



# Solicitors' Professional Indemnity Insurance

Review of the October 2022 Renewal Season

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In recent years, the legal profession has experienced tough market conditions with surging premiums, a lack of appetite from existing insurers to take on new clients, and an absence of new insurance provider alternatives. This punishing combination has left many firms with few options. Green shoots are definitely sprouting though, with the recently concluded Professional Indemnity Insurance (PII) 1 October renewal season showing definite signs of more positive conditions.

This report details the trends we've witnessed across market appetite, rates and claims; a closer look at the real and growing risks around cyber-attacks; and tips for firms renewing in April 2023.

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# State of the market

Below we look at the current market trends and explain why we think the worst is behind us.

## More positive underwriter conversations

During the October renewal period, we saw a shift in attitude from insurers, with many showing a greater appetite to grow, and a willingness to consider and engage on the right firms. Something that has been absent from the market for a while. Insurers remain extremely selective, however, so firms need to present themselves in a positive way.

Many clients were offered terms at the same premium as expiry, despite the general inflationary environment and early renewal offers were also made to clients who met certain underwriting criteria; a welcome return for clients who had, pre-pandemic, enjoyed this opportunity for many years.

## Rating stability

The October renewal provided measured relief from the extreme pricing pressure endured by some law firms in recent years, where it was not uncommon for premiums to increase by more than 20%. Whilst rate decreases were rare for clients, rate increases were much less severe and showed true signs of stabilising. Insurers were more open to negotiation and many were receptive to considering new business opportunities. In fact, several were looking to grow their existing portfolio.

Overall, rate increases were fairly benign and, in many cases, initial renewal offers could be challenged and more favourable terms achieved. The lack of choice over the last two years has meant that the vast majority of firms renewed with their incumbent insurer. However, we expect to see increased choice in the not so distant future. As the market softens and more insurers look to grow their portfolios, firms should start to enjoy stability that has been missing over recent years.

## Healthy competition

We have not seen any new insurers enter the market for a few years, due to the increased claims activity and the rates being too low for it to be a sustainable and viable business venture for insurers. However, rates have increased to a level that will make it more attractive for new insurers to enter the market now. This would undoubtedly increase competition between insurers and could further ease market conditions. Traditionally, new entrants gain market share by offering low pricing, however in our view this is unlikely to happen.

With the anticipated recession, which history tells us will trigger a raft of conveyancing claims from lenders, we expect new insurers to offer premiums at rates that are consistent with current appetite and pricing.

An ideal outcome for 2023 would be for any new entrants to underwrite at sustainable rates, offering competitive terms with enhanced coverage. This would then encourage incumbent insurers to sharpen their pencils to retain existing customers and compete for new business opportunities to create some healthy competition.

## The value of continuity

Regardless of the credentials or offers new entrants provide, Miller is an advocate of continuity, however, we recognise that this must be accompanied by the right premium, coverage and terms. Continuity does not mean accepting complacency.

When underwriters at a new insurer have come from a credible background, the case to move is strengthened. We provide a balanced view on whether staying or moving is in a firm's best interests, and an incumbent insurer's offer will always be considered carefully, and taken as the starting point for negotiation, especially in the current environment.

We strongly believe in creating controlled competition and testing the incumbent insurer. We challenge insurers to make sure the firm is still getting the best deal and coverage available in the current marketplace. We are certainly seeing a shift towards a buyers' market.

## Excess layer - an opportunity to educate

The excess layer market, particularly the first excess layer that sits immediately above the compulsory £2m or £3m, continues to present challenges. The claims picture remains bleak with many settlements breaching the primary cover and causing total losses to the excess layer insurers. Whilst most firms who purchase excess cover have experienced significant increases in premium, some underwriters continue to argue that pricing remains thin. This is further compounded by the global economic situation and the fact that premiums do not adequately reflect inflation.

There continues to be a supply and demand issue for the first excess layer sitting above the primary £2m or £3m limit of indemnity. This layer has always been difficult to negotiate, however up until about four years ago, this was not an issue as premiums were consistently priced at £1,000 per million for firms up to a certain size. Many argue that it is this inadequate pricing that has caused a reluctance from insurers to participate at this level. Whilst current minimum pricing has increased significantly some argue that it is still not reflective of the risk. The minimum premium generally only applies to firms where the exposure above £2m or £3m is limited or where the nature of the work undertaken is deemed very low risk. Unfortunately, this layer can only withstand a small number of claims before the entire premium paid across the profession is exhausted.

