

Newsletter Dedicated to PII Issues - July 2010



Dear Colleague,

As you will appreciate, the issue of professional indemnity insurance has been to the forefront of discussions within the profession over the past twelve months. While the last renewal period was a difficult one, it is hoped that the process for 2010/2011 will be less traumatic.

The Society is committed to an information process that will assist the profession to prepare for the next renewal period. In particular, the Society would emphasise the importance of risk management for every solicitors' firm.

This special eNewsletter has been compiled by the Society's PII Committee and further articles will follow in forthcoming issues of the eZine. All colleagues are urged to commence the process for PII renewal at an early opportunity, in order to maximise the options available to your firm.

If you have any suggestions, concerns or queries in relation to professional indemnity insurance, please send them to the Society's dedicated email address piihelpline@lawsociety.ie.

With kind regards.

Yours sincerely,

Gerard Doherty
President

Current Market Trends

There are a number of trends in the professional indemnity insurance market that will be of interest to practitioners.

Premium Levels

The average premium paid by firms for professional indemnity insurance on the minimum terms and conditions almost doubled at the last renewal. The cause was an extremely high level of claims. Areas of practice are an increasing influence on premium level and less weight is being attached to setting premium on a per capita basis. However, the premium increase was less than had been expected due to the operation of competitive forces.

Extra Cover for Commercial Undertakings

Despite initial reluctance on the part of some insurers to provide this cover, it did become available due to competitive pressures. The extra cover was not provided to firms with poor risk management or unsatisfactory experience in dealing with such matters. It is estimated that between 30 and 40 percent of firms have obtained this extra cover.

Reasons for Refusal of Cover

The insurers have indicated to the Society that the main reasons for refusal of cover are the following:

- (i) Incomplete proposal forms.
- (ii) Indicators of poor risk management; for example, failure to maintain a register of undertakings.
- (iii) Unviable firms. Firms that were not considered to be financially viable businesses including those considered by the insurers to be unlikely to be able to pay a reasonable self-insured excess were generally considered to be uninsurable.
- (iv) Poor claims experience with little background information or explanation on claims.

(v) Failure to improve risk management following claims.

(vi) Concentration of work in high risk areas, particularly firms dependent on conveyancing for more than 50% of their business.

Market Dynamics

There is a new insurer in the market, XL. Delays in the SMDF quoting were a serious problem and this has been acknowledged by the SMDF. There is now a better spread and more balanced market with more insurers having significant market shares and no single dominant insurer. The impact of the suspension of the Assigned Risks Pool (which normally provides cover for firms unable to obtain cover in the market) was less significant than had been feared. There is no doubt that risk management is the principal current issue in practical terms. It is imperative that every firm takes risk management seriously and it is the unequivocal strong advice of the Society that they should do so.

Quality of Proposal Forms

The insurers have told the Society that the quality of proposal forms was variable for the last renewal period, with many incomplete forms. The insurers advise that firms with claims should explain in summary:

- (i) How the claims arose;
- (ii) How the claims were dealt with;
- (iii) The history of the firm;
- (iv) A description of the firm's risk management procedures; and
- (v) Changes that have been made to prevent future claims.

Some insurers have advised that firms should have a copy of their register of undertakings available for inspection.

Claims Experience

The loss ratios for insurers in the three years up to 2009 have ranged from 180% to 800%. A loss ratio of 800% means that, for every €100 collected in premium, the insurer has had to pay €800 in claims. The high frequency and severity of claims is a serious problem. Loss ratios for some insurers for each of the last 10 years have exceeded 100%. However, there are indicators for 2010 that there has been a decline in the frequency and severity of claims due to the reduction in the scope of cover as a result of regulatory changes and the large volume of claims reported in the prior periods.

Next Indemnity Period

No insurer, other than Hiscox, has indicated an intention to leave the market. Most insurers have said that the reduction in the scope of cover has helped stabilise the market. However, the serious historical losses have resulted in the Irish solicitors' professional indemnity insurance market being critically examined by top international management in the insurance companies.

We expect that, based on recent feedback from insurers, the renewal process will be more efficient this renewal, but firms will continue to come under close scrutiny by insurers who believe that the worst is not necessarily behind them in regard to new claims. An early start to renewal negotiations is critical to avoid surprises and practitioners should consider all available options.

