

**A Review on Professional Indemnity Insurance for Quantity Surveyors**

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## **Abstract**

Professional Indemnity Insurance is a risk shifting mechanism popular among the service providers including the delivery of construction related services. One of the guiding principles used for structuring an insurance policy is to ensure adequate indemnity. This research is to appraise various dimensions of Professional Indemnity Insurance (PII) related to the quantity surveying profession with particular emphasis on the Sri Lankan context. A comprehensive literature survey was carried out to recognize the liabilities that inspire policy requirements. A desk review was carried out to identify the deficiencies of the existing PII policies. 15 individual practitioners selected purposively were interviewed to gauge their perception and experience. All responses were considered valid for analysis. A discourse analysis was carried out to understand the themes and patterns in the context under study and draw conclusions. It was found that PII for the QS profession is at its embryonic stage. The study suggests that the uptake of enhanced policies would indeed help in fostering a fully-fledged insurance mechanism for quantity surveyors that is capable of accommodating the rapidly changing and newly added dimensions in the quantity surveying profession.

**Keywords:** Professional indemnity insurance, Quantity surveyor, Professional liabilities, Insurance policy

## **INTRODUCTION**

For decades, it seems there has been an explosion of claims against professional liabilities within the profession where the professionals were held liable to the client and others for failures to perform their obligations in accordance with the standard of care. However, the various approaches have been available to deal with this risk of professional faults and negligence. One of the mitigation measures is Professional Indemnity Insurance (PII) which undertakes to indemnify the damages caused by the faults and negligence of the professionals committed in the ordinary course of his business.

However, when considering the Sri Lankan context, the majority of quantity surveyors did not have any idea as to the extent of their faults and negligence occurred and if any faults would be committed, they did not have adequate knowledge regarding the mitigation measures that could be used to address the effects. Therefore, this study aims to explore the measures available to mitigate

the professional faults and negligence of quantity surveyors with special emphasis on Professional

Indemnity Insurance (PII). Professional Indemnity Insurance is a risk shifting instrument designed to protect disgruntled customers from the negligence of the professionals. In the case of quantity surveying, negligence could be in several forms; mistake in measurements, cost plan, documentation, strategic advice etc. that ends up losing money, time, reputation etc. In construction, architects, engineers and design professionals have been considerably exposed to numerous consequences on building defects, contractual issues and litigation especially when building design issues have been in the spotlight in the construction industry (Harris, 2005). This reason has made Professional Indemnity Insurance become so important to the construction industry. Without insurance, professionals would be vulnerable to indemnity claims from a variety of sources (Jayalath, 2011).

Any professional that renders skilful advice and services to people, can be sued for errors and omissions on their part, the cost of which in some cases can be excessive (Sinha, 2013). However, according to Harris (2005), a few design firms claimed that they do not belong to any professional association and never had a claim during their long establishment. Therefore, they do not think that PI Insurance is necessary. On the other hand, unclear limit of liability gives bad judgments towards the application of PI Insurance as professionals think that they do not need such liability, and instead of paying premium, they would rather 'going bare' or they doubt on what the policies offered by the insurers (Harris, 2005).

There are situations where a business entity suffers loss as a result of negligent act by a professional engaged by the business entity (Meng et al., 2007). In fact, 'going bare' could be distressful for design professionals (Meng et al., 2007). The amount of risk or liability that is covered for an individual or entity by way of insurance services has no definitive answer, either. It depends largely upon the clients' requirements and the context in which insurance is warranted. As such, it is important to investigate the dimensionalities related to Professional Indemnity Insurance (PII) in order to understand the context within which the client's requirements could be fulfilled without fail. The context under discussion is insurance taken in the discharge of quantity surveying services.

## **RESEARCH GAP**

There are a number of research that focused on Professional Indemnity Insurance and their applications in different type of industries, but a few on the construction industry. When this is related to the Sri Lankan context, it is very much of a primeval stage. Hence, it is expected that this study will provide some empirical data to judge upon the extent of PII coverage specifically related to the delivery of quantity surveying consultancy services. There is a need for greater

awareness on the concept and application of Professional Indemnity Insurance, and a greater

emphasis of its use in the construction industry, having understood the strengths of PII as a risk shifting mechanism.

