

The professional indemnity merry-go-round starts again

An early start and a good choice of broker are key to a smooth renewal process, writes **Frank Maher**



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Most firms will now be turning their thoughts to their annual professional indemnity insurance (PII) renewal. This article looks at the process: what you can expect, some topical hotspots and other aspects to consider, and some additional thoughts for firms with difficulties.

Brokers

First, there is the process itself: expect the usual deluge of proposal forms and telephone calls, some from established brokers who know what they are doing, but quite a few too from non-mainstream players. Solicitors' PII is highly specialised, and much as the chap round the corner may do a very good job on your office insurance, there is no substitute for truly specialised advice on PII from someone who knows the market and knows what particular insurers are concerned about. You would not instruct even the best criminal lawyer to do your conveyancing, and the same applies here. Failure to appreciate that has cost some firms dear.

Equally, you should not instruct multiple brokers to represent you. I advised one firm which had failed to take that point on board. They had a particularly difficult claims history, mainly down to successor practice liability for a firm they had acquired, and faced a severe challenge obtaining any quotation at

all. But they made things far worse by instructing multiple brokers. When they finally instructed a broker with particular expertise in resolving difficult cases, they found that many insurers were not interested in discussing the case with him because they had already been approached by other brokers, who had painted a poor picture of the firm with insufficient attention to the good work they were doing to put things right.

That said, there are several schemes with brokers tied to particular insurers, so it is inevitable that firms which are shopping around will have to approach more than one broker. But take professional advice first. It is worth paying a fee for a good broker who truly knows the market, in all but the simplest of cases.

Insurers

For most firms, there may only be a choice of about four insurers.

Not all insurers are created equal, as has been graphically illustrated by the collapse of Quinn, Lemma, Balva, and ERIC. I have acted for a number of firms which found themselves uninsured as a consequence and the resultant grief is not something which many would wish to experience. However, for many firms at the time, there may have been little choice – other than to cease

practising. Some did change from rated insurance to unrated just to save a few pounds, and they must surely have lived to regret that.

It is not, of course, a given that unrated insurers will fail, nor even that rated insurers will not fail (as Independent did), but the independent assessment provided by a rating agency is an important factor to consider.

The claims handling is also important. This applies equally to the insurers' own claims team and the panel solicitors whom they retain. Some have vast experience of solicitors' claims; others do not. I have audited many firms' files and the variation in quality and knowledge of solicitors' claims is significant.

The policy

Read it! Some contain non-standard provisions, such as requirements for additional information when notifying circumstances which may give rise to claims, and failure to comply may cause coverage disputes – whether rightly or wrongly is not the point.

You should also note the cost of run-off insurance, which will be stated in the policy. You may not be planning on closure, but who knows what is round the next corner? You may even need run-off cover because of a merger, which is unforeseen at the beginning of the policy year.

Some firms took out 18-month or other non-standard-length policies when it first became permissible to do so, but about 90 per cent of the profession seems to have stayed with the 1 October renewal date, and even some of those who took out 18-month policies then renewed for a further 18 months, bringing them back to 1 October. The more time you can purchase at the same price and based on the current claims history, the better.

The proposal

It is essential that firms complete the proposal form accurately. Many firms only ask partners or fee earners about claims and circumstances. But proposal forms generally contain warranties that you have asked all staff. So, ask all staff, in writing. It is good practice to do this more frequently than annually, too, as you are almost invariably required to notify circumstances promptly (or similar wording).

Disclosure of material facts is critical. This might include a Solicitors Regulation Authority (SRA) forensic investigation, or any planned changes. Note, too, that you will generally be required to notify anything which has arisen after the proposal form was completed.

Hotspots and claims trends

The biggest hotspot has to be bank scams, with common ringing firms, purportedly from the bank,

and persuading staff to provide information and codes, including those generated by card readers. These have resulted in significant claims on insurance, though some of the less experienced insurers have yet to appreciate that such claims are covered under the SRA minimum terms and conditions, which has caused unnecessary problems for the firms concerned.

As a consequence of this, at least two of the larger insurers will be asking what steps firms have taken to avoid such claims through systems and training. Training – for all staff, not just accounts staff – can be online or face to face, but do not be deluded into thinking that circulating a memorandum or email constitutes training: it does not, and it will only go in the pile with the rest of the unread internal circulars.

Lender claims are showing signs of diminishing from the 2009/10 peak, as would be expected with the passing of six years since the global financial crisis. However, there are still far too many claims around which exhibit the same causes as the claims which emptied out the coffers of the Solicitors Indemnity Fund in the 1990s, particularly basic breaches, such as failing to inform lenders of prior transactions in the previous six months and price adjustments such as allowances and fittings included in the cost. Supervision is frequently inadequate in these cases.

In the lead-up to last October's renewal, I saw many more cases than in the past involving unauthorised (and hence illegal) collective investment schemes. Examples were hotel and student lets, not to mention wine, ostriches, and other esoteric investments. In the main, these were from firms block notifying circumstances rather than claims.

Problem cases

While the renewal is not expected to be difficult for most firms, that is scant consolation for those who do have a problem. They need a good broker (as discussed above). They also need to consider what steps they can take to improve their presentation. This might include, for example, block notification of circumstances – however, this requires specialist advice, as it has to be done properly and tie in with the policy wording and insurance law, may involve the exercise of professional judgement on how far to go, and may come with strings attached, possibly causing friction with your current insurer or even triggering an SRA investigation. Some insurers find an independent review of the firm useful in problem cases.

It is important to see your relationship with insurers as a partnership, and your choice of broker is critical to that relationship. Start early on in your renewal process, particularly if you foresee problems. **SJ**



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