

RISK FOCUS

LEGAL PRACTICES GROUP BULLETIN APRIL 2018

SRA proposals for PII reform: are there any winners?



Welcome to the latest news bulletin from the Legal Practices Group at JLT Specialty. In this issue, we focus on the recent Professional Indemnity Insurance (PII) consultation issued on the 23rd March 2018 by the Solicitors Regulation Authority (SRA).

This consultation is extremely important to firms of solicitors in England and Wales. Regardless of your size and profile, we strongly recommend you should fully engage and understand the implications of

the proposed changes suggested by the SRA.

JLT represents well over 1,000 firms of solicitors in England and Wales. Our clients range from sole practitioners, high street firms, larger city and national firms and practices with a global footprint.

During the last few years, we have collated significant amounts of data focused on PII claims and the various risks faced by the profession. It is our team's knowledge and experience

supported by this data that places us in a strong position to offer informed guidance and advice to our clients and other affected stakeholders.

We are delighted that Frank Maher of Legal Risk LLP has agreed to provide us with his thoughts and observations on this latest SRA Consultation. Frank is a leading lawyer specialising in law firm risk and professional indemnity insurance and is highly respected by the insurance community and the legal profession.

On 23 March 2018 the Solicitors Regulation Authority (SRA) published its renewed attempt to reduce the level and scope of compulsory professional indemnity insurance (PII) cover required for solicitors in England and Wales under the SRA Minimum Terms and Conditions 2013.

For many years, the profession has enjoyed what is probably the widest cover of any profession in the world, and benefitted from the bulk buying power generated by approximately £250m of annual premiums.

At present LLPs, limited companies and Alternative Business Structures (ABSs) are required to have £3m cover and partnerships and sole practitioners £2m.

In 2014, the SRA consulted on reducing cover to £500,000 with significant reductions in scope of cover. Despite much opposition, the SRA applied to the Legal Services Board (LSB) for approval of its proposals for reform. These were largely rejected, broadly on the basis that the SRA had not submitted sufficient evidence in support.

The SRA then obtained ten years' claims data for 2004-2014 from insurers, published on 19 October 2016. They said that the data demonstrated that

98 per cent of claims would be covered if the limit were reduced to £580,000. Although the data was obtained from 90 per cent of insurers still in the market, and provided some information on the work types giving rise to claims, it could never properly be relied on as a basis for determining the level of cover which is appropriate, because it did not include data from many insurers who had left the market or become insolvent.

By definition, many of these insurers had left the market or become insolvent in no small measure because of their adverse claims experience insuring solicitors - the very insurers which might be expected to have the largest claims. Those which became insolvent were Quinn (2,911 firms insured), Lemma (590), Balva (1,500), ERIC (number unknown) and Enterprise (43), so the numbers are not insubstantial.

The SRA claims data largely predates the emergence of cyber claims; according to the SRA's Risk Outlook 2017/18, by way of illustration (as there are no complete figures for losses), from the first quarter of 2016 to the end of the first quarter of 2017, solicitors reported over £12m of client money stolen by cyber criminals, though one may query whether this figure represents the full picture.

The Law Society published a response to the claims data identifying its limitations.

The SRA's new consultation in many ways follows the 2014 document, again proposing a reduction to £500,000, but £1m for conveyancing claims. Curiously, it says 98 per cent of claims would fall within a £500,000 limit - whereas their own previous figure based on the same data was £580,000, which the writer understands is due to rounding of percentage points, but nonetheless demonstrates that the premise on which the proposals are based is flawed.

Other important proposals for change are the exclusion of claims by financial institutions from compulsory MTC cover - which would exclude not only lenders but also, for example, legal expenses and other insurers. The SRA also proposes reducing run-off cover to an aggregate of £1.5m or £3m for conveyancing claims.

The SRA believes that reform would reduce premiums by 5-10 per cent and that this would in some way encourage new entrants to the profession in the form of ABSs.

It is quite possible that firms which have only ever done criminal work or immigration and are not successor



practice to a firm which has done other work types might see a small reduction in premiums, though insurers doubtless factor their low claims exposure into their pricing models in any event. However, there is little evidence of new ABSs seeking to join the profession in order to practise in crime or immigration. Few others would benefit, but many would lose out for reasons which follow.