### **AIM AND OBJECTIVES**

The aim of this research is to critically appraise various dimensions related to the Professional Indemnity Insurance as far as applicable in the quantity surveying practice. The objectives are to (1) discuss the scope of liability in the discharge of quantity surveying functions (2) identify the PII as a risk shifting mechanism (3) evaluate the extent of the coverage of PII and, (4) identify the deficiencies in PII policies.

### **LITERATURE SURVEY**

Businesses that offer advice, designs or similar services in a professional capacity are potentially at risk regardless of the size of business (Hussin and Ismail, 2016). Nowadays, suits against professionals have become a trend and it is expanding dramatically. According to Hussin and Ismail (2016) it is a growing problem as the law has become more concerned to those injured due to the professionals' mistakes. The available insurance policies predominantly cover professional negligence, errors and omissions, breach of professional duty and civil liabilities (Jayalath, 2011). These insurances cover professionals' services without fear of being sued by their clients or third parties for problems that occur as a result of their professional activities. Currently, more claims have been directed towards construction professionals for their negligence (Sinha, 2013). Complicated and complex development process, keeping track with the rapid advance in technology and the time pressure for speedy delivery have led to this situation. Table 1 provides literature on different types of liabilities a quantity surveyor would face.

*Table 1: Liability Exposure*

<b>Ref</b>	<b>Previous research</b>	<b>Liabilities</b>
1	Jayalath (2012).	Giving misleading pre-contract estimate.
2	Cheung (1997)	Errors in the bill of quantities. Giving inappropriate advice on contractual matters. Failing to keep the client informed on matters with significant cost implications.

		Breach of duty to monitor or control cost as the work proceeds.
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		Under-estimation during construction. Errors in claim assessment.
3	Gamage (2018)	Failure to take prompt action or response. Failure to inform the client on matters with significant cost implications. Inaccurate determinations in contract price adjustment. Inappropriate advice on selection of contractors/ sub-contractors/ suppliers. Loss of documents or data Mistakes in bid pricing Inaccurate information Fraudulent misrepresentation. Unfair treatment to contractors in tender negotiations Inadequate compliance with standards Incorrect valuation of construction work. Late certifications and non-certifications Bias in negotiations.
4	(Gabriel and Adjei-Kumi, 2007)	Errors in interpretation of standard method of measurement Errors in measuring work in site

### **Professional Indemnity (PI) Insurance as a Risk Shifting Mechanism**

The costs of professional liability is covered by Professional Liability Insurance. In the event of someone is sued due to a professional liability and loses the trial, PII would cover the legal fees. These policies have been designed to cover a specific type of professional liability in different fields. For instance, a doctor may want to get a malpractice insurance in order to cover medical liability. Professional Liability Insurance is also referred to as PII or Fault Liability Insurance in the standard contract of FIDIC (1991). These insurances can transfer part of the risk from a professional to an insurance company (FIDIC, 1991; Wang, 2000; Wang, 2002). Professional liability does not have a tangible carrier, but the connotation of the supervision liability for example is complex. Professional liability can also be called insurance liability. Therefore, it is essential to



have a proper definition of the professional liability when it is applied to the quantity surveyor's

role (Wang, 2000; Wang and Lin, 2003). Construction industry is known for its own complexity and uncertainty where insurance has a pivotal role. As Cantor (2014) highlighted, here are different types of insurances available in the construction industry (Table 2).

