, alteration, disclosure, use of or access to **personal data**.
 However, this does not apply to any covered claim or part of a covered claim made against **you** by a **client** which arises directly from **your** performance of a **business activity** for that **client** and which is not otherwise excluded by **What is not covered, A. 6. Cyber incidents** above. The most we will pay in relation to any such covered claim(s) is the special limit stated in the schedule for personal data claims.

How much we will pay

We will pay up to the limit of indemnity for this section stated 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** stated 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

The most **we** will pay for each item below, unless otherwise stated in the schedule, is a single limit of indemnity, which is an aggregate limit, for the total of all claims (including their **defence costs**) brought against **you** arising from:

Dishonesty

1. the dishonesty of **your** partners, directors, employees, sub-contractors or outsourcers;

Property damage

2. the physical loss or destruction of or damage to tangible property; and

Injury

3. the death, disease or bodily or mental injury of anyone.

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

Personal data claims

The most **we** will pay for the total of all claims or parts of claims against **you** by a **client** including **defence costs**, which arise directly from **your** performance of a **business activity** for that **client** relating to **personal data** is the relevant amount stated in the schedule, which is included within, and not in addition to, the overall limit of indemnity for this section.

You must pay the relevant **excess** stated 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

1. **We** will not make any payment under this section unless **you** notify **us** of the following promptly and 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 anything, including any actual or alleged shortcoming in **your** work, 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**;
 - c. your first awareness of any actual or threatened proceedings against you for breach of a statutory obligation;
 - d. your discovery, or the existence of reasonable grounds for your suspicion, that any partner, director, employee, sub-contractor or outsourcer has acted dishonestly.
2. When dealing with **your client** or a third-party, **you** must not admit that **you** are liable for what has happened or make any offer, deal or payment, unless **you** have **our** prior written agreement. If **you** do, **we** may reduce any payment **we** make under this **policy** by an amount equal to the detriment **we** have suffered as a result.

Control of defence	<p>We have the right, but not the obligation, to take control of and conduct in your name the investigation, settlement or defence of any or any part of a claim.</p> <p>You must give us the information and co-operation which we may reasonably require and take all reasonable steps to defend any claim. You should not do anything which may prejudice our position.</p>
Appointment of legal representation	<p>We have the right, but not the obligation, to select and appoint an adjuster, lawyer or any other appropriate person of our choosing to deal with the claim.</p>
Partially covered claims	<p>We will not pay any part of a claim and its associated costs which is not covered by this section. If a claim is made which is not wholly covered by this section or is brought against you and any other party who is not covered under this section, then at the outset of the claim, we and you agree to use best efforts to determine a fair allocation of covered and non-covered parts of any claim or associated costs, including defence costs on the basis of the relative legal and financial exposures.</p>
Advancement of defence costs	<p>We will pay defence costs covered by this section on an ongoing basis prior to the final resolution of any claim. However, we will not pay any defence costs in connection with any claim or part of a claim which is not covered under this section. You must reimburse us for any defence costs paid where it is determined there is no entitlement under this section.</p>
Payment of full limit of indemnity	<p>We have no further duty to indemnify 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.</p>
Payment of excess	<p>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.</p>
Disputes	<p>For the purposes of Control of defence in this section of the policy, General condition 14, Arbitration, within the General terms and conditions is amended to read as follows:</p> <p>Any dispute as to whether to settle or to continue the defence of a claim or as to the fair allocation of any partially covered claim and its associated costs, will be referred to a single Queen's Counsel (or equivalent in this or any other jurisdiction) to be mutually agreed or in the absence of such agreement to be nominated by the President of the Law Society of England and Wales. The opinion of such Queen's Counsel shall be binding on you and us in relation to matters referred under this clause. The costs of such opinion shall be met by us.</p>