



Calm before the storm?

While speculation continues that current levels of insurance premiums probably cannot be sustainable for more than another year at most, the UK's leading law firms have continued to take advantage of the availability of cover at relatively low cost to increase indemnity limits and obtain additional types of insurance.

This is the fifth Legal Risk annual Professional Indemnity Survey of Top 100 firms in the United Kingdom. The report shows the increasing focus on partner asset protection. We have reviewed the trends over five years, and also examined the position in the top 30 firms.

We know from our advisory work for the larger firms that there are only a small handful now without a dedicated risk management team. Increased focus from regulators, enhanced by rule 5 of the Solicitors' Code of Conduct 2007 which requires firms to make arrangements for the effective management of risk, can only increase the trend.

This survey, as in previous years, is independent and is not influenced by the involvement of any insurer or broker in its preparation.

Once again there was a significant increase in the number of responses, particularly among the larger firms, which has enabled us to provide separate commentary on the top 30 firms.

This year's survey made further enquiries about other types of law firm insurance cover as well as asking about the professional indemnity renewal process which firms went through in 2007. We also asked about business continuity planning, another issue covered by rule 5 of the Solicitors' Code of Conduct 2007, and how firms deal with potential US liabilities.

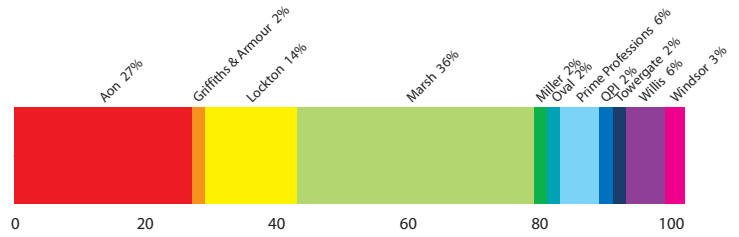
Choice of Broker

Who is your broker?

Once again, there were significant numbers changing broker with 14 per cent doing so, though the number changing was still less than the previous high of nearly one in five in 2004.

Marsh kept their lead of 36 per cent while Aon moved into second place with 27 per cent, up from 19 per cent last year. Lockton meanwhile slipped back to third with 14 per cent.

Note: total is over 100% due to roundings.



Top 30

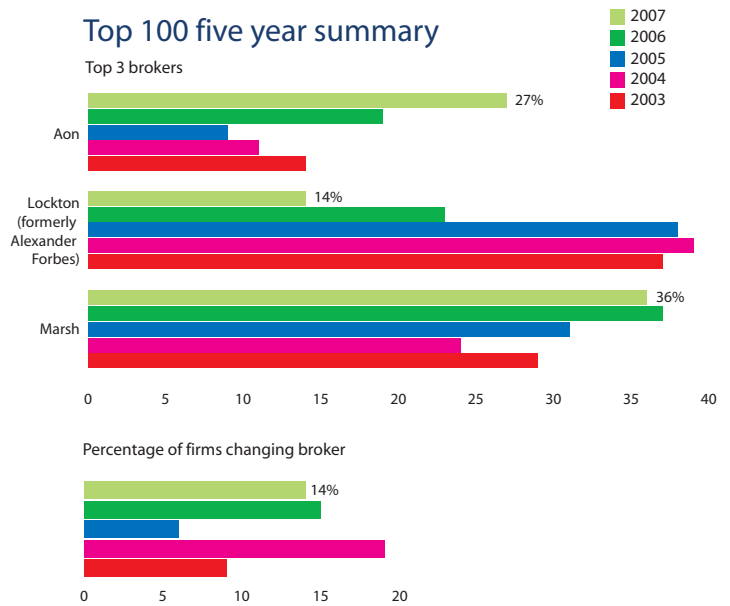
The position in the top 30 is rather different, with Aon showing a dominant position at 50 per cent, followed by Marsh at 32 per cent. Lockton are in third place with 9 per cent. 5 per cent changed broker this time.

Top 100 five year summary

There have been significant changes over the past five years, with Marsh moving from second place to top in 2006, and Aon finally overtaking Lockton (previously Alexander Forbes), who led for the first three years, to take second position overall.

Over the past five years there has been a steady flow of firms changing brokers. Only three firms responding to our surveys over the full five year period have changed broker twice; individual brokers changing firm have played a part in this.

