

October 2023

Solicitors PII Season Review



The October solicitors PII renewal season process commenced much earlier, with early/quicker renewals on offer from many of the leading insurers. Despite the earlier start, the season did not conclude earlier, with risks still being bound up to and including Friday 29 September. Some paperwork and finance agreements weren't actually finalised until after 1 October.

The positive trend continued for legal practices, with a more active (some may say buoyant) PII market. This is thanks in part to the appetite among leading insurers to grow their respective portfolios, coupled with the entry of new capacity in the market in the shape of Fortegra. For many, this increased competition resulted in more favourable outcomes compared to previous renewal seasons.

Naturally, economic uncertainty continued to influence proceedings. Many insurers are still maintaining a cap on the amount of property work that firms can undertake, and will decline to underwrite risk where those conditions aren't met. That said, most insurers do have bigger budgets to fill – and when presented with an opportunity to secure significant premiums, several leading underwriters threw some caution to the wind. Practices with a smaller fee income, and a less substantial/attractive premium available, were unlikely to have attracted as much interest.

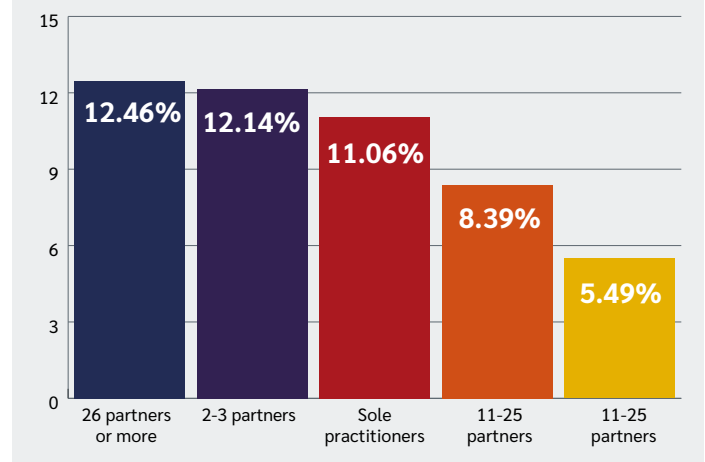
Practice profile determines outcomes

The open market for solicitors' PII – in existence since 1st September 2000 – continues to be working well for much of the legal profession of England and Wales, particularly as competition increases. Yet for some practices, it can seem dysfunctional.

Those who are likely to have suffered again at this season's renewal are practices with a modest fee income, or whose profile includes higher-risk areas. These are not bad firms; rather, the harsh reality is that underwriters make their decisions based on purely economic factors, the major one being affordability. If a firm undertakes what is perceived to be a higher-risk area of practice, then insurers' claims experience dictates they must look to charge a minimum premium – regardless of how small the proportion of total work originates from these activities. If a practice's fee income cannot sustainably afford to pay this amount, then an insurer is highly unlikely to wish to offer terms.

Despite more competition, not everyone received lower annual premiums. Rateable fee incomes – one of the biggest factors influencing premiums charged – have increased in recent months, reflecting what has been a period of success for many legal practices. Of those that Lockton proudly represent, 65.7% had generated more in fees at this season's renewal, at an average increase of 11.39%. The best performance came from practices with 4-5 partners, with 15.06% percentage growth. This growth naturally had an impact on the premium charged – pleasingly, however, premiums rose on average by a comparatively modest 3.36%, equating to a reduction of 3.82% in the rate applied to fee. This meant that the average cost of PII did not erode practices' profit margin.

Average Growth in Fee income by size segment of Profession



The improved market conditions also impacted the working layers, which likewise saw increased competition. Most new entrants focussed on firms below £5M in fee income, helping to drive rate reductions for the working layer by 2.88% on average, consistent with the impact to the primary layer. For coverage placements exceeding £10M, the pricing was relatively flat, with only modest adjustments made.



Continuity of insurer remains incredibly important and is something that professional advisers will typically advocate. This was evidenced by the fact that 94.9% of renewing firms stayed with their current provider, either on a complete or co-insured basis. The latter – in which two or more insurers share the risk (of claims) with the reward (of premium) – continues to be an increasingly desirable outcome for both insurers and insureds. Of the practices Lockton represent that renewed this October, 9.6% resulted in a co-insured placement. Different primary limit placements were achieved too, with 51 different permutations involving 19 different insurers.

