2015-16 PII survey

A survey of solicitors' experiences of the 2015-16 professional indemnity insurance renewal

Law Society response

27 April 2016

The Law Society response to the 2015-16 annual PII renewal survey

1. This document summarises the results of the most recent annual survey into the solicitors' professional indemnity insurance (PII) renewal process and sets out the Society's preliminary response. The research, which relates to the main 2015-16 renewal at 1 October 2015, was conducted at the request of the Law Society by an external provider, Mustard Research Limited. The survey covers firms' most recent PII renewals up until they were surveyed (including some firms surveyed after 1 October if the firm had variable length policies expiring after 1 October 2015). It surveyed 560 law firms ranging in size from sole practitioners to firms with up to 25 partners, about their experiences and perceptions of the 2015-16 PII renewal process. The analysis is representative of the Law Society's population of member firms by size (number of partners) and region. An equivalent survey has been conducted annually since 2008.[1]

2. As in recent years, this year's survey sought to gauge how effectively the PII market has operated and the take-up of variable length policies, including policy durations and start and end dates. This year's survey also explored:

    - the impact, if any, of a new regulatory outcome introduced by the Solicitors Regulation Authority (SRA) for firms to assess and purchase the appropriate level of PII cover
    - firms' claims experience, including in relation to scams
    - awareness of policy issues around post six-year run-off insurance arrangements.

State of supply and the renewal process

3. As was the case last year, the PII market remains competitive and very favourable for firms. Once again, there was plenty of rated capacity. The market saw two further new rated entrants - Pelican Underwriting Management Limited and QIC Europe Limited, the latter introduced to offer replacement PII to firms formerly insured with the unrated insurer, Alpha. With the reduction in Elite's market share to three percent and Elite's announcement that it will not write new PII policies for solicitors in England and Wales as of April this year, unrated insurer presence is becoming negligible in this market generally and specifically in the traditionally under-served small firms sector, which in the past was heavily reliant on unrated insurers.

4. For the second year running, the PII renewal went smoothly for the vast majority of firms. The percentage which found the renewal process not very difficult or not difficult at all, increased from the previous year's 62 per cent to 76 per cent. The two-to-four partner firms sector experienced the greatest degree of difficulty, with 12 per cent of firms reporting the renewal experience as quite or very difficult.

5. As part of the Society's drive to reduce the burden on firms, we have encouraged insurers and brokers to accept each others' proposal forms, in

[1] Full versions of surveys are available at http://www.lawsociety.org.uk/support-services/risk-compliance/pii/surveys/

order to reduce the need for multiple form-filling by firms. The survey found that 52 per cent of firms submitted only one proposal form, 8 per cent reported 'none' and 30 per cent submitted two or three forms. Loyalty to previous insurers was high however, with nearly two thirds of firms renewing with their last insurer.

6. Over a third of firms reported having policies longer than the traditional 12 months, with 18 month policies being the most popular non-12 month choice. Renewal dates continue to be distributed throughout the year, though firms which took out 18 month policies in two successive years will be reverting to the 1 October renewal date.

7. The increased trend in taking up variable length policies has an impact on comparing market shares of insurers, since these can fluctuate by the month and the 1 October snapshot is now a less reliable indicator. Nevertheless, this year's survey has found that the ranking by market share has largely followed the findings of last year's survey. Travelers, Am Trust, QBE, Axis and Zurich remained in the lead on number of firms they insured, though QBE's reported share has fallen.[2] QIC has made gains in the 5-10 partner space (which Alpha did not occupy).

8. The impact of reducing the burden of multiple form-filling, the increased choice of insurer and the availability of variable length policies, are likely to have resulted in more competition in the supply of solicitors' PII, to the benefit of firms.

Premiums, loyalty / satisfaction with insurer

9. The strongest drivers for choice of insurer were given as cost, and loyalty / relationship with insurer. 43 per cent of respondents identified lower premiums and 35 per cent stated 'similar or acceptable cost' as key drivers of their choice.

