The Law Society

Professional indemnity insurance survey

2010-11 renewal

July 2011

supporting solicitors

Contents

Key findings

This is a study conducted at the request of the Law Society by an external provider, Exodus. It surveyed 399 law firms and 359 black and minority ethnic (BME) firms about their experiences and perceptions of the 2010-11 professional indemnity insurance (PII) renewal process. A random stratified (by partner count) sample was used, findings are therefore representative of the experiences of the profession as a whole.

The Law Society conducted similar studies in 2009-10 and 2008-09 and, where appropriate, this summary compares the findings.

Nearly two thirds (63.5%) of law firms surveyed reported no difficulty with the 2010 PII renewal. The extent to which firms found the 2010 renewal process difficult was related to the size of the firm in that the smaller the firm, the greater the difficulty. A higher proportion of firms surveyed reported finding this year's renewal difficult compared to those surveyed in previous years. This increase in reported difficulty can be partly explained by the withdrawal from the PII market of Quinn and other insurers reducing their capacity to offer terms to small firms.

The survey showed similar timing of applications and response times to last year, although the response time by month nearer the October deadline has marginally improved.

In previous years, most surveyed firms were offered and accepted cover from their existing insurer. This year, however, one quarter of surveyed firms were unable to continue with their existing insurer because the insurer was no longer offering insurance to their type of firm or had withdrawn from the PII market.

Similar to last year, most surveyed firms (93.5%) had received an offer from at least one qualifying insurer. However, the proportion of sole practitioners receiving at least one refusal was disproportionately high.

Almost 70% of firms surveyed stated that their premiums had increased since 2009-10, compared to 62% of firms who reported an increase in last year's survey. The size of the firm (number of partners and solicitors), claims history within the last 12 months and changes in the number of fee-earners were identified as significant predictors of premium levels for those firms surveyed. The survey's analysis considered that the black and minority ethnic (BME) status of the firm and the proportion of different types of work undertaken were not significant predictors of PII premiums.

The Law Society's 2009-10 survey represented the start of our consideration as to possible differences in renewal experiences between BME firms and non-BME firms. In this 2010-11 study, we sought to identify further the areas of concern by our members as to their experiences with PII brokers and insurers. Although the study cannot prove discrimination, it can identify differences which may indicate possible indirect discrimination, if a like-for-like comparison reveals that BME firms (that is, firms with 50% or more of partners from a certain race, ethnic or national origin) are placed at a particular disadvantage when compared to others without a legitimate objective justification. Given that BME firms are smaller than the wider membership (nearly all 99.3% of BME firms in the survey sample had less than five partners), the 2010-11 survey makes additional comparison with non-BME small firms to help identify whether differences, if any, are due to a firm's BME status instead of the size of firm.

According to the survey report, "perceived differences in experiences of the PII renewal process of BME and the wider membership were unlikely to be due to deliberate discrimination by PII providers".[1] Few BME firms (4.4%) felt that their ethnicity had impacted on premiums paid and the analysis found that there were no significant differences in outcomes or premiums paid for comparative BME and non-BME firms. The survey suggests that difficulties in renewal experiences by BME firms were likely to be related to the size of BME firms, rather than the ethnicity of the firm.

However, there are some areas of difference, particularly in terms of the risk factors reported by BME firms.

BME firms continue to be disproportionately represented in the assigned risks pool (ARP). Nearly three times as many BME firms applied to enter the ARP compared with all firms surveyed (12.4% compared to 4.8%). This difference remained after the comparative analysis of small firms which showed that BME firms were twice as likely as non-BME small firms to enter the ARP (8.6% compared to 4.0%). Robust analysis of the differences in the risk factors[2] experienced by BME and non-BME in the ARP was not possible due to the small number of ARP firms in the population sample. The report's findings, in this regard, reflect only the risk factors experienced by the surveyed ARP firms and are not representative of all firms within the ARP. Differences experienced could be due to chance and should therefore be treated with caution.