There are no signs whatsoever that the excess layer market is going to change any time soon and indeed a return to the former minimum levels is very unlikely.

## Exposure specific negotiation

The excess layer premium is negotiable and the best way to achieve a more competitive offer is to explain what exposure the firm has to potential claims above the primary limit. For example, we act for a Personal Injury law firm where the vast majority of their work is low value RTA. However, they have a Clinical Negligence team where settlements run into the millions. With full categorisation of work and comprehensive number of files, likely quantum, etc., we were able to demonstrate that the actual exposure is limited. We got further details from the Insured about the nature of the cases, risk assessment procedures, file management, etc., and successfully negotiated a lower premium more reflective of the actual risk.

## Financial scrutiny

A firm's financial health remains a key underwriting consideration for insurers. The SRA Minimum Terms & Conditions mandate, on any insurer that signs up to the Participating Insurer Agreement, that they have to offer a six-year run off period in the event that a firm ceases during the policy period. Consequently, when underwriters are considering risks, they need to ensure that firms can not only meet their immediate liabilities, but must also look ahead and

make an educated guess of the financial security of the firm going forwards. Insurers charge an additional premium to cover this risk, which is a percentage of the annual premium, however should a firm become insolvent, the six-year run off period has to be provided irrespective of whether payment is received.

Certain insurers specifically raised this point with the SRA, but no compromise was reached. To address this risk, some insurers introduced the use of Personal Guarantees, which has been met with mixed responses from the profession.

Demonstrating strong financials may be particularly challenging for start-ups or teams leaving established firms to start up on their own. We are seeing an increase in firms backed by third-party litigation funders, and this requires a full explanation to provide adequate comfort to insurers, including details of any repayment terms. A key consideration for underwriters is whether any loans or funding could be called, resulting in firms facing financial difficulties in terms of cashflow and meeting liabilities in the short or long-term.

Firms also need to offer insurers a credible explanation of any anomaly in their accounts, leaving nothing to the underwriter's assumption. It remains easy for insurers to decline to offer a quotation, so it is important to work with your broker to ensure that any potential concerns are addressed before the submission is sent.

Financial strength enables firms to make the right decisions. It is a strong risk management benefit and we have persuaded insurers to factor this into their underwriting rationale and risk rating of a firm.





# Claims trends

## Continuing need to provide a full submission

Preparing a full submission for insurers' consideration continues to be paramount in the current market. The expectation from insurers is that firms should be prepared to go into in-depth information relating to risk management, cyber security measures, client selection, retainer management and scope creep, as well providing analysis of prior claims history. Having this information ready and well-presented assists with renewal negotiations with both incumbent insurers and alternative providers, and has advantaged many law firms through this renewal season.

## Looking ahead

Given the cyclical nature of the insurance market, history states that we're due a return to softer conditions. However, we are not there yet and with the current global economy, and predictions of a recession and further inflation increases, we believe that it will take some time before returning to a fully soft market.

On the positive side, insurers are more receptive to new business opportunities, and equally keen to retain existing portfolios, resulting in a greater willingness to negotiate on premium levels and the accompanying terms and conditions, including excess levels. This is where a comprehensive submission will pay dividends. Presentation remains critical, and a strong broker partner respected by insurers continues to be an enormous asset.

## Greater insurer scrutiny on claims histories

During the October renewal season, insurers paid closer attention to, and raised more questions than prior years in regards to a firm's claims history. This included the number of notifications, claims paid and reserved, and the lessons learnt from each incident. There is a clear focus from insurers on the details of what led to a claim, whether anything could have been done differently, and if so, what measures have been implemented by the firm to prevent a reoccurrence.

## Covid-19

The anticipated fallout from the Covid-19 pandemic has not yet materialised, but it remains to be seen whether some of the anticipated claims actually come to fruition. There was an increase in notifications during the past 12 months but given the longtail nature of Solicitors' PII, it is too early to tell what the outcome will be. Some predict that in 2024-5 we will see claims attributable to home working during the Covid lockdowns. Many firms successfully mitigated the risks of remote working, not meeting clients to execute Wills, take instructions, etc., but some believe that the loss of learning by osmosis and junior lawyers not asking questions will bring a raft of new notifications to insurers. This, of course, remains a risk with hybrid working.