*Table 2: Types of Insurance Used in the Construction Industry.*

<b>Types of insurance</b>	<b>Description</b>
Collateral warranty	Legally binding agreement which is ancillary to a separate contractual agreement between two parties and which imposes an extended duty of care and a broader liability to those parties
Contract works insurance	Policy that covers all risks involved in a construction project which commonly issued under the joint names of a contractor and a principal client
Directors and officers insurance	Protects directors' and officers' company due to the claim made towards their wrongdoings
Employer's liability insurance	Helps in paying compensation if employees injured or becomes ill due to their work done for the employer
Flood insurance	Insures home owners for the flood related insurance claims
Integrated project insurance	Insures client and all his alliance partners, replaces liability driven PII with financial loss cover where the outturn cost above the target cost plus pain-share is insured
Latent defects insurance	Provides cover for new buildings if there are any latent defects appear with a condition of breach of contract is proven
Legal expenses insurance	Can be insured either via specific policy or as a section of a combined policy to insure against cost of defending legal action
Legal indemnity insurance	Provides recompense if the policy holder faces capital loss or expense while dealing with a range of possible legal issues
Office combined/contents/buildings insurance	Safeguard business owners' assets against damage or theft
Performance bond	Insures clients against contractors' failure to fulfil contractual obligations

Professional indemnity	Covers the proven negligence act did by the service provider
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insurance	
Public liability insurance	Provides covers usually for contractors towards personnel injury, or loss or damage to property of third parties
Residual value insurance	Underwrites valuations of assets at the date of termination of a lease or other type of financing arrangement
Terrorism insurance	Can be obtained on a standalone basis or as an addition to a conventional building or commercial combined policy.

Source: (Cantor, 2014)

Design Guarantee Bond is seen to be more effective than any Collateral Design Warranties, or PII (Singh, 2009). It is because of the tangible and easily enforceable remedy towards employers. Other than that, PII is well-known for its high premium. As described by Wright (2004), the rationale of the extremely high premium rates and the withdrawal of cover in some cases are due to the claims by the injured at work sites besides the extensive professional indemnity claims. PII is expensive and unless the services that the professionals provide involving design responsibility and relevant contractual provisions, they have no alternatives other than insurance (Johnson and Dracoulis 2007).

According to Soni (2013), PII provides a safeguard when a business has to pay to cover legal costs or mistakes for whichever error made during the work period. According to Sheridan (2008) it was identified that clients' requirements influence the concerns of insuring for PI Insurance by the consultants, as well as the level of PI Insurance cover they hold. It is paramount that the consideration towards PII is made in the retirement in addition to verify the status of historic liability (CQI, 2016). Moreover, PII can also come in handy when claims were made by dissatisfied client towards the consultant even when the insured has done nothing wrong, in such cases the PII will cover the defence cost to protect the Insured (Zaborowski, 2013). As Wolman (2016) mentioned, the reputation is important to the success of an engineering consultancy's business, since it entirely on trust. The business' longevity is based on the robust product and reliable service which could get the contribution of professional to provide the necessary funds and pay for the necessary parties to solve the issue at hand. Negligence is an action or omission of an action that could endanger the life, health, properties, morals or comfort of the public (Gutierrez et. al., 2013). Defective work is a consequence of design negligence which can also be reflected as a negligent act, even though it arises during or after the construction period of a project.



Besides, any loss of action can be identified as a need of insuring for PII as there will be a lot of time taken when such claims are made. Another aspect is peace of mind. The engineer is holding an extremely huge responsibility when a business is run him. Although a business has never experienced a claim situation before, there are still a lot that taken in to account. It is a wise choice of having the right amount of protection for an unexpected issue that can turn the situation upside down. But it could be prevented and run without worrying much on claims that could be made against them (Soni, 2013).

### **Limitations of Professional Indemnity Insurance**

The extent of coverage related to Quantity Surveying Indemnity Insurance can influence the outcome. The premium of PII can be identified as the main issue where the rationale of the extremely high premium rates and the withdrawal of cover in some cases are due to the claims by the injured employees at work besides the extensive professional indemnity claims nowadays. Similarly, Johnson and Dracoulis (2007) claimed, professionals do not have any other options even though PII is expensive. Other than the premium issue, common conditions and exclusions listed within the contract are difficult towards insurer, as an insured party will only be indemnified where the defective design results form an act or omission which is covered by the policy wording where these policies' frequent terms are "failure to exercise reasonable care" or negligence, errors or omissions and in case of, PII excludes cover for "fitness for purpose" obligations and might still no cover breaches of contractual terms which impose a better duty than the law of negligence (Johnson & Dracoulis, 2007).