The comparative analysis of small firms also highlighted differences in risk factors exhibited by BME and non-BME firms in general as opposed to in the ARP. Small BME firms were seven times more likely than non-BME small firms to state that they were required to submit CVs (21.3% compared to 3.2%[3]) or that one or more partners had undertaken or was undertaking the QLTT (12.8% compared to 1.8%[4]). BME firms were also more likely to state that they had one or more partners with less than five years' qualification (15%) compared to 8.8% of all firms and 5.7% of non-BME small firms. However, the survey's regression analysis[5] found that these risks factors were not strong contributors to the variance in premiums, which supported its conclusion that size of firm, claims history and changes in the number of fee earners had the most impact on firms' premiums.

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[1] Exodus market research, *Professional Indemnity Insurance Survey 2010*, p. 5.

[2] For example, the fact that BME firms surveyed in the ARP were more likely to have partners taking the qualified lawyers transfer test (QLTT) or having less than five years' qualified experience than other small firms in the ARP.

[3] 10.5% of all law firms stated that they had to provide partners' CVs.

[4] 5.5% of all law firms stated that one or more partners had taken or was taking the QLTT.

[5] Multiple linear regression was conducted to explain the variance in premiums by measuring the explanatory value of individual factors whilst holding all others as constant.

Table comparing previous year survey results on key findings

Description of result	2008–09	2009–10	2010-11
Firms that reported no difficulty in PII renewal	74%	79%	63.5%
Average response times of insurers for applications received in August and September	5 weeks (August); 4 weeks (September)	4 weeks (August); 2 weeks (September)	3 weeks (August); 1.5 weeks (September)
Firms that received an offer from at least one qualifying insurer	88%	93%	93.5%
Firms that received an offer from their existing insurer	84%	82%	65.4% applied and 93.2% were offered terms (note: impact of Quinn).
Firms that experienced a premium increase	55%	62%	69.3%
Firms that experienced a premium decrease	22%	14%	21.1%
Median premium	£12,500	£16,666	£14,050

The profession's experience

The firms surveyed were typical of the make-up of the general profession in England and Wales. More than half reported operating in the areas residential conveyancing, commercial property and probates/wills. The least common practice areas were immigration (14%) and crime (24%).

Timing of applications

The timings of PII applications were as follows:

- Before the end of July (38%)
- In August (38%)
- In September (23%)
- After 1 October (1%)

These figures are similar to the dates firms submitted their applications for PII in the 2009-10 survey.

Timing of notification of outcome of applications

Most firms surveyed (76.4%) submitted their first PII application by the end of August. This is consistent with the findings from the 2009-10 survey.

The average time between application and decision was 33 days compared to 31 days reported by firms surveyed last year. Yet compared to previous survey results, the response time by month nearer the October deadline had improved. Average response times of insurers for applications of those surveyed received in August and September had improved by 1 week and 0.5 weeks respectively. However, 7.8% of PII applications from surveyed firms were not responded to until more than two months after submission; all bar two of these applications were submitted before the end of July.

Only 30% of firms had been notified of the outcome of their application by 31 August, although this has improved from 20% last year. Almost all (96.6%) of applications had been responded to by the end of September, compared with 88% of those surveyed in 2009-10.

Outcomes of applications

Previous insurer

In previous years, the majority of firms surveyed were offered cover by their existing insurer (82% in 2009-10 and 84% in 2008-09). This year many firms surveyed stated that they were unable to continue with their existing insurer due to the exit of Quinn; one quarter (24%) of firms stated that they were unable to renew with their existing insurer because the insurer was no longer offering insurance cover. However, of the two thirds (65.4%) who applied for cover from their existing insurer, 93.2% were offered terms and 87.6% accepted those new terms.

Offers of PII

Most of the firms surveyed (93.5%) received an offer from at least one qualifying insurer, which is similar to the experience of those surveyed last year. Although most applications (84.4%) resulted in an offer being made, one tenth (9.7%) of applications were declined. A higher proportion of firms surveyed this year (5%) stated that they had not received a response on the outcome to an application from an insurer compared to last year (2%).

The proportion of sole practitioners were disproportionately high in the number of firms that were declined cover. Half of the surveyed firms that received one or more refusals for cover were sole practitioners, although this group makes up less than two fifths of Law Society members. Almost two fifths (38.9%) of 2-4 partner firms received at least one refusal. Unlike the results from last year's survey, where no firm with 5 to 25 partners was refused cover, these larger firms made up 11.2% of firms who reported at least one refusal.

