

Avoiding the Balva trap

Was Balva an accident waiting to happen, asks **Frank Maher**



Balva—a name which will cause trepidation among members of the 1,300 law firms—one in eight of the profession—who insured with them.

There is no suggestion that they are insolvent. But then equally, what reassurance is available? The unaudited fourth quarter accounts for 2012 will not, on their own (if at all), provide that assurance.

As the English section of Balva's website states: "Activities of Balva have not stayed unnoticed by international professional organisations." The Financial Conduct Authority register notes: "The Latvian regulator has prohibited this firm from writing any new business in the UK, effective 1 March 2013." It is not clear when this note was added, but it first appears to have come to the attention of the press around 12 April 2013, a worrying time lapse.

A secure future?

Now, it is entirely possible that the measures taken by the Latvian authorities will secure Balva's future, but it will require a degree of faith from policyholders to come to that conclusion. It is not just a question of whether they will continue in business until the end of the policy year on 30 September. Firms will have notified, and in future be notifying, circumstances which may give rise to claims. Those claims may not come through for years, and may take many more years to resolve before payment is required.

In addition, the state of the economy and the commercial pressures on law firms

from the Jackson reforms, legal aid cuts, the referral ban and lack of conveyancing will force many to close their doors before the next renewal. If they do so without any successor practice, they will have to fall back on run-off insurance for six years from 1 October 2013. Firms which are insured with Balva will have to obtain their run-off insurance from Balva too, upon payment of an additional premium. They may wonder if it is money well spent, but they are almost certainly contractually bound to pay it.

“It was a case of going with an unrated insurer, or going out of business and taking out run-off cover”

Why choose Balva?

So why did so many firms choose Balva, despite Law Society warnings of the dangers of using unrated insurers, reinforced by the recent failures of Quinn and most recently, in September 2012, Lemma? Provisional figures for the renewal, which took place on 1 October 2013, show that 12.504% of the profession's total premiums of £239,300,522 were paid to unrated insurers.

Some were no doubt tempted by costs savings and decided to take their chance. However, I suspect that many did so because they had a claims history which

meant that they had no real choice—it was a case of going with an unrated insurer, or going out of business and taking out run-off cover. It is right to observe that as ratings are applied for and paid for by the insurers, it does not follow that an unrated insurer is unsafe, but it makes it harder for buyers to satisfy themselves as to their financial strength. Independent, another insurer of solicitors, was AA rated immediately prior to its collapse in June 2001.

I have advised many firms who had claims problems and have seen a number who were simply unable to obtain cover from rated insurers. Many of these involved rogue partners or employees with multiple lender claims. While the recent case of *McManus Seddon Runhams v European Risk Insurance Company* [2013] EWHC 18 (Ch) is undoubtedly very helpful in providing some justification for “laundry list” notifications in such circumstances, it is not the complete answer. Insurers from whom a firm seeks cover subsequently will still be concerned that the notification may be incomplete.

How to improve the situation?

So how might things be improved? There is always a challenge, if not an impossible hurdle, in seeking to protect the public. There is little protection for the public when solicitors are insured with an insolvent insurer. I am advising firms with Lemma policies whose turnover exceeding £1m means that they have no protection from the Financial Services Compensation Scheme, and the problems are real. Even if they did have protection, the scheme only covers 90% of claims, and there are other potential pitfalls too.

We have to accept that there is no perfect solution. However, I do believe that if the firm could provide the Solicitors Regulation Authority with assurance as to the extent of laundry listing which had been done in the circumstances I have described, involving multiple potential claims from rogue partner or employee X, there would be more prospect of obtaining cover if a waiver permitted another, rated, insurer to offer cover on terms which excluded claims arising from the activities of X. That might mean some claims were uninsured, but in practice they would be more likely to be claims by lenders. Under the current system, it is the entire client base of a firm which is at risk. An imperfect solution, maybe, but it might help.

NLJ



Frank Maher is a practising solicitor and partner in Legal Risk LLP, specialising in advising law firms, insurers and regulators on professional indemnity and compliance.