

A risky business

Frank Maher considers how to avoid a repeat of this year's PII fiasco

Unprecedented difficulties faced many firms during this season's round of insurance renewal. Yes, they were mainly small firms, but some larger firms had problems too, and it may not be long before even large international firms start feeling the pressure too.

We need to be wary of assuming there is one single cause or one simple answer. Many have latched on to a single issue as being the cause, or a single solution as being the answer. The single renewal date is a problem, and in should be reviewed, but it is not the sole cause.

If a typical small firm does conveyancing, pays a premium of, say, £25,000, has one claim per year, and the average lender claim costs, say, £50,000, it is not hard to see why an insurer might not find the proposition attractive, even though the firm is well run, and its claims record is better than average. The example is hypothetical, but illustrates the problem.

Insurers can only realistically make money from small firms if they have a large scheme for small firms, but they risk catching a large cold if it goes wrong, and recessions breed lender claims, as we saw in the nineties. Then the only option may be for a whole book of business to be moved to a new insurer, leaving the previous insurer nursing the problem, which is largely what happened this time for the small firms.

Most risks are insurable if the terms are right, but the problem for law firms is that the compulsory "minimum terms and conditions" are not right from the perspective of insurers. Problems can usually be sorted by, for example, large excesses, but because the minimum terms require insurers to pay the excess if the firm does not pay, and the small firms' covenant is not strong enough, the smaller firms will be at risk of becoming uninsurable sooner rather than later.

As a profession, we offer financial security (through insurance and the compensation fund), far in excess of any other profession and financial institutions, but it may be at a price we cannot afford for much longer. The cover provided by the

Financial Services Compensation Scheme in many cases is risible by comparison, despite recent changes. Automatic run-off cover for six years, even if the premium is unpaid, is another cause of difficulty.

Unattractive features

A further unattractive feature from an insurer's perspective is the complete prohibition on avoiding the policy or claims, even in the event of fraud; the reimbursement provision in the policy does not give insurers sufficient redress in the worst cases. Cover for collapsing banks and loss of client account is potentially a disproportionate feature of cover; although perhaps less concerning than it appeared a year ago, the recent collapse of a Dutch bank shows the problem has not completely gone away. This year, the Law Society of Ireland has had to reduce both the breadth and level of compulsory cover to meet challenges such as these.

For large firms, their turn may come, perhaps sooner than they realise, and they may discover the problems the large accountants have faced. Pension claim fall-out from the *Barber* decision, tax planning under challenge from a cash-

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starved government, commercial property fraud, possible fall-out from securitisation of residential mortgages—the terms of which may be subject to severe challenge from insurers of small firms—and mergers and acquisitions which have turned out to be bad deals, are all building up a head of steam, not only in the UK but on the continent, where claims against law firms have traditionally been almost non-existent.

Some of the firms which suffered problems this time, but not the majority, deserved to be caught out. They had been too busy making money in the good

times to supervise their staff. Poor conveyancing practice by unqualified staff with no supervision was a major cause of problems. Equally, however, there were firms with no claims experience who could not obtain cover either.

Some insurers' premiums were artificially low in previous years, and the substantial increases those insurers imposed this time were merely redressing the situation, hence routine rises of 50% experienced by many firms.

Single provider

Could a Son-of-SIF be the solution? As a single provider, it would probably not be acceptable, and as a qualifying insurer, alongside the rest of the market, experience in Ireland suggests it may not be viable.

The single renewal date may have served us well, but it poses a high risk for the profession, particularly if an insurer were to

collapse in the month before renewal, and it may well be past its sell-by date. We cannot force insurers to be interested in our business, when they have their own businesses and shareholders to protect. Perhaps it is time to revisit the breadth of cover and ask whether it is still sustainable. **NLJ**

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