Over half of surveyed firms (55.8%) had accepted terms by mid-September and nearly all (95%) firms had finalised their arrangements by the 1 October deadline.

Difficulties in renewing

Nearly two thirds (63.5%) of firms surveyed reported no difficulty in renewing their PII. This suggests that the 2010-11 renewal was more difficult for those firms surveyed than in previous years where 79% of firms reported no difficulty in 2009-10 compared with 74% in 2008-9. The extent to which firms found the process difficult was related to the size of the firm in that the smaller the firm, the greater the difficulty. This increase in reported difficulty can be partly explained by the withdrawal from the PII market of Quinn—the insurer with the largest market share last indemnity year and the insurer of many small firms—and other insurers reducing their capacity to offer terms to small firms.

According to the responses received from those surveyed, the most commonly cited difficulty was lack of standardisation in the application forms and the amount of information required making the application process time-consuming and difficult. Several firms mentioned the lack of timely feedback on their PII applications meant that they had little time to consider alternatives.

Assigned risks pool

A similar proportion of all law firms applied to enter the assigned risks pool (ARP) this year as those in 2009-10 survey (4.8% compared to 4.6% respectively) and more than half of these remained in the ARP at the time of the survey (19 January 2010).

Premium levels

Almost 70% of firms surveyed stated that their premiums had increased since 2009-10 (69.3%), compared to 62% of firms who reported an increase in last year's survey.

Around one fifth of those surveyed (21.1%) experienced a premium decrease and 10% of firms' premiums remained the same. Fewer premiums (9.5%) decreased this year compared to the results from the 2009-10 (14%) and 2008-9 (22%) survey. A smaller proportion of firms in the current survey reported that premiums had stayed the same as the previous year (9.5%) compared to the proportion reporting static premiums in the 2009-10 research (17%). The proportion of firms reporting either an increase (69.3%) or decrease (21.1%) in premiums in the current survey was larger compared to figures reported in 2009-10 study (62% and 14% respectively).

Sole practitioners paid a median premium of £6,350 while firms with more than 25 partners paid a median premium of just under £500,000. However, analysis of the proportion of gross fee income spent of premiums found no correlation with firm size and therefore, it cannot be concluded that payment of PII premiums presented a greater financial burden to smaller or larger practices.

Nearly one quarter (24.1%) of surveyed firms had reinsured the excess payable on their PII policy. Nearly one fifth of those surveyed (19.1%) had purchased top-up cover beyond the level of cover required under the minimum terms and conditions, the majority (53%) of firms who purchased top-up cover were firms with five or more partners.

Risk factors and premium levels

Size of firm, claims history and changes in the number of fee earners in a firm were all found to be significant predicators of premium values in this year's survey.

The level of premium paid depended greatly on the size of the firm as outlined above.

Firms with a good claims history had lower premiums. Firms that had a claim made against them (19.4%) or had notified their insurer of circumstances giving rise to a claim (30.8%) in the last 12 months had higher PII premiums than those surveyed that did not.

Despite the common perception that insurers place a higher risk on residential conveyancing work undertaken when calculating premiums (66 firms surveyed considered type of work undertaken affected premium), the survey results did not find a statistically significant relationship between the amount of conveyancing work undertaken and the variance of PII premiums. Similarly, the survey found no correlation between BME status and a firm's premium. BME firms' experiences are examined in the next section.

Black and minority ethnic (BME) firms' experience

One of the objectives of this survey was to ascertain whether there were any significant differences in the experiences of black and minority ethnic (BME) firms compared to the wider membership. Although the study cannot prove discrimination, it can identify differences which may indicate possible indirect discrimination, if a like-for-like comparison reveals that BME firms are placed at a particular disadvantage when compared to others without an objective justification. Given that BME firms are smaller than the wider membership (nearly all 99.3% of BME firms in the survey sample had less than five partners), it is more appropriate to draw comparisons between small (1-4 partner) BME firms and non-BME firms, than BME firms and the wider membership. As such, the survey makes additional comparison with non-BME small firms to help identify whether differences, if any, are due to a firm's BME status instead of the size of firm.

