

Out On Our Own

SECTION EDITOR



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Editorial

Dear readers,

To be a freelancer, you must factor in many elements to run a personal business. A topic that has raised discussion over the years I've been chair of the Freelance Business Group is whether a freelancer needs Professional Indemnity Insurance (PII) or not. In this issue,

Sara Rubio and Lucia Messi are discussing just that after they both came across the demand from a potential client to set up a PII. Unsure of what was available and the reasons why they needed one, they went into research mode. With their research and asking the EMWA LinkedIn group and attendees of the Freelance Business Forum in November 2021, here, they present their

findings, not to give a definitive answer but to let you all know what information is available on this topic. Many thanks to both of them for bringing this together. I hope it helps those faced with a similar situation.

Happy reading.

Laura A. Kehoe

Professional indemnity insurance: One of the many dilemmas of freelance medical writers

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Sooner or later in their professional journey, freelance medical writers (MWs) may be confronted with the decision of whether or not to obtain professional indemnity insurance (PII). We believe no blanket recommendation can (or should) be conveyed regarding this topic due to the many factors to consider and the variability from one freelance MW's circumstances to another's. We personally encountered the dilemma of whether we needed PII or not in 2021 upon a request by a potential client. After conducting some research, we realised this is a complex topic that is recurrently discussed among the freelance MW community.^{1,2} We, therefore, asked EMWA members to complete a short survey both on the EMWA LinkedIn group and during the November 2021 EMWA Freelance Business Forum (FBF) to gauge the current opinion among the community and to spark some debate around it. Here, we share the pooled results of these polls, some key discussion points from the FBF and beyond, and extra details/resources that we hope are useful to the community. We are by no means experts

on PII or other insurance/legal aspects, so please keep that in mind while reading this article and consult the appropriate experts if you need advice regarding PII. Of course, the survey header indicated that the questions were related to PII, so there may be a response bias as people with PII may be more inclined to respond. However, we wanted to share these general results with the community to inform those of what other freelance MWs are doing regarding this topic.

What is PII, and why would a freelance MW want to have it?

In general terms, PII is a commercial insurance that covers against claims from clients or third parties due to potential negligence, errors, breaches of contractual terms, and alike committed by a business (including freelancers) during the course of their professional activity. Below we present some reasons for/against having PII.

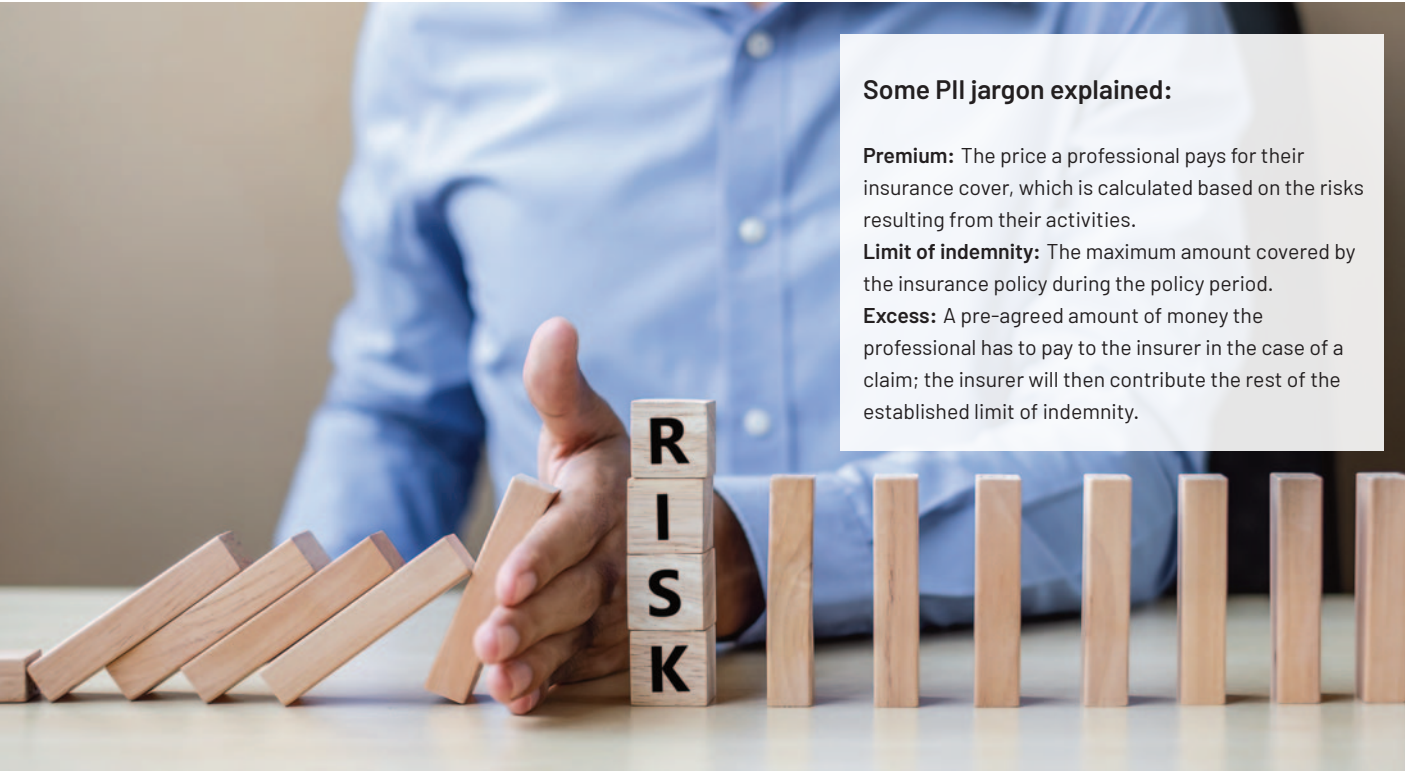
Reasons for having PII:

1. In some countries, it may be required so a person can be recognised as a professional MW and, thus, be able to perform the job.
2. It may be contractually required by some clients to engage in a collaboration with the freelance MW.
3. It provides protection to the freelancer, especially against financial risks and time lost from work.
4. It gives peace of mind to both the freelancer and their clients.

5. It might be seen by some as a sign of professionalism/marketing tool to attract new clients.

Reasons against having PII:

1. Its benefits may not be fully relevant to all freelance MWs (PIIs in the market are often not specific for our profession, plus activities and risks greatly vary from one MW to another).
2. Some freelance MWs argue they do not need PII as they shall not be held liable for the final content of the documents they work on.
3. Some insurance companies have difficulties understanding the day-to-day job of a MW and their potential risks and insurance needs, which might make the PII purchase process more difficult.
4. Policy clauses and jargon may be complex for non-experts and often require some research or advice before purchase, which may put some people off.
5. It is a structural cost that may be considerable in the long term.



Some PII jargon explained:

Premium: The price a professional pays for their insurance cover, which is calculated based on the risks resulting from their activities.

Limit of indemnity: The maximum amount covered by the insurance policy during the policy period.

Excess: A pre-agreed amount of money the professional has to pay to the insurer in the case of a claim; the insurer will then contribute the rest of the established limit of indemnity.

Pooled results of the surveys and key discussion points

Question 1. Do you have PII in place?

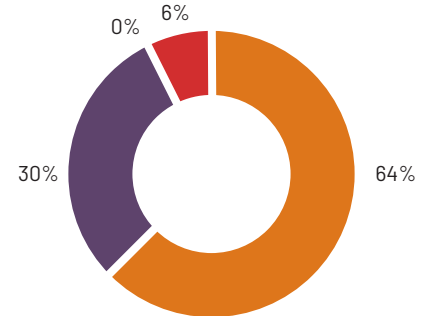


Among the interviewed professionals, there was a 1:1 distribution between MWs who have PII and those who do not.

Discussion points

- There is clearly no unanimous consensus on the topic.
- Among freelance MWs who do not have PII, some have never been asked to carry insurance, while others prefer to only engage in insurance-free collaborations.
- During the FBF discussion, it emerged that having PII in place seems to be a common practice among freelance medical translators.
- The percentage of freelance MWs with PII is slightly higher than the 43% reported among MedComms freelancers in a survey published in 2014.³

Question 2. What would you do if your new client agreement states that you must have a PII cover, but you do not have one?



Most of the interviewed freelance MWs would prefer to put PII in place rather than negotiating the removal of such clause from the agreement.