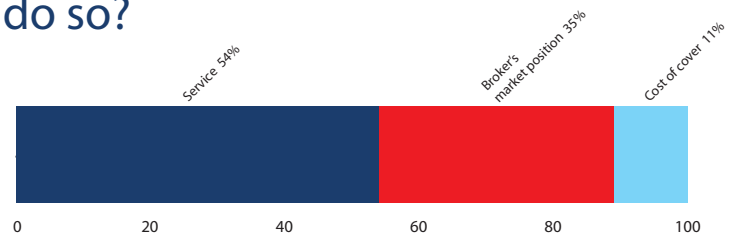
Top 100 five year summary



If you changed broker, why did you do so?

54 per cent cited service as the reason, 35 per cent the broker's market position, 11 per cent the cost of cover. Only three per cent pay the broker by commission.

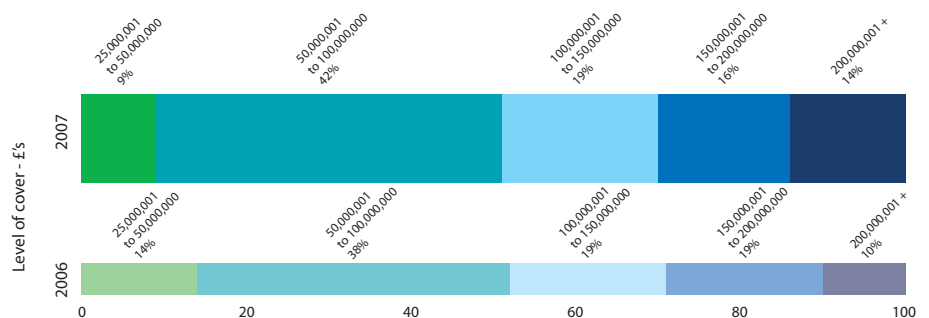
Note: One firm changing broker did not respond to this question.



Cover

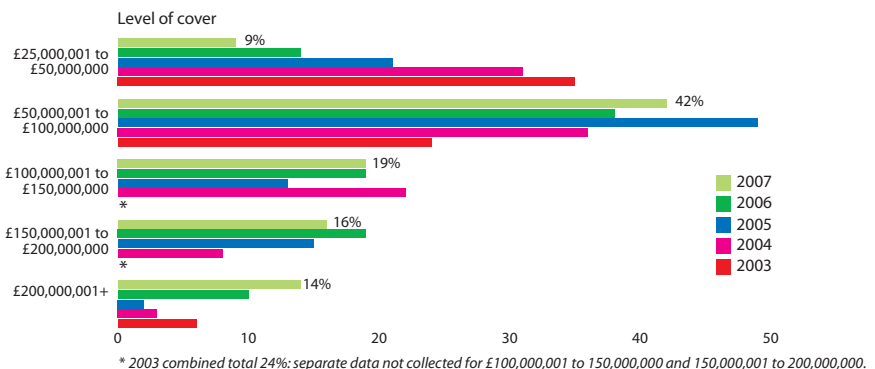
How much cover did you obtain?

Once again many firms have been buying more cover, with 25 per cent doing so. The continued soft market has made this affordable. The results show an increase in firms buying over £200 million from ten per cent last year to 14 per cent this year, though that is in part influenced by the increased number of responses from top 20 firms – up from 11 last year to 16 this year: all but one of the firms buying this level of cover is in the top 20.



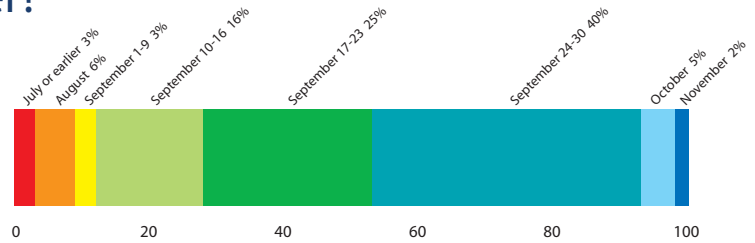
Top 100 five year summary

There has been a significant shift over the five years: only nine per cent of respondents now have £50,000,000 or less cover. During the period, the policy wording on aggregation of claims changed, increasing the likelihood of multiple claims being subject to one policy limit, which may have caused many firms to increase cover in 2004, as shown in the results of our 2005 survey.



When did you finalise this year's cover?