Very few firms (4.4% and 16 in number) felt that the ethnic make-up of the firm impacted on premiums paid. The analysis found that there were no significant differences in outcomes or premiums paid for comparative BME and non-BME firms. The survey suggests that difficulties in renewal experiences by BME firms were likely to be related to the size of BME firms, rather than the ethnicity of the firm. According to the survey report, "perceived differences in experiences of the PII renewal process of BME and the wider membership were unlikely to be due to deliberate discrimination by PII providers".[6]

There were however some reported differences that were only experienced by BME firms and not all law firms or non-BME small firms. These are highlighted below, however, the survey found that these reported risk factors did not correlate to differences in treatment. Regarding the differences experienced by firms in the ARP, the sample size of ARP firms in the survey does not permit any conclusions to be drawn.

Characteristics of BME firms compared to wider profession

BME firms have a higher propensity to be sole practitioners than the wider membership. More than half (51.5%) of BME firms are sole practitioners compared with 38.3% of all firms.

The work mix of all law firms in general and that of BME firms is also different. For example, a comparison of BME and non-BME small firms showed that BME firms were nearly ten times more likely to undertake immigration work (56.3% compared to 6.1%). BME firms differed little from the comparative sample of non-BME small firms in the extent to which they held quality marks, but differed in the length of time trading. Just over half of BME firms (52.6%) had been trading under their current name for five years or more, compared to almost three quarters of small non-BME firms (71%). Small BME firms reported lower average gross fee income for 2010-11 (£148,000) compared to small non-BME firms (£250,000).

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[6] Exodus market research, *Professional Indemnity Insurance Survey 2010*, p. 5.

Timing of applications

No evidence was found of any significant difference in the timing of submissions between BME firms and the wider profession.

Timing of notification of outcome of applications

More than half (54%) of BME firms accepted terms by mid-September, this finding is similar to previous years and all firms. However, a slightly higher proportion of BME applications of those firms surveyed took more than two months to process (10.4% compared to 7.8%), although the overall difference is not statistically significant. This is similar to the 2009/10 survey results which found that BME firms were notified later than the wider profession.

Outcomes of applications

Previous insurer

BME firms were affected by the exit of Quinn from the market. A greater majority of BME firms were insured with Quinn (29.4% compared to 25.7% non-BME small firms) during 2009-10. More than one third (36.6%) of BME firms indicated that their existing insurer no longer offered terms. Of those who did apply (52.7%) to their existing insurer, 92.1% were offered terms and nearly 87.6% accepted them.

Offers of PII

The proportion of applications for cover resulting in an offer was the same for small BME firms as for small firms generally (80.9% and 81.9% respectively).

Difficulties in renewing

Nearly one third (27.9%) of BME firms described their experience as 'very difficult'. Although this is a significantly higher proportion when compared to the wider membership, this perception is not necessarily aligned with the firm's BME status but is more likely due to the size of firm. Only a few BME firms (4.4% and 16 in number) felt that their ethnicity had impacted on premiums paid. A comparative analysis found that a similar proportion of BME and non-BME sole practitioners found the process 'very difficult' (22.2% and 20.7% respectively), although a higher proportion of small BME firms (1-4 partners) had difficulties (25.1% compared to 17.3% non-BME small firms).

Small firms surveyed indicated that they may have less opportunity to employ dedicated staff and systems to facilitate the renewal process and, as a result, may have less tangible relationships with brokers and underwriters. In recent times, some insurers have been reluctant to insure small firms, resulting in less access to a range of providers.

Assigned Risks Pool

BME firms continue to be disproportionately represented in the assigned risks pool (ARP). Nearly three times as many BME firms applied to enter the ARP compared with all firms surveyed (12.4% compared to 4.8%). This difference remained after the comparative analysis of small firms which showed that BME firms were twice as likely as non-BME small firms to enter the ARP (8.6% compared to 4.0%). However, the low number of firms entering the ARP in the survey sample prohibited robust analysis to explain this finding.

The surveyed BME firms in the ARP reported different risk factors to non-BME ARP firms. Of those surveyed, the BME firms in the ARP had a greater tendency to have one or more partners with less than five years' qualification or one or more partners who had taken or are in the process of taking the Qualified Legal Transfers Test (QLTT), but were a lower risk with respect to claims history than other small firms in the ARP. A higher proportion of BME firms had been in the ARP within the last five years and were more likely to have been trading for fewer years than comparable non-BME small firms. There were also more likely to have had no quality marks (although this is true of small firms in general). However, the report's findings, in this regard, reflect only the risk factors experienced by the surveyed ARP firms and are not representative of all firms within the ARP. These differences may not exist in another sample.

