



Professional

INSURANCE BROKERS

Solicitors' PII: The Rollercoaster Since Demutualisation In 2000



Insurance for your reputation



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Kevin McParland, MFL Professional's Managing Director, looks back at the ups and downs in the 7 years since solicitors' PII was demutualised, plus he summarises what the future could hold.

It might be useful to recap why the profession demutualised its professional indemnity insurance arrangements in 2000 and instead purchased cover in the commercial insurance market.

We were led to believe that the reasons were numerous and complex, but in reality there were just two main ones:-

- It was expected that the open market would bring competition and thus produce better deals for the profession;
- It was considered that the mutual Solicitors' Indemnity Fund was being overly subsidised by the larger practices. In round terms, it was believed that small practices claimed £2 for every £1 of premium they paid: the commercial insurance market would impose discipline.

The question of competition

So far as the question of competition is concerned, most of the insurance market disgraced itself with its lack of underwriting discipline, particularly from 2000 to 2007 and into 2008. Premiums were at near suicidally low levels. The profession never had it so good and most of it never will again.

On the question of subsidisation by the large practices, the playing field may initially have levelled a little but in reality the situation hardly changed until 2007/8, albeit that the distortions were less obvious: while insurers were obliged to declare their premium returns to the Assigned Risk Pool (ARP), they were not obliged to declare the related claims figures.

Certainly, prior to 2008, the insurance market had either been in denial about the losses being incurred or chose not to make the details public.

After 2008, the market-place became stormy for the profession and the full force of the gale was felt by the smaller practices, both in substantial premium hikes and in lack of available capacity.

Astonishingly, there still are insurers, some of them new to the market, which continue to believe they can resist the forces of nature by offering cover at premiums that are below cost price.

Although the pain suffered by the small practices has been considerable (sufficient to put many firms out of business) it has not been as severe as it might have been, due to the emergence of yet more (presumably temporarily) gravity-defying insurers, some of which are substantial players.

I suppose it is better that a substantial insurer gets it wrong and has an adequate balance sheet to pay claims, rather than policyholders being left in the sort of situation in which the customers of Quinn Insurance found themselves and having to rely upon the largesse of the Irish Government to pay them! But you never know...

Open for business again

Since 2008, some of the more enlightened insurers have been cleansing their books of poor solicitors' business and are now open for business again at a sensibly competitive level of price. This, combined with the changes made to the insurance regime by the Solicitors Regulatory Authority (SRA), means there is some light at the end of the tunnel for the legal profession.

- For insurance year 2012/13, the profession is to contribute to the cost of the ARP. At the time of writing, the Law Society has challenged the original proposal, which was that the profession should fund the first £10m, then the insurance market the next £10m. The Law Society seeks a 50/50 split between the profession and insurers. Clearly, the Law Society is expecting the ARP to be less problematical in 2012/13 than it has been for the past several years. Time will tell whether that is a sensible

position to adopt.

- For 2013/14 and subsequently, the ARP will be discontinued. For any firm that is unable to obtain cover at renewal in October 2013, and which consequently has to discontinue, its insurers on risk for 2012/13 will be obliged to provide six years' run-off cover - without premium if the practice fails! Similar arrangements will apply at subsequent renewals, with there no longer being an ARP as insurer of last resort.

Good news

Looking forward, solicitors PII seems a little more inviting to insurers than it has for a few years and that should be good news for the profession.

While there are always exceptions to any rule, the overwhelming impression is that the majority of legal practices have grabbed the cheapest price for their insurance every year, without giving any thought to the longer term consequences of this behaviour. Neither has it been of any benefit to the long-term sustainability of the profession's insurance arrangements that, along the way, insurers have rewarded all practices with uneconomically low premiums. Firms have enjoyed cheap cover even where it was not deserved - which could continue only for so long.

Now that the more stable participants in the insurance market are adopting a more sensible approach, it is up to the profession to play its part too. Each practice has to strive to make itself into a well-run, low risk business and thus be a better long-term proposition for insurers. Please remember that, from 2013, the expiring insurer will have to provide run-off cover if a practice is closed down. That will mean insurers will look more closely than hitherto at the long-term viability of any practice seeking insurance.

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