As last year, two thirds renewed in the last two weeks, though the last week was down from 45 per cent last year to 40 per cent this year. The general lack of firms changing insurers once again suggests that shopping around was generally with a view to negotiating the best deal with existing insurers in a highly competitive market – the total paid by the profession for primary cover in England and Wales was at its lowest level since 2003. The firms which finalised their renewal after September included two Scottish firms for whom the renewal date is 1 November, and two English firms.



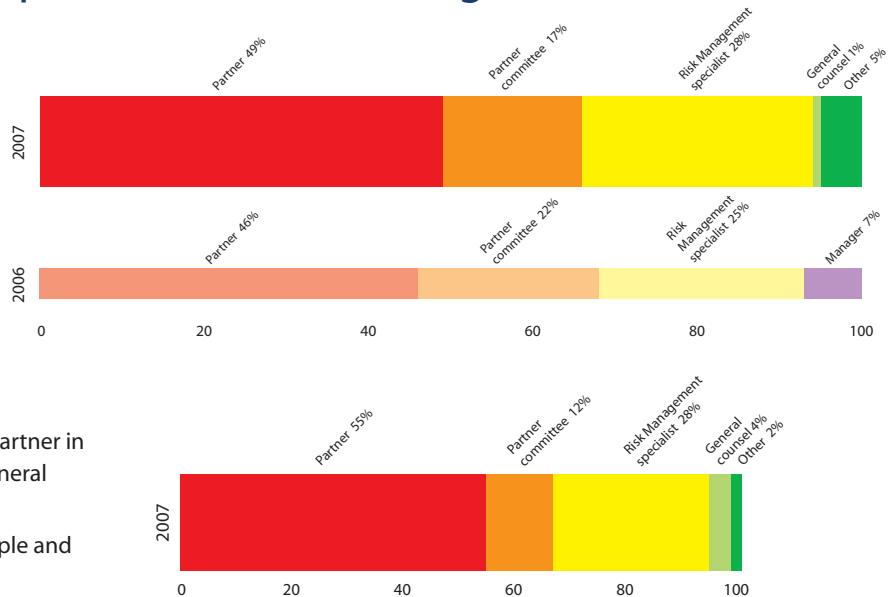
The top 30 were not markedly different from the overall position: 52 per cent renewed in the last two weeks of September.

Systems

Who is responsible for risk management?

We know from our work with many of the firms concerned that attention to risk management has moved up the partnership agenda, the need heightened by the requirements in rule 5 of the Solicitors' Code of Conduct 2007 and increased regulatory action by the Solicitors Regulation Authority.

Partners continue to maintain responsibility in this important area.



Top 30

The position here was similar with 55 per cent having a partner in charge, 12 per cent partner committee and 4 per cent general counsel.

We are beginning to see firms follow the American example and appoint general counsel.

Note: The total in the table is 101 per cent due to roundings.

Business continuity plan

This was a new question this time, prompted partly by the requirements of rule 5 of the Solicitors' Code of Conduct 2007 to make provision for the continuation of the practice in the event of emergencies but also by the increased attention which firms are giving to the issue as a matter of good practice. Clients are increasingly asking about plans, and those supplying volume services for consumers may be subject to stringent contractual requirements which may contain onerous financial provisions in the event of non-compliance.

76 per cent of those responding have a final plan, 24 per cent have a

draft plan; one firm did not respond.

An important aspect of any business continuity plan is whether it has been tested. We asked whether the plans had been tested in the last 12 months. Only 51 firms out of 64 responded to this question suggesting that some may be coy about the extent to which their plans are developed, though we do know that one firm which did not respond had in fact invoked its plan out of necessity and with a successful outcome. Of those who replied to this question, 55 per cent had tested their plans, 43 per cent had not. One respondent which had a final plan replied 'not applicable'.

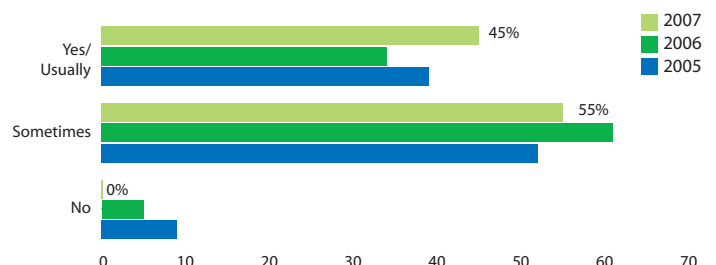
Top 30

21 firms replied to this question out of 22 respondents. 81 per cent had a final plan, and 19 per cent a draft. Only 16 firms replied to the question whether it had been tested – 50 per cent had done tests.