## Buyer-funded developments/ investment schemes

All sorts of issues arise from development work and insurers are still very cautious in insuring firms that undertake this work. Whilst the notifications from this work have reduced, the claims over the last 24 months have cost a significant amount of money. In many instances both the primary and first excess layers have had to pay out their full limit of indemnity. The work continues to raise concerns over conflict, failure to

advise on the risk of the investment, failure to advise on loss of deposits etc. As a result there are very few insurers that are prepared to consider providing a quote to any firm that acts on purchases where the deposit is more than 10% without an adequate explanation.

The warning notice issued by the SRA stated that investors in buyer-funded developments have lost over £120m and that bonds promoted to protect deposits, which range from 30-80%, have proved worthless. A large proportion of these losses have been claims against the profession for failure to advise.

## General Data Protection Regulation (GDPR)

We have seen an increase in the number of claims relating to breach of GDPR.

## Multiple Dwelling Relief (MDR)

Claims against solicitors usually allege failure to properly advise of the potential to claim MDR savings on Stamp Duty Land Tax (SDLT). This peaked in the last 18 months and now there has been a gradual decline in new claims.

## Invoice manipulation

We have seen an increase in payment diversion fraud/invoice manipulation losses in recent months – vigilance and training is paramount to reducing the risk of being caught out by this type of fraud.

## Ancillary relief in divorce

One growth area of claims is that of ancillary relief associated with alleged under-settlement in divorce cases, particularly related to alleged entitlement to spouse's pensions.



# Cyber-attacks: a real and growing risk

With significant client balances and sensitive data held, it is not difficult to understand why fraudsters consider law firms to be an attractive target.

## Will drafting

Will drafting errors remain common in the profession. Family structures tend to be more complex now with second marriages and extended families which results in disputes. We are also seeing an increase in Larke v Nugus requests where a party seeks information about the circumstances surrounding drafting a will.

## Stamp Duty Relief Scheme - Conveyancing

The Stamp Duty Relief Scheme created unprecedented work levels for conveyancers with many working 15-hour days to get the work completed within the deadline. Undoubtedly claims will arise from these extreme conditions.

## Remote working

Prior to the pandemic the vast majority of firms were not fully set up for working from home. This gave rise to concerns over supervision, cyber security, confidentiality, mental health, to name a few. Most now operate a hybrid working model where different working practices and procedures are required to mitigate the risks.

## Possible recession

Past trends have also shown a correlation between economic downturns and increased claims in the Solicitors' PII market. For example, rising interest rates may lead to mortgage and loan defaults, business failures, and even a property market crash. When that has happened previously, some lenders have

sought to recoup their losses from solicitors. The insurance market has already been extremely reluctant to insure firms with more than about a quarter of their income coming from conveyancing. During the October renewal, underwriters were more receptive to hearing why a firm with more than this might still be a desirable risk, however a dramatic economic downturn or widespread mortgage defaults in the new higher-interest-rate environment could derail this advancement.

## Unbundled or Pay As You Go services

With the current cost of living crisis, there is likely to be an increase in the use by consumers of 'unbundled' or 'pay as you go' legal services. This is where a solicitor provides legal assistance under a limited retainer, rather than engaging under a traditional full retainer where the solicitor typically deals with all matters anticipated from initial instructions until the case is concluded.

To avoid any misunderstandings, there needs to be absolute clarity on what the firm is and is not doing. Managing your retainer with the client will be fundamental to mitigating this risk. Case law seems to support the proposition that a solicitor may be under a duty to advise on procedural requirements irrespective of the limited scope of the retainer. As a result we expect to see some claims from this work.

**Phishing:** This continues to be one of the most common cyber security incidents, with 84% of firms falling prey to such an attack. There is a significant internal threat associated with phishing emails as unsuspecting and untrained staff are at risk of clicking on malicious phishing emails, with 41% of law firms suffering a security incident that was caused by a member of staff.

**Spear-phishing:** This is a specific type of phishing attack, where the attacker researches their intended targets and writes messages that they are likely to find personally relevant. A spear-phishing attack often uses email spoofing, where the information inside the "From" portion of the email is faked, making it look like the email is coming from a different sender. The message will seem legitimate and will usually come from a trusted source or someone senior and can be very difficult to spot.