Despite that, every policy encompasses a limit of indemnity, sometimes cited because the limit of liability or perhaps sum insured, which is that the amount cover available (Earp, 2006). Whenever a cover is on an aggregate basis, the limit of indemnity is that the maximum amount available to fulfill any single claim which implies it is also the amount available to fulfill the overall of all claims notified within the period of insurance. Professional Liability Insurance coverage is restricted to the normal standard of care which implies that designers cannot make any guarantees or claims beyond what is normal within the industry, and still be covered (Zimmerman, 2010). However, design professionals' cannot release from their responsibilities at the retirement which implies that even after they have stopped the career; it is possible that an action could be brought against them for a negligent act within the designs or actions in previous years. Therefore, run-off cover protects design professionals for the identical risks that the PII policy protects them against the amount of time they purchase run-off cover. Besides, it provides cover for the potential

incidents which have happened but are yet to be reported (Vero, 2012). However, it will not cover

them for any work performed after the original policy expires.

PII generally does not cover the “fitness for purpose” obligations and might as well cover no breaches of contractual terms which impose a higher duty than the law of negligence (Johnson & Dracoulis, 2007). Every policy has a limit of indemnity called limit of liability (Earp, 2006). The limit of indemnity is the maximum amount available to meet any single claim whenever a cover is on an aggregate basis. PII coverage is limited to the ordinary standard of care (Zimmerman, 2010). Deductible is also one of the issues in PII. It is a policy condition which requires the insured to pay a portion of loss whenever a claim is made (PAM, 2015). In the event of a claim is made, engineers would normally pay legal expenses up to the deductible as per in the agreement. But in some policies, legal defence costs have been excluded from the deductibles. There are zero deductible policies too. But they are more expensive. Therefore it is necessary to identify whether the cause of the loss is negligence in the mandating of the technique for the performance of the work (Johnson & Dracoulis, 2007). Any failure to notify in accordance with the policy conditions may entitle the insurer to decline a claim besides the insurers may be entitled to cancel the policy if the failure to notify a pre-renewal claim or a circumstance occurs after the policy has been renewed (Paterson, 2014).

### **Deficiencies in the Policies**

Desk research refers to secondary data or that which can be collected without fieldwork. Therefore, the information provided by customers can be used most effectively in the further process of research as it is the most precise and useful. Figure 1 interprets 8 attributes identified in the literature survey, which need to be addressed in the PII policy proposal. By analysing 40 policy proposals, it was found that some attributes like “Exclusions” are included in all the proposals. Some attributes had a minimum consideration in their policies. For example, only 25% of the analysed proposals had included the “Minimum deductible”. The below pie chart indicates the percentages representing how main attributes have been considered in policy proposals.



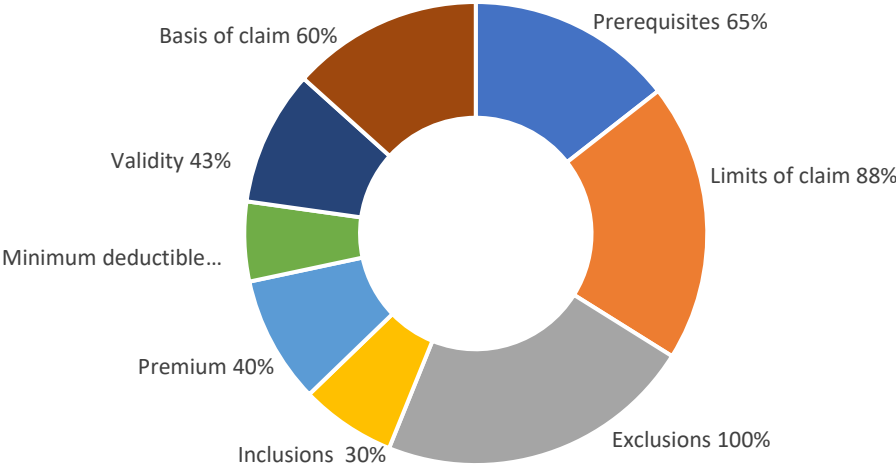


Figure 1: The percentages of the main attributes in PII policy documents.