10. The average premium was reported as 8 per cent lower this year and mean premium costs dropped for all size firms. As a percentage of firm turnover, the average premium cost for sole practitioners was higher than that for firms with two or more partners.

11. Although larger firms were more likely to apply to two or more insurers, loyalty is of greater importance to 11+ partner firms. They are more likely to value service above cost, identifying previous experience of an insurer and close relationship with an existing insurer. However, in absolute terms, larger firms also benefitted more than smaller firms (those with 2-4 partners) and sole practitioners, in terms of a reduction in average premium.

Level and cost of cover purchased

12. Last April, the SRA introduced a new regulatory outcome for firms to assess and purchase the appropriate level of PII cover. In the absence of guidance from the SRA on how it would enforce this new requirement, the Society produced new advice on purchasing top-up cover.

[2] This might be attributable in part to a number of respondents naming the broker Aon as their insurer.

13. The survey found awareness of the new SRA outcome to be high - by almost eight out of ten firms. A smaller proportion of firms was found to have purchased top-up cover this year - down from 24 per cent to 19 per cent. The main purchasing reasons were given as 'always do so' and because the firm had reviewed the value of its transactions. Just under a third of firms referred to the Society's new advice on purchasing top-up cover, and the majority who did so found it useful or very useful.

14. The mean cost of top-up cover rose slightly this year.

Renewal in first quarter of 2016

15. Anecdotal information suggests that renewals which took place in the first quarter of 2016 also benefited from a continuing soft market with similar premium levels.

Risks and claims

16. Not surprisingly, the survey found that the larger the firms, the more likely they are to have notified their insurer of a potential claim; had a claim made against them; increased the amount of conveyancing they do; or had a Legal Ombudsman decision made against their firm which required them to provide a remedy.

BAME firms' PII experience

14. This year we took a close look at the PII experience of firms with at least half of partners from Black, Asian and Minority Ethnic groups (BAME groups). In the past, some small firms and sole practitioners were reported to have experienced difficulties in obtaining PII. BAME firms tended to be heavily represented among small firms.

15. The survey's findings indicate that overall, BAME and non-BAME firms had much the same experience of renewal; 52 per cent of BAME firms found the PII renewal process not very difficult and 23 per cent not at all difficult, compared to 41 per cent and 35 per cent respectively of non-BAME firms. The percentage differences reporting the experience very difficult and quite difficult were also very low for both groups - four and two percent for BAME firms and two and seven per cent for non-BAME firms. Segmenting BAME firms by firm size in order to compare the experience of sole practitioners and 2-4 partner firms produced a sample size which was too small to be of statistical significance.

16. A higher percentage of BAME firms than non-BAME firms reported having been in the Assigned Risks Pool (ARP)[3] - six per cent over no non-BAMEs. This might be attributable to historical difficulties in getting cover which they have since overcome by finding cover on the open market, in contrast to the majority of non-BAME firms which entered the ARP.

[3] The assigned risks pool was closed to all firms on 1 October 2013.

17. The survey found that in general, smaller proportions of BAME firms experienced risk factors than non-BAME firms. For example, BAME firms are considerably less likely to have notified the insurer of a potential claim or had a claim made against them; experienced an increase in conveyancing work or had an upheld premium bands, with a significant drop in favour Legal Ombudsman decision requiring them to provide a remedy.

18. The survey also looked at premium levels paid. At 6.6 per cent, the mean premium of BAME firms as a percentage of their turnover in the last renewal was just over two per cent more than that of non-BAME firms (4.8 per cent).

19. When it comes to premiums paid on a per-partner basis, BAMEs fare better; 57 per cent have a cost of premium of less than £5000 as opposed to 40 per cent of non-BAMEs. The percentage difference plateaus for rising premium band with a significant drop in favour of BAME firms at the £10,000-£15,000 and £15,000-£20,000 bands.

20. The Society will explore with the insurance industry what inference, if any, can be drawn from the premium results when the data is cut this way.