**Malware (malicious software):** Describes software which is deliberately designed to deceive a computer or its user. For example, malware might allow a fraudster to secretly and remotely view information on the firm's computer network, or capture keystrokes and passwords which could be used to access online bank accounts. Malware is also widely used for reconnaissance work beforehand – to increase the likelihood of a successful attack – and for cleaning up the 'crime scene' on the firm's computer network before disappearing, leaving no trace.



**Ransomware:** The UK Government's National Cyber Security Centre (NCSC) has reported a 935% increase in 'double-extortion' ransomware attacks since 2021. In this kind of attack, the criminals exfiltrate stolen (often sensitive) data before encrypting it and threatening public release to try to force payment. Ransomware is typically spread via unsolicited emails and employees clicking on genuine-looking links. This can be on the back of spear-phishing.

**Cyber extortion:** This occurs when a fraudster issues an online threat and demand to a potential victim. As with ransomware, the demand is usually aimed at forcing payment, typically in a digital currency such as bitcoin. Threats vary but have included fraudsters stating that they will leak confidential data about a firm's clients on the internet, and threats to post thousands of defamatory comments on review sites causing reputational damage.

**Impersonation frauds:** Typically these are emails disguised to look as if they have been sent by a known beneficiary of the firm, quoting alternative bank account details for a settlement or payment that is due to be paid. Fraudulent emails can also target your clients, falsely advising them that your firm has changed the details of the account to which clients need to send funds. Another common impersonation fraud is where an employee receives an email – apparently from a senior person within the firm – asking for an urgent and confidential payment to be made. With any of these types of impersonation fraud, any payments sent to the fraudster's account are likely to be lost.

**Zero-day attacks:** A zero-day attack refers to a security hole in software that is unknown to vendors. This is exploited by hackers before it is identified and fixed. Attackers exploit these weaknesses before a patch becomes publicly available. Until a zero-day vulnerability is mitigated, threat actors can freely exploit it to breach data, systems, and networks. The number of zero-day exploits in 2021 grew more than 100% compared to the previous record set in 2019. The most frequent zero-day exploits involved Microsoft, Apple and Google products.

## Real life cyber-attacks on law firms

### Tuckers

Leading criminal law firm Tuckers was fined £98,000 by the Information Commissioner earlier this year after a ransomware attack that encrypted nearly a million files exploited its "negligent security practices". The firm knew it had problems with cyber-security the previous year, having failed the government-backed Cyber Essentials standard, but did not rectify quickly enough.

### ACS Law

ACS Law in 2011 remains a striking example of what can happen should the worst come to pass. This sole partner firm failed to seek professional advice when setting up systems, hosted sensitive personal data on a hosting service aimed at home users, and failed to install a firewall. Following a data breach, the ongoing loss of turnover, high costs associated with replacement of IT systems, and increased insurance costs rapidly led to the firm becoming insolvent. Had ACS Law remained solvent, it would have faced the £200,000 fine announced by the Information Commissioner, who stated that the firm should have known the requirements of the Data Protection Act 1998 and ensured that personal data was being kept safely and securely.

### DLA Piper

DLA Piper fell victim to a large-scale ransomware attack in 2017. Like the NHS WannaCry attack, the ransomware originated from a foreign state undertaking cyber warfare and did not specifically target DLA Piper's systems. However, this did not stop the ransomware getting on to their servers and their network and business being severely disabled.

**The above are just some examples of law firms being targeted and the financial and reputational impact these can have. Cyber risks can no longer be ignored.**

# Guidance ahead of April renewals

Insurers remain extremely selective, and so firms still need to present themselves in a positive way. Below are some tips from our brokers on the ground ahead of April 2023 renewals.

- Comprehensive and accurate information is absolutely key.
- Providing a bespoke cover letter or risk management submission will enhance your chances of having multiple quotations to consider.
- Include details regarding your typical client base, internal risk management processes, and how your firm continually maintains its high operating standards. If you have identified any key risks or challenges that lie ahead for the firm, include how you plan to deal with these.
- Include details of the firms' growth and strategy plans.
- Firms' finances will be put to closer scrutiny by underwriters so if there are any anomalies, provide a full explanation.
- Conveyancing continues to cause the most amount of claims and as a result remains a concern for insurers. If the fees from conveyancing are above 25%, the more information you provide about the nature of your conveyancing work the better as this will open up options for the firm.
- Accompany your claims history with explanations and evidence of remedial implementations to prevent recurrence.
- Work with a broker that will challenge your submission, ask questions to fully understand your risk profile and ascertain which insurers may be interested in providing a quotation.

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