## RESEARCH METHODOLOGY

Overall research methodology is illustrated in Figure 2 and 3 which involves both secondary (Literature Review / Desk Survey) and primary data collection.

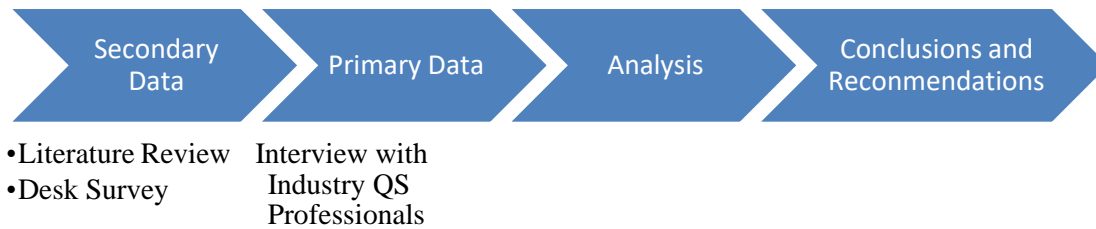


Figure 2: Research Design.

A literature survey was undertaken to identify the scope of liability in the discharge of the quantity surveying functions and PII as a risk shifting mechanism available globally in the construction industry. A desk review was carried out on the existing PII policies in Sri Lanka to identify the characteristics and coverage. An interview guideline was developed with the use of findings of the literature survey and desk review.

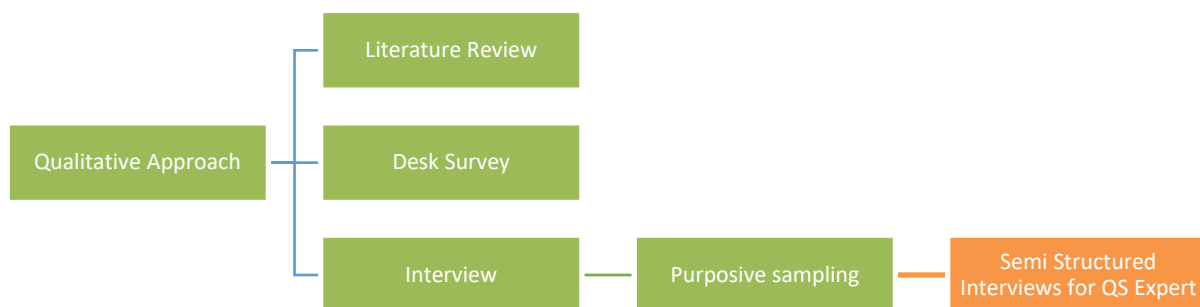


Figure 3: Data collection.

For the purpose of interview, construction professionals were selected using the purposive sampling method. Interviews helped gather information on their exposure to PII mechanism and practical problems experiencing in the current policies especially in delivering consultancy services. Their professional background is quantity surveying in different capacities in both private and public sector projects (Table 3).



Table 3: Interviewee Profile

Designation of Respondents	Years of Experience			
	10 to 15	15 to 20	20 to 25	More than 25
Director	0	1	1	2
Construction Manager	0	0	0	0
Project Manger	1	0	1	0
General Manager	0	1	0	0
Chief Q.S	3	1	1	3
<i>Total Responses</i>	<i>04</i>	<i>03</i>	<i>03</i>	<i>05</i>
<i>Rate of Response</i>	<b><i>100%</i></b>			

A kind of discourse analysis was carried out to identify the meaning and patterns of the context in which the research was conducted. Hence, qualitative and interpretive method of analysing texts was adopted in this study. Interpretations were given on both of the details of the material itself and contextual knowledge.