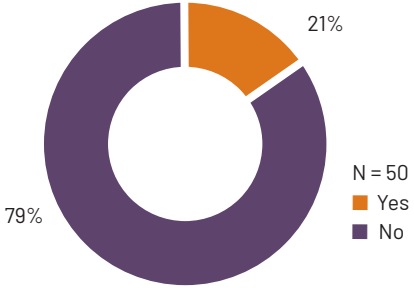
Discussion points

- One potential reason to explain these results is that refusing to get PII might mean losing the prospective business (some of the interviewees already experienced that).
- Not all clients require PII. The interviewed

freelance MWs often found this requirement coming from large clients, especially those based in the United Kingdom (e.g., contract research organisations [CROs] and MedComms agencies), or from publicly funded organisms in the US, which tend to enforce that all contractors are insured for legal reasons.

- Some clients seem to be rather flexible in finding alternative ways to work with freelancers who do not have PII and may even be willing to remove such clause from the contract (see next question).

Question 3. Have you ever asked a client to remove the PII requirement from the collaboration agreement?

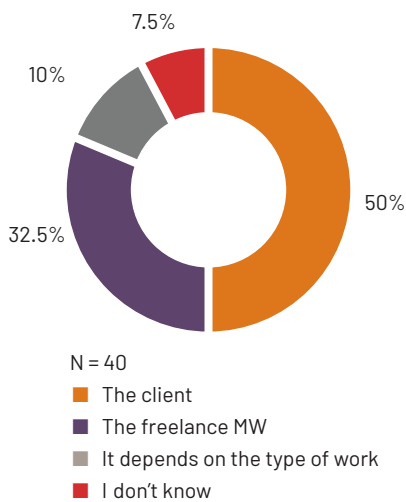


Only a minority of freelancers have asked a potential client to remove the PII requirement from the contract.

Discussion points

- Even after asking the client, removal of the PII requirement may not be possible due to legal reasons. For instance, a prospective client of a freelancer may hold a PII themselves and may be contractually required by their end client (e.g., a pharma company) that any subcontractors are also insured, to guarantee that any work is performed under appropriate cover.
- The plausibility of such a request may depend on who is considered responsible for the final document (see next question).

Question 4. Who is responsible and liable for the final content?



Half of the interviewed freelance MWs consider their client responsible for the final content of the document.

Discussion points

- Some freelance MWs argue that they do not need PII and they shall not be held liable for the final content of the documents they work on because:
 - Freelance MWs do not usually sign off on the final document
 - The final document is usually the result of a shared effort involving a team of MWs, data checkers, editors, and expert reviewers
 - Most of the time, the freelance MW does not even see the end product.
- Some situations might expose MWs to a higher responsibility, visibility, and consequent risk of exposure to legal action such as:
 - Authoring clinical study protocols, reports, or other documents
 - Acting in a consultant capacity or offering

professional expert advice to a client who does not have any expertise in the area of interest

- Being acknowledged in published articles, according to Good Publication Practice (GPP 2022) guidelines.
- Of note, a separate question on the poll showed that none of the interviewed freelance MWs have ever faced a claim. This result may make us question the real risk faced; however, we should apply some caution here because anyone who faced a claim is likely not to share that information to safeguard their reputation.

Conclusion

The need for PII continues to be a debated topic among the freelance community. In many cases, freelance MWs can perform their business activities regardless of whether they have PII or not, which means taking PII is a choice rather than an obligation. Therefore, we believe there is no blanket recommendation on whether freelance MWs should take PII. This will most likely depend on the circumstances of the business, the nature and risks of services provided, or the requirements imposed by clients, among other factors. In any case, it is worth dedicating some time to fully understand a PII policy, including the fine print, to decide whether the cover suits the particular needs of a freelancer. On a final note, we would like to acknowledge that data in this article should be taken lightly as the sample size of these polls ($N \leq 50$) is small if one considers the amount of freelance MWs in Europe, and responses may be slightly biased. However, we wanted to share what we gathered from our EMWA freelance community hoping that other peers find it useful.

Acknowledgements

A special thanks to Laura Kehoe for the opportunity to present about PII during the November 2021 EMWA FBF, and to write this article. We are also grateful to everyone who participated in the polls and/or discussions about PII.

Disclaimers

The opinions expressed in this article are the authors' own and not necessarily shared by EMWA.

The authors of this article are not experts in the insurance/legal field. Therefore, they cannot provide any advice on the topic and do not intend to convey definite opinions.

This article summarises key points from discussions that took place during the November

2021 FBF, live and remote discussions among freelance colleagues, and materials available online. For these reasons, not all sentences have been referenced but the additional consulted online materials have been included in the "further reading" section.

Conflict of interest

Lucia Massi and Sara Rubio are both freelance medical writers and declare no disclosures or conflicts of interest related to this piece.

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Further reading

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