First, the proposals will require firms, as at present, to 'take out and maintain professional indemnity insurance that provides adequate and appropriate cover in respect of current or past practice...' On the basis of the SRA's own data, most firms will have to buy more cover, albeit this may be on terms less beneficial than the MTC. Minimum premiums mean that any saving from the reduction in MTC cover will probably be outweighed by additional premiums to cover the difference between the proposed £500,000/£1m (conveyancing) and the current £3/2m limits.

The SRA has advised in its consultation paper on the Insurance Distribution Directive that firms doing conveyancing, probate or personal injury will generally have cover of €1,250,000 with an aggregate of €1,850,000. The number of firms which might conceivably benefit from a reduction is therefore already reducing.

Lenders already commonly exclude sole practitioners from their panels, and may well exclude many firms other than the largest because of lack of certainty of protection. As well as harming conveyancing firms, this may also harm consumers who may either have reduced choice of solicitors, or have to pay for separate representation of the lender as well as their own solicitors.

There will inevitably be more coverage issues, for example under the aggregation provisions (under which multiple claims may be subject to a single policy limit), or because of allegations of misrepresentation or

non-disclosure. This in turn will force firms to seek their own legal advice on coverage.

At present, where there is a dispute between insurers, there is provision for one insurer to defend a claim and resolve the dispute by arbitration later. The benefit of this will be substantially reduced by lower limits, which may affect large firms as well as small ones.

Retirement will become more expensive because current levels of cover will not be available for a single one-off premium. Even firms which are taken over by a successor practice will probably want to take out run-off cover, because they have no assurance of adequate protection under the successor's policy.

At present, solicitors are prohibited from limiting liability below the compulsory minimum of £2/3m, yet because of the 'claims made' basis of PII, their assets may be at risk if compulsory cover is reduced.

It is not possible to say that one only does low value work and therefore needs less cover: the writer's experience has included the defence of a £3m conveyancing claim from a £25,000 purchase, and a multimillion pound claim from the £2,000 settlement of a personal injury claim. There is no way of knowing which claimants will randomly find their claims are not covered, damaging the reputation of the profession in the process.

The proposals will benefit very few indeed. Those who oppose the change should make their views known before the consultation closes on 15 June 2018.



Frank Maher is a practising solicitor and partner in Legal Risk LLP, specialising in professional regulation and professional indemnity insurance. www.legalrisk.co.uk

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JLT's Legal Practices Group, a leader in Professional Indemnity insurance, is one of the most experienced and largest specialist teams in the UK, with over 40 legal insurance specialists. Headquartered in London with 9 offices across the UK, JLT's Legal Practices Group represents over 1,000 firms ranging from sole practitioners and firms in the high street to larger city and international practices with a global footprint

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We trust you have found this bulletin to be of interest.

The next few weeks are an important period for solicitors in England and Wales. The proposed changes to PII will touch all firms to a greater or lesser degree. Understanding how the proposed changes will affect your firm is important.

If the profession does not respond to this consultation in greater numbers than the 2014 consultation, the profession could end up sleepwalking into a PII nightmare.

Mr Maher raises many good points. In particular, the fact that the data relied upon for SRA's recommendations ignores the claim data of insurers that have left the market will lead some to think the data is misleading or invalid.

The Legal Practices Group at JLT is here to help.

We understand the need to review the current compulsory PII arrangements. Although we recognise that one size does

not necessarily fit all, the current arrangements provide uniform cover that is clear for the consumer to understand.

The changes proposed could cause an enormous headache for consumers and those charged with arranging the PII for their firms. Furthermore, the proposed savings may not materialise.

Through discussion with various stakeholders including our clients, insurers and other brokers, we are aware of a feeling of bewilderment as to the SRA's motivation behind the proposed changes.

We will continue to inform the profession as best we can about how we see the potential effects of the proposed changes. Are they using a sledgehammer to crack a nut? The cost of PII could be significantly cut if the number of PII claims reduced. We believe that further improvement of the professions' management of risk and compliance is the key and should be the priority.



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