## RESULTS AND DISCUSSION

Insurance is usually seen as a risk transfer medium. Its importance is frequently recognized only after a major loss. Any QS proposer who wishes to obtain an insurance cover is given a Proposal Form for completion at the first step and the specific proposer should complete the proposal by divulging all true details and interpretations or any material facts which could mislead the Insurer should not be stated at the Proposal Form. As submitting of materials facts which are interpreted will lead Insurer to cancel the Insurance Policy or declined the liability in the event of any loss/damage claimed by the Insured. Table 4 provides a comparison against 8 attributes as the key findings of this research.

*Table 4: Mapping of Findings during the Research Process*

<b>Ref</b>	<b>Dimensionality</b>	<b>Literature Survey</b>	<b>Desk Review</b>	<b>Interview</b>
<b>1</b>	<b>Prerequisite</b>	Professional membership	Financial Capacity	Academic Qualification
			Experience	Professional Qualifications
<b>2</b>	<b>Limits of claim</b>		Not exceeding the sum stated in the “per event” or “aggregate limit”	
<b>3</b>	<b>Exclusions</b>	Libel or slander	Beyond the scope of professional service under domestic legislations, ethical codes and rules	
		Dishonest, fraudulent, illegal and malicious acts of Insured s Directors/ Partners	Pure financial loss	
		Loss of money of securities by Theft or misappropriation by Insured’s employees	Financial lost resulting from exceeding cost estimate and time limits.	
		Insolvency of the Insured/Predecessors in business	Cost of revising and redesigning.	
		Insured intentionally causing or facilitating the progress of claim	Loss of documents.	
		Illegal act or breach of any legislation	Neglect, error or omission by the	

			Insurance or in	
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			providing financial or advice on financial matters.	
<b>4</b>	<b>Inclusions</b>	Breach of duty	Legally liable payment under, Breach of duty, negligent act, error or omission, during the policy period and within the territory.	
		Professional Negligence		
<b>5</b>	<b>Premium</b>	Considerably high	Depends on the liability coverage requirements and claim limits.	Considerably high
<b>6</b>	<b>Minimum deductible</b>	Stated in the policy deductible schedule	All the cost and expenses incurred by the Insurer investigating and defending the claim.	Stated in the policy deductible schedule.
			Exceeded amounts in Insured' deductible stated in the schedule	
<b>7</b>	<b>Validity</b>	Within the insurance period	Within the insurance period + post liability period	Within the insurance period
<b>8</b>	<b>Basis of claim</b>	Contractual liability	Contractual liability and Legal liability	Contractual liability and Legal liability



## **CONCLUSIONS**

It was found that there is no Professional Indemnity Insurance policy exclusively dedicated for Quantity Surveying practice though it is a distinct discipline arising its own liabilities. Quantity Surveyors are also issued the similar insurance policies which are issued to Engineers and Architects. Interests on the services of quantity surveying are at a low profile with the insurers. However, opportunities have been extended to obtain insurance on personal basis or on single project basis during the working period and another six months. In conclusion,

1. The professional responsibilities of the quantity surveyor are currently spread over a wide range of functions because of the project complexity, technical usage, and multi-task management.
2. Even though PII is one of the popular risk shifting methods in the world, it seems Sri Lanka has some setbacks in terms of their implementation.
3. At present, the PII coverage of the quantity surveyor does not fully satisfy its needs. Most of the time it is merely a documentation requirement. The lack of flexibility to adapt the proposals according to the requirements and misconception in the quantity surveyor's field regarding the PII premium has caused gradual diminution for the usage of PII.
4. Providing sufficient knowledge about the main eight attributes seems essential at the initial stage of PII application, but most of the proposals are deficient in this respect.
5. Covering the liabilities specific to a quantity surveyor with a general cover is the reason for many disagreements. For example, cost estimating being one of the functions of quantity surveying has been an exclusion.
6. In case of changes in the requirements, most of the local insurance companies work within the framework of their international re-insurance company is one of the major obstacles to obtaining a cover that is in need.
7. There is a need to raise awareness on premium. It is time insurance companies revisited their policy accommodating the rapidly changing and newly added dimensions in the quantity surveying profession.

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