Scams

18. This year, we included questions about scams' experience. In the worst case scenario, a scam can result in a firm having to close and partner bankruptcy, if the firm cannot meet its regulatory obligation to make good the client account within a short period of time.[4]

19. The Society last year responded to the emerging need for advice for firms which have been scammed on how to meet the regulatory obligations, survive and recover, by producing a new practice note, *Protecting your firm if you fall victim to a scam*.[5] The survey found that 85 per cent of firms were aware of the new practice note and that the majority found it helpful. The practice note has since been amended to reflect knowledge gained from practical experience.

20. The survey found that almost a quarter of all firms reported being targeted by scammers in the last year; the larger the firm, the greater incidence of scam attempt reported (perhaps in view of greater volume of work done).

21. The survey found that less than 10 per cent of the reported scam attempts resulted in the successful theft of client account monies. Anecdotal evidence (from nine survey responses) of how the loss was made good shows that insurers paid up in full or in part in around one-third of cases (i.e. where the firm was found to have been negligent). Banks made good the loss in approximately a further third of cases.

22. As noted, PII premiums have fallen in absolute terms in the October and Q1 2016 renewals compared with the 2014-15 renewal period. However, the Society is aware of isolated incidences, following a scam, where an insurer

[4] Approximately 7,500 firms hold client accounts.
[5] http://www.lawsociety.org.uk/support-services/advice/practice-notes/protecting-your-firm-if-you-fall-victim-to-a-scam/

has raised a firm's premium upon renewal and even raised the cost of the firm's run-off cover.

23. There are also indications that some insurers, when setting premiums at renewal, will now ask firms what preventative measures they have taken to protect against criminals targeting client accounts, including what security and IT systems they have in place.

24. Earlier this year, the Society stepped up its messaging and advice to members on scams risk awareness and launched a new website page dedicated to scams prevention advice, training and products.[6] At the same time, the Society published common sense tips for firms[7] which cover:

- handling client money
- verifying bank account details
- risks associated with email, telephone calls and use of wifi
- security policies and training
- technical preventative measures and
- reporting scams.

25. The Society's prevention advice is reviewed regularly and firms are urged to ensure that they keep their awareness and training up to date, as the nature of scams can change quickly.

Claims experience

26. This year, we asked firms about experience of claims over the last 12 months. The survey found that around one in six firms had dealt with their insurer about claims. Not surprisingly, the larger the firm, the greater the likelihood of claim.

27. QBE and Travelers, two of the top three insurers by number of firms insured, were reported as having the most number of claims (14 per cent and 11 per cent respectively). These insurers cover a large proportion of 5-10 and 11-25 partner firms, as do Zurich and Hannover, which were not reported as having a large number of claims (5 per cent and 4 per cent of claims). The results for the unrated insurers, Alpha and Elite were six and four per cent.

28. We asked firms about their satisfaction with the ways their claims were handled. 86 per cent of firms were very satisfied or fairly satisfied. The results of experience satisfaction surveys can be misleading if the respondents are not well informed. In this case, respondents volunteered the reasons for their answers which included speed and efficiency of service; good communication; quality of service/knowledge; good service/supportive/helpful, satisfied with outcome and 'listened to feedback'. These findings tend to corroborate the findings on reasons for choice of insurer, particularly for larger firms, which were found to be more likely to value service above cost, identifying previous experience of an insurer and close relationship with an existing insurer.

[6] http://www.lawsociety.org.uk/Support-services/Practice-management/Scam-prevention/
[7] http://www.lawsociety.org.uk/Support-services/Practice-management/Scam-prevention/practical-tips-to-protect-your-firm-from-scams/

29. That the PII market is working well for the profession is also corroborated by the low level of dissatisfaction - only five per cent were very dissatisfied with the way the claim was handled.

Use of brokers

30. Reported broker professional performance was slightly improved over last year. A smaller percentage (18 per cent over last year's 25 per cent) reported that no level of service was agreed; a smaller percentage (35 per cent over last year's 44 per cent) reported that commission was not disclosed. Proactive commission disclosure by brokers disappointingly remained much the same as last year, reported by just over one-third of firms.