Premium levels

Small BME firms paid a lower PII premium than comparative small non-BME firms in the survey sample; small BME firms paid on average (median) £7,970 compared to £12,270 paid by non-BME small firms. One third (32.4%) of BME firms surveyed paid a lower premium than in 2009 compared with just one fifth (18.8%) of non-BME small firms surveyed. This difference could be due to BME firms' lower claim's history, which was identified as a significant predictors of PII premiums. However, it was found that a firm's BME status did not have a significant relationship with variance in premiums.

A higher proportion of small BME firms paid 5% or more of their gross fee income as PII premiums (62.9%) compared to small non-BME firms surveyed (56.1%), suggesting that PII premiums presented a greater financial burden for a greater number of small BME firms than small non-BME firms. However, differences in the average (mean) proportion of total gross fee income spent on PII premiums between small BME (9.3%) and non-BME (7.8%) firms were not found to be statistically significant.

Risk factors and premium levels

The comparative analysis of small firms also highlighted differences in risk factors exhibited by BME and non-BME firms in general. BME firms were less likely than non-BME small firms surveyed to state their firm had a claim (4.8% compared to 14.2%) or notified their insurer of circumstances (11.1% compared to 27%). However, BME firms were more likely to state that they had experienced an increase in the number of fee earners in the last 12 months (21% compared to 15.4%) and that they had been in the ARP within the last five years (8.2% compared to 1.8%). BME firms were seven times more likely than non-BME small firms to state that they were required to submit CVs (21.3% compared to 3.2%[7]) or that one or more partners had undertaken or was undertaking the QLTT (12.8% compared to 1.8%[8]). BME firms were also more likely to state that they had one or more partners with less than five years' qualification (15%) compared to 8.8% of all firms and 5.7% of non-BME small firms.

With the exception of claims history, these risk factors were not strong contributors to the variance in premium. This supports the survey's conclusion that size of firm, claims history and changes in the number of fee earners had the most impact on firms' premiums and potentially explains the finding that the BME firms surveyed had lower premiums due to lower claims history.

Conclusion

Although the survey cannot prove discrimination, it can identify differences which may indicate possible indirect discrimination. A like-for-like comparison of BME and non-BME small firms surveyed found there were no significant differences in outcomes or premiums paid, suggesting that any difficulty in renewal experienced by BME firms is likely to be related to the size of BME firms, rather than the ethnicity of the firm. The survey does highlight differences in the risks factors reported by BME firms related to length of trading, QLTT and size of firm although these factors did not impact on outcomes for those surveyed. The survey also confirms that BME firms are disproportionately represented in the ARP, however, due to the small number of ARP firms in the sample, is unable to perform reliable analysis to explain this finding.

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[7] 10.5% of all law firms stated that they had to provide partners' CVs.

[8] 5.5% of all law firms stated that one or more partners had taken or was taking the QLTT.

Improving the PII renewal process

More than half (53.1%) of firms surveyed agreed that the PII process would be improved by variable renewal dates, compared with 39% of those surveyed in 2009-10 and only 8% in 2008-09.

A quarter (24.8%) of firms who responded felt that insurance companies should take individualistic approach and one fifth (20.3%) thought insurers should offer quotes earlier.

Seventy-four firms surveyed (18%) supported improving the open market system by encouraging more insurers and brokers to enter the market. Only 7.3% of all firms in the survey sample advocated a return to a master policy or mutual such as the Solicitors Indemnity Fund (this figure was 9% in the 2009-10 survey).

Some firms surveyed (13%) felt that the current renewal process did not need to be changed as they experienced no problems.

Ceasing practice

Less than one tenth (7.3%) of firms in this year's survey had considered ceasing practice and placing their firm into run-off; however, 46.2% of these firms had decided to continue practicing and 15.4% stated that they could not afford the run-off premium.

Four firms (1%) surveyed stated that they had elected to use changes to the successor practice rule, which gives firms the option to run-off their previous firm when the practice merges with another firm.