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51

different permutations within primary limit placements

19

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Rising severity of claims

The positive adjustments to rate, while good news for firms, aren't necessarily reflective of the general claims environment within the legal profession. Notifications volumes have not necessarily reduced, nor have the value of claims. Rather, with rising contract values, along with the continued increase in the value of assets, severity of claims is becoming greater, not smaller.

The vast majority of losses are not publicised, and rightly so – but there are some situations that do hit the headlines of the legal press. One such example is the collapse of law firm network Kingly, which impacted both the Compensation Fund and professional indemnity insurers. Similar stories have been seen with Metamorph Group and, more recently, Axiom Ince. Without a slowdown in both the frequency and severity of claims, we could see a negative impact on the otherwise improving PII market conditions.

Insurance and risk assessments

Given the nature of the activities undertaken by the Legal Profession of England and Wales along with the broad working of the SRA's minimum terms and conditions (MTCs), there is a lot at stake for insurers. As a result, underwriting teams' due diligence and individual risk assessments are key in determining insurers' pricing and risk selection.

Peer reviews, involving a committee of underwriters, have been commonplace for some time. This is particularly true for larger, complex risks, or those with a high frequency or severity of claims experienced. For renewing firms, this places even greater emphasis on the strength of a presentation.

Underwriters look at several factors when undertaking their risk assessments, principally:

- **Activity profile** – the type and volume of work undertaken. Each area of practice will carry a different risk rating.
- **Client base** – who practices act for, including the values involved.
- **Claims experience** – has a practice previously experienced claims, and what measures did they implement as a result?
- **Risk management** – how firms are mitigating the risk associated with their specialism(s). This could also include: supervision and governance; ratios of qualified to non-qualified fee earners; case management system utilised; partner/senior fee-earner peer reviews, hybrid working arrangements; workload monitoring, including culture and wellbeing.

Each and every insurers' appetites differ when it comes to the risk profile of a practice that they are willing or able to quote competitively. Naturally, there may be greater competition for those practices focused on areas of practice that are lower in risk. But equally, the variance between insurers pricing may be quite modest, as there will be a minimum premium charged.

For many areas of practice, insurers required additional information to finalise terms. Key topics included:

- **Conveyance and property work** – these exposures have long come under scrutiny. Buyer-funded development exposures remain undesirable, due to the losses experienced by insurers. New-build work also carries a threat of sideways exposures, with developers repeating mistakes across successive plots. Insurers' considerations include the controls in place, and the experience and workload of the team undertaking the work. The introduction of the Building Safety Act has also led to questions posed around firms' exposure to this type of work. Specifically, topics include their ongoing appetite for such instructions, vetting procedures adopted, and training procedures.
- **Matrimonial work** – insurers posed questions around practices' appetite for offering single representation divorce, and if so, how they intend to mitigate the associated risks.
- **Cyber resilience** – this is becoming an increasingly important factor in insurers' risk assessments. A growing number of insurers are insisting that practices carry a separate cyber policy to a certain level (often to a minimum of £1M) or face an additional premium. Other insurers are less concerned, largely due to a cyber policy typically only providing first-party coverage. Regardless, they do expect firms to be cyber resilient, and have the ability to obtain this insurance if desired.

- **Financial stability** – this remains a key consideration for all prudent insurers. Participating insurers are required to provide run-off cover under solicitors' MTCs, something which no insurer likes to provide, as they don't receive consideration for taking on the risk. Because a practice with weak financials has a greater probability to trigger run-off, they are likely to experience a reduced set of options. Of course, there are genuine reasons for a dip in a firms' financials, from the exit of a partner to office refurbishments. However, without a supporting explanation, insurers will be reticent to deploy their capital, with personal guarantees required in some cases.
- **Succession** – a particular consideration in cases of an ageing leadership team. Without receiving a succession plan, insurers are unlikely to present a credible alternative offer.
- **Merger and acquisition (M&A) strategy** – despite various successful mergers, recent months have also seen some costly failures. It is of utmost importance to take an insurer on any M&A journey, keeping them abreast of potential changes in the practice, and getting them to note new hires before they are taken onboard.
- **Sanctions** – questions relating to sanctions remained very topical throughout the season. Many insurers are now requesting that practices complete their own specific question sets before offering coverage.

Arranging finance also took longer than in previous years, with numerous finance providers undertaking enhanced due diligence before providing instalment plans.

Outlook

Looking ahead to 2024, the positive trend within the solicitors' PII market is likely to continue, with further new capacity anticipated. While this is good news, to capitalise on an improving market landscape firms will need to ensure that they provide their Lockton executive with sufficient supporting information to share with insurers.

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