Do you limit liability contractually?

This is the first time that every firm responding has stated that it limits liability contractually at least some of the time – a far cry from the 20 per cent found by the City of London Law Society's survey in 1999.

It is the third year we have asked about this issue and the number routinely limiting liability has risen from 39 per cent to 45 per cent. We know from our experience of advising a number of these firms on their terms of engagement that limitation of liability clauses are becoming more sophisticated and involve more than a simple liability cap.



As we commented last time, we doubt many firms limit liability 100 per cent of the time, even ignoring any issues on the provisions relating to contentious business in section 60 (5) of the Solicitors Act 1974, though going forwards this restriction has been amended by the (rather

confused) provisions of the Legal Services Act 2007. It is another area where more detailed questioning might reveal rather more but we have had to take account of the limits which may be imposed on respondents' time.

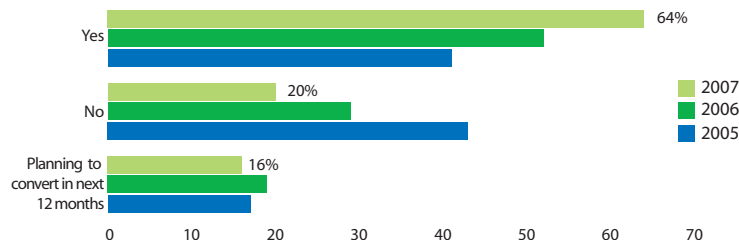
Top 30

Of the top 30 firms responding, 41 per cent responded 'Usually' and 59 per cent 'Sometimes'.

Do you have Limited Liability Partnership status?

While Limited Liability Partnership (LLP) status does not protect the firm itself from claims, and some partners may need reminding that it is not a risk management strategy in itself, it is a valuable step in protecting partner assets.

Conversion continues to gain ground with only 20 per cent not already converted nor seeking to convert. Again, while we know of the occasional exception where firms have cited perceived cultural reasons for not converting, we suspect that those who have not converted are in the main unable to do so at present for accounting reasons, particularly retired partner annuities.



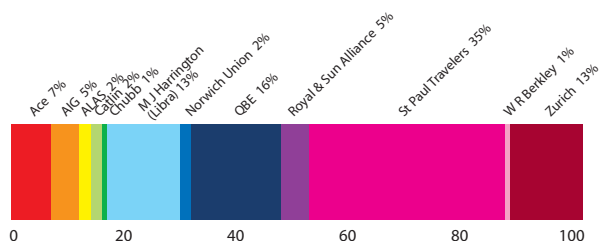
Top 30

Even more firms in the top 30 have converted – 68 per cent with a further 18 per cent planning to convert in the next 12 months.

Choice of Insurer

Who is the insurer of your primary layer?

St Paul Travelers (now rebranded as 'Travelers') remains the dominant force among the larger firms with a slight increase on last year among firms responding – up from 33 per cent to 35 per cent. Although this might appear in part to be due to the increased response this year from top 30 firms, two firms who changed insurer did so to St Paul Travelers. QBE came second as last year with Zurich and M J Harrington (Libra) joint third.

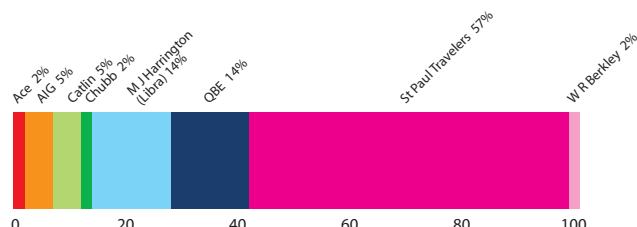


Note: total is 102 per cent due to roundings.

Top 30

The market for top 30 firms is rather less diverse and St Paul Travelers dominate even more with 57 per cent of the firms responding. QBE and M J Harrington (Libra) came joint second followed by AIG and Catlin.

Note: total is 101 per cent due to roundings.