31. The reported high levels of satisfaction with their brokers by surveyed firms suggests that firms ought to be making better informed use of their brokers. The factors that firms volunteered to support their reasons for satisfaction and dissatisfaction did not include reference to service level agreement or to commission disclosure.

32. Firms with non-standard length policies preparing for renewal are reminded of the need to ensure that the broker is clear about the service level being provided and about commission charged. This is all the more important when dealing with a sub-broker, since the additional link in the chain of brokers will increase the commissions paid.

Barriers, costs, risks and cover of closing a firm

33. Two per cent of surveyed firms reported making use of the extended indemnity period (EIP). We know from previous surveys that EIP is valued not only by distressed firms struggling to renew their policy. Some firms which have made the decision to close (for example, planned retirement) find it a helpful facility for managing an orderly exit.

34. Worryingly, the median cost of run-off cover for all firms has gone up from last year's 250 per cent to 300 per cent. The affordability of run-off cover will have therefore increased the barrier to retirement for some firms. 'Could not afford the run-off premium' was the main reason given by this year's reduced percentage of firms (5 per cent, compared to last year's 11 per cent) for not putting their firm into run-off, having contemplated doing so.

35. Larger firms were much more likely to make use of the successor practice rules when merging, but most have not required the acquiring firm in the merger to take out run-off cover.[8]

36. The Society, in our response[9] of 3 September 2015 to the SRA's 8 July 2015 *discussion paper: protecting clients' financial interests*,[10] supported the SRA's

[8] These results are based on a very small numbers of responses and should therefore be treated as anecdotal.
[9] https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/documents/protecting-clients-financial-interests/
[10] https://www.sra.org.uk/sra/consultations/discussion-papers/protecting-clients-financial-interests.page

suggestion to assist facilitating orderly firm closure through the creation of a hardship fund. The Society however advised the SRA not to limit this to sole practitioners.

37. The last insurer on cover is obliged to provide run-off cover to the closing firm. There is however no obligation on the firm to take this cover from the insurer; the firm may shop around for run-off cover. Anecdotal information suggests that insurers do not offer such cover for firms shopping around for a better quote. This, compounded by the near-universal adoption of the same percentage multiplier of the firm's last annual PII premium, suggests that there is no open market for run-off cover and this results in higher costs and a barrier to retirement for firms wishing to close. This is an issue that the Society will be raising with the SRA again in the context of its PII reforms consultation.

38. With an anticipated decision from the SRA on the future of the Solicitors Indemnity Fund (SIF)[11] (which provides post six year run-off cover), this year, the survey included question relating to awareness of the SIF and of the protection that post six year run-off cover provides to the profession and its clients.

39. The survey confirmed almost universal awareness of the SIF, across all firms by sector size. Almost half of surveyed firms agreed there should be post six year run-off cover available to all ceased firms paid for by universal contributions from the profession. Around a quarter disagreed. 40 per cent of large firms disagreed.

40. The most common reason for disagreeing (given by 44 per cent of firms) was that they do not believe they should have to pay for other firms' negligence. A further 22 per cent gave the similar reason, that its a firm's responsibility to make sure they are insured. 20 per cent of firms gave 'don't know' as an answer, suggesting that knowledge of the implications of this cover no longer being available might not be universal.

41. Smaller firms were more willing to pay for such indemnity cover through universal contributions. Over 30 per cent of all firms, when asked about their willingness to pay for such cover, gave the answer 'don't know,' again suggesting that this is something that many firms perhaps do not think about unless closure of the firm is foremost on their minds.

42. The survey also asked firms how concerned they would be if the SRA were to reduce compulsory run-off cover to three years. Just under a third of all firms replied they would be concerned or very concerned. The high proportion of firms that were not concerned is likely to be accounted for by firms which are not themselves contemplating closing or whose business model is one of limited liability. The percentage giving 'don't know' as an answer was in single figures across all firm size sectors.

43. The Society will consider whether to carry out more probing research, perhaps through focus groups, to gain a better understanding on what may lie

[11] SRA decision to end the SIF arrangements at 2020 was announced on 9 March 2016.

behind the respondents' answers in relation to run-off issues and awareness of the risks to the profession more generally.