

Welcome to the June edition of Risk Update.

SRA Proposal to amend the minimum terms

In a previous article, I mentioned that part of the reason why solicitors' Professional Indemnity Insurance is so expensive is the extremely wide policy cover, which far surpasses the coverage available to any other profession. I will pick up the question of cover again later.

So, why has the SRA agreed to continue to approve unrated Insurers? I think most people would view their decision as a virtual dereliction of their duty to the profession's clients, who they claim to be so concerned to protect.

It is a wrong decision! The five insurers that caused tremendous problems for the profession were all unrated, and were passported into the UK from other domiciles. All failed and the facts are clear. Professional indemnity is long-tail business, meaning there can be a gap of many years between effecting the cover, paying the premium and Insurers having to pay claims. Unreliable insurers are not insurers at all.

I was going to say that the SRA is also failing to protect the members of the profession itself, but then firms can always decide for themselves not to risk using unrated insurers. It has always escaped me why so many of them have been prepared to take that chance as the potential downside far outweighs any modest premium saving that might be achieved. But then some members of the profession have always tended to treat PII as a commodity purchase.

I do not see that banning unrated insurers would wreak havoc on premium levels. Anyway, many firms were fleeced as a consequence of the Balva/Berliner debacle, being left with little time to make alternative arrangements and finding themselves at the mercy of a very opportunistic insurance market that was licking its lips and counting the cash.

In considering why the SRA has made this decision, I would say political expediency. What can you expect from a regulator which concluded that over 3,000 firms were in order to remain with Quinn Insurance when it went into Administration part way through the

insurance year? There wasn't much evidence of consideration being given to customer protection then: politics rather than solutions were the order of the day.

Moving on to the cover changes now proposed by the SRA, at first I got quite giddy in the hope that they might tackle the issue of over-protection and come up with something sensible and sustainable...only to be disappointed yet again.

they will be faced with more or less the same level of claims payments, they will require more or less the same amount of premium.

If these proposals are adopted, it will be imperative in my view that firms purchase more than the reduced minimum level of cover: reputation and financial survival could be at stake. If top-up policies are used, their cost will increase as the cover will attach in excess of £500,000 rather than the current £2m.

This whole plan is so ill-conceived that I hope the forthcoming consultation process will consign it to the waste bin.

If the SRA is serious in its desire to reduce the cost of professional indemnity insurance in a sustainable manner, it should address the issues which directly affect claims. Chief among these are the scope of the policy wording and, in particular, improving firms as insurance risks.

So if we now ask ourselves whether the SRA has really

tackled the problem of the cost of PII cover with its proposed changes, and whether, as a smaller firm, our PII premium will reduce because we only have to purchase a £500,000 limit, regrettably the answer on both counts will be a resounding **NO**. The proposals are the exact opposite of what the profession needs at the moment. They will potentially throw the insurance market into chaos prior to renewal, just as some stability was beginning to take hold.

Had the SRA exercised some intelligence in this regard and offered a more sophisticated set of solutions along the lines I have mentioned in previous articles then it would be something worthwhile and potentially sustainable but sadly that is not the case.

Contact Kevin McParland, Managing Director, with your questions and feedback on Risk Update or to discuss your PI insurance requirements.

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SRA PROPOSAL TO AMEND THE MINIMUM TERMS

- Reduce the level of mandatory PII cover to £500,000 for firms with revenue of under £2m.
- Introduce an aggregate limit on claims.
- Require compulsory cover for claims by individuals, small and medium-sized enterprises, trusts and charities.
- Reduce run-off cover to a minimum of 3 years for smaller practices.
- Require firms to assess the level of cover appropriate to their firm beyond the minimum.

The feedback from the insurance market is that the SRA formulated its proposals over the Easter break (seemingly on the back of a beer mat) and dropped them on the Approved Insurers during the second week in May, expecting the consultation process to be over by mid-June with everything in place for renewal on the 30th September.

These proposals are illogical and ill-considered. The thinking appears to be: "If we let small firms buy only 25% of the limit of cover we previously thought necessary, and we also allow them to buy Run-Off cover for only half of the period we previously considered necessary, the insurance premiums will reduce".

Now, if you go into a supermarket and buy 3 apples instead of 6, you would reasonably expect to pay half the price. But unfortunately, insurance does not work like that: the level of premium is driven by the cost of claims and nothing in the SRA's proposals will have any significant effect on that. The plain fact is that most claims fall within the first £0.5m of cover, and most claims from ceased firms arise within the first three years of run-off. While I have no accurate statistics, the feedback I am receiving is that 90% of claims by firms with revenue below £2m fall within the reduced limit now proposed. You do not need to be a rocket scientist to work out that if insurers feel