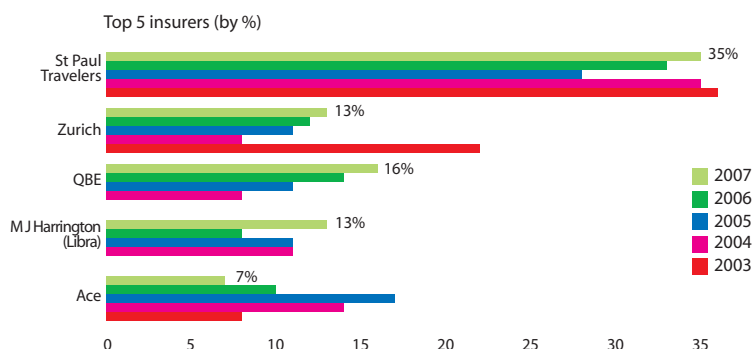


Top 100 five year summary

St Paul Travelers have remained the market leader in the top 100 throughout the past five years of our surveys, even though they have reduced their market share for solicitors overall, perhaps consistent with a focus on firms more likely to have sound risk management.

QBE have held second place for the last two years while ACE have slipped back from second place in 2004 and 2005 to fifth place this year.

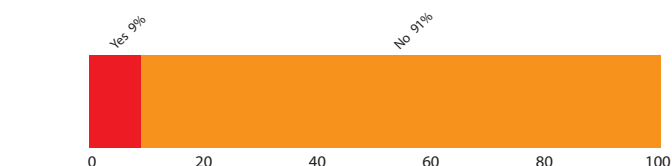
Zurich have maintained a strong presence – in second place for the past two years, but they do not insure any firms in the top 30 at present.



Did you change insurer this time?

9 per cent changed insurer this year – the highest proportion since 2004. Of these, two changed to AIG who increased their share in the top 100 from two per cent to five per cent, two to St Paul Travelers, one to QBE and one to Zurich. These included one top 30 firm which changed to St Paul Travelers. Half the firms who changed insurer were those who also changed brokers.

Of the firms responding to our survey over the five years, only three have



changed insurer twice. Large firms tend to recognise the heightened risk of policy coverage disputes involved in changing insurer in our experience; they also recognise the value of loyalty and relationships, both with underwriters and claims teams.

Key points from the survey –

1. All respondents now limit liability contractually at least some of the time.
2. 14 per cent changed brokers: Marsh retained the lead but Aon have half the top 30.
3. 9 per cent changed insurer: St Paul Travelers have 35 per cent overall and 57 per cent of the top 30.

Other Insurance

Do you have any of the following insurance?

We asked firms about a number of additional forms of cover, two which we asked about last year and two more this year.

Last year was the first time we asked about 'Lifeboat' policies to protect the residual personal liabilities of members of Limited Liability Partnerships (LLPs). The name 'Lifeboat' was first used by St Paul Travelers but the terminology is commonly used in referring to other providers' products too. These are policies which, with some variations in approach and detail, protect members of LLPs from residual personal liability.

Partly fuelled by the increased number of LLP conversions, and partly by increased awareness, the number of firms with Lifeboat policies has increased slightly from 14 per cent to 16 per cent this year.

Top 30

The top 30 showed more interest in buying these additional forms of cover, with more than twice the take up of Lifeboat and Management Liability cover. We were slightly surprised that one top 10 firm which had Lifeboat cover last year did not do so this year.

Managing risk with American clients

We asked, for the first time, 'If you advise clients who are based or are substantially owned/controlled in the USA or Canada, do you implement any additional risk management controls?'

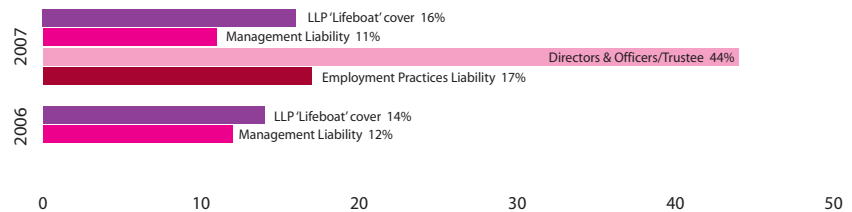
Our reasons for asking were growing concern at the exposure of firms to these liabilities, fuelled by a variety of factors, including investment by clients into UK companies and increased interest in transatlantic mergers. Inward investment by clients has resulted in at least one major claim in the US courts for a UK firm with no overseas offices. Transatlantic mergers raise the spectre of insurance arrangements rather different from those to which UK law firm partners are accustomed: they may find that they have rather less scope of cover once they are insured under a global programme, as partners in one firm we advised discovered with some concern.

