

The PII countdown begins (Pt 1)



Professional indemnity insurance: Frank Maher casts an expert eye over what to expect

With approximately 90 per cent of the profession still renewing its professional indemnity insurance (PII) on 1 October 2015, we look at what to expect and what to look out for. This is the first of three articles—the second of these will look at problem cases, and the third will look at the implications of possible changes in compulsory cover. In this article, we look at market conditions and the factors to consider on renewal.

Top of the agenda is that insurers have been hit by large claims arising from bank scams, and at least two of the larger ones will be asking specific questions on firms' training and controls. All staff need training, not just accounts staff. By way of example, questions are being asked about what controls you have put in place to combat internal and external frauds and scams. Firms are being asked for details of training, including to whom it is provided and how often, and about your firm's systems and procedures. What should firms look for when renewing? There are several factors to consider.

Claims handling

This is really what you are buying, and you need to know what you can expect for your money. The writer's experience of acting for firms with coverage disputes and of auditing claims files shows that there is a wide variation in the quality of claims handling both by insurers themselves and by the panel solicitors whom they appoint. We have heard of firms which were victims of bank scams having problems obtaining indemnity

from non-mainstream insurers who did not understand that these were covered under the Minimum Terms and Conditions.

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Larger firms may have some say in the choice of panel firm, but generally small firms will not. Will the panel firm be one which really understands, and has experience, of solicitors' PII claims? They are different from other professions' PII claims, because they are more dependent on the expertise of the panel firm due to the low incidence of admissibility of solicitor expert evidence.

Security

No less important, is the question of security. Use of unrated insurers has diminished considerably. First, many firms had their fingers burned by the collapse of one or more of Quinn, Lemma, Balva and ERIC, and some were let down by Berliner's belated discovery that it was not authorised to insure solicitors in England & Wales. Having acted for firms facing uninsured

claims, the writer can say that it is a deeply unpleasant position to be in, though it does not of course follow that unrated insurers will inevitably fail, nor that rated insurers will never fail. A rating does, however, provide some external validation and a degree of comfort.

The move from unrated to rated insurers was also fuelled by availability of cover from new entrants, and because many firms found that they had to have rated cover to remain on lenders' panels.

Continuity matters

Continuity of cover is also an important consideration. In practical terms, it reduces the risk of problems in the event of non-disclosure of circumstances or material facts (even if as a matter of strict law it makes no difference). However, some insurers are exiting the solicitors' market, so some will have no choice but to look elsewhere. The impact will probably be felt more by smaller firms and those with dependency on conveyancing.

Even when insurers are staying in the market, some firms have to change insurer, either because of cost or relationship issues, and this can happen in particular where the firm has a problem claims history. Care is needed and we look at this in the next article.

Although the general view is that the renewal is likely to be benign and most firms will see little change from last year, inevitably some insurers are looking for increases, particularly for large firms as there have been some large claims in that sector. There is some talk too of new entrants to the market, but the writer doubts these will have a significant impact.

An important point to consider is how much cover the firm should buy. One cannot assume that the minimum cover is sufficient just because the firm only does low value work: the writer has defended a £3 million claim arising from a £25,000 property purchase, and there is also the risk of multiple claims from similar causes being treated as one claim with one policy limit—under the “aggregation clause”.

For all but the simplest risks, there is value in having—and paying a fee for—the advice of a broker experienced in solicitors' PII. While the number of brokers offering schemes tied to particular insurers means that contacting more than one broker is almost inevitable, good quality professional advice may save its own cost

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