One concern we had when we prepared the survey was the case of **Stoneridge v Scientific Atlanta** which could have increased the risk for professional firms of accessory liability in securities fraud cases. The appeal to the Supreme Court has since been dismissed. However, this does not mean an end to concern about US liabilities. We believe

Notes on data

We invited the top 100 UK law firms to respond. 64 replied across the spectrum from magic circle to the smaller firms, including 22 of the top 30. Where charts contain data for more than one year, references to a given year refer to the data we collected in that year and which is contained in the following year's survey. Data for the 2006 year, for example, is contained in our 2007 survey.

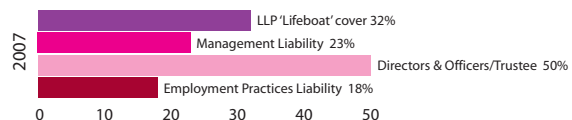
Frank Maher, Sue Mawdsley and Francis Dingwall © Legal Risk, solicitors www.legalrisk.co.uk



Management liability policies protect the management of the partnership or LLP from liability incurred in that capacity; there was a slight reduction from 12 per cent to 11 per cent. Again, there was little overlap - 6 per cent had this and Lifeboat, against 4 per cent last year.

This year we also asked about Directors and Officers/Trustee liability cover and found that 44 per cent of firms purchased it.

Our final question on types of cover was for Employment Practices Liability which was bought by 17 per cent of respondents.



there are still many concerns, even for firms with no overseas practice but who may face claims by investors in other circumstances. The wide extra-territorial activity by the US Department of Justice may also find non-US advisers caught up in investigations in a variety of cases, including, for example, alleged bribery or price-fixing.

10 per cent of firms indicated that they apply additional risk management controls, 48 per cent did not, and 43 per cent said this was not applicable. It is of course possible that firms which do not take additional measures are satisfied that the risk management they have in place is already sufficiently effective to deal with these additional risks. We do query however, with reason for doing so, whether larger firms with corporate clients who may have US investment can safely assume that the risk is in fact 'not applicable' when the tentacles of globalisation are reaching ever more parts of commercial life.

Among top 30 firms, 14 per cent implement additional controls, 68 per cent do not, and only 18 per cent regarded it as 'not applicable'.

Risk Management Law for Lawyers

- Legal Risk are practising solicitors specialising in risk management and related issues – as lawyers, we understand the pressures our clients in the sector face
- We have advised many top 100 UK law firms and many other leading firms worldwide
- We have a growing international expertise; 20 per cent of our practice is from outside the UK
- Our wide and varied law firm client base enables us to provide benchmarking throughout the legal sector
- We provide legal advice on risk management issues from our specialist knowledge of regulatory compliance issues and deep understanding of professional indemnity insurance.
- Our track record of 25 years' experience in handling professional indemnity claims, and 5 years dedicated specialisation in risk management helps us provide truly practical and informed advice on the Code of Conduct and other areas of regulatory compliance
- Our clients include many leading insurers and Law Societies
- We provide the e-learning content for risk management and anti-money laundering courses used by most of the largest firms
- Legal Risk help law firms and their insurers save money and reputations
- Legal Risk is recognised within the legal sector and is recommended in the Legal 500

Our services

Risk Management

- Professional negligence claims prevention advice
- Assessment of law firms' risk exposures
- Advising on, and setting up, risk management systems for lawyers
- Contractual issues, including limiting liability
- Protection of partner assets
- Review and auditing of risk management systems
- Cross border issues

Regulatory Compliance

- Professional Conduct issues
- Code of Conduct advice
- Avoiding and managing conflicts of interests
- Anti Money Laundering
- Disciplinary, including representation in tribunals

Partnership

- Structuring firms, and drafting Agreements
- Partnership dispute resolution
- Risk management issues on creation, merger and dissolution

Professional Indemnity

- Defending claims
- Policy coverage issues
- Strategies for obtaining improved terms of cover
- Successor Practice issues

Training

- Risk management
- Anti-money laundering
- Professional conduct



Legal Risk partners - Frank Maher (front), Sue Mawdsley and Francis Dingwall (standing)



Recommended in the 2007 edition for defendant professional indemnity



Risk Management in the Legal Profession 2nd Ed

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