Quinn Insurance

As is well known, the High Court has appointed administrators to Quinn Insurance. Both Quinn Insurance and the administrators say that it is "business as usual". The Society does not require firms insured by Quinn Insurance to take any action at present.

Start Preparing for Renewal Now

1. **Collect information now**
 - Firms should start collecting information well in advance of the insurers finalising their proposal forms as the information required can be difficult and time consuming to find and the collation of information should continue on an ongoing basis.
 - Last year's proposal forms should be checked to predict most of the information that insurers will be looking for at the next renewal date.
 - Firms should establish a system to capture this information on an ongoing basis to save both time and money in the long term.
2. **Seek copy of claims history**
 - The claims history of the firm should be obtained from the current insurer. The insurer is required to provide this information in accordance with the Qualified Insurers Agreement.
 - The claims history report from the current insurer should contain a summary of each claim made against the firm under each policy, the amount reserved by the insurer against each claim (including the basis on which the amount was calculated) and whether the amount includes defence costs, information on any excess or deductible for each claim and any amounts paid out in relation to each claim (including any excess or deductible due from but not paid by the firm).
 - Firms should comment on any outstanding claims as to their current status.
 - Firms should outline what steps have been taken to avoid a re-occurrence of the problem.
3. **Research the market**
 - Firms should research professional indemnity insurance market conditions and enquire from brokers about what type of firms are covered by each insurer. Many insurers may have narrow underwriting criteria and will only quote certain types of firms.
 - Enquiries should also be made as to what are the key issues that suitable insurers for your type of firm will be looking for in assessing proposals.
4. **Apply early**
 - Some insurers limit the amount of business that they accept and, when this limit is reached, they will stop offering cover. Therefore proposal forms should be submitted as soon as possible. Proposal forms should be available in early September 2010.
 - Early submission should also indicate that a firm is professional and well managed and therefore less likely to constitute significant risk.
 - Wherever possible, firms should meet with insurers to address any key issues or concerns of insurers.
5. **Risk Management**
 - The Society strongly recommends that firms adopt formal risk management policies and procedures and notify insurers of the procedures in place. Read more in-depth information on risk management.

Risk Management

The Society has received many queries from members of the profession regarding risk management.

What you need to do

Most solicitors' firms have experienced increased difficulty in renewing professional indemnity insurance and significantly higher premium levels. All the qualified insurers have made it clear that it is in the interests of the solicitors' profession for there to be a significantly increased focus by the profession on risk management to ensure that cover continues to be available, to reduce the rate at which premium levels rise and ultimately to reduce premium levels. The introduction of improved risk management procedures should assist in protecting firms, provide firms with more options in relation to the number of insurers willing to provide cover and improve avoidance of claims arising.

Why you need to act urgently

The adoption of formal risk management policies and procedures or the improvement of existing risk management policies and procedures is not an 'overnight' process. In most cases there will be a great deal of work involved and the time between now and the next renewal process in November is relatively short. The Society strongly recommends that all firms which have not already commenced addressing the adoption of formal risk management policies and procedures in their firm should do so as soon as possible.

Who can help you

The Society established a panel of risk management consultants approved by the Society to advise solicitors' firms in relation to risk management, focused on risks of concern to qualified insurers. The risk management scheme being promoted by the Society involves a range of risk management advisory services being available to solicitors' firms from consultants on the panel on the basis that each firm should decide for itself which approach best suits its needs.

Proposals were sought and obtained by the Society from a range of risk management consultants. These proposals have been assessed to ensure that only proposals which are believed by the Society to have the general confidence of the insurance market have been placed on the approved list. While the list has been compiled by the Society to meet this requirement, the Society accepts no liability for the services provided by any of these consultants. It will, of course, be a matter for each insurer to decide what weight they will choose to give to any risk management system introduced.

The qualified insurers have indicated that they welcome improved risk management procedures in firms, which should eventually result in fewer claims, which may result in reduced premiums in the long term. It is the view of the qualified insurers that risk management should be ingrained in firms and maintained on an on-going basis.

The list of approved risk management consultants is as follows (in alphabetical order):

- [BusinessEye](#)
- [Legal Risk LLP](#)
- [Legalwise](#)
- [Anne Neary Consultants](#)
- [Outsource](#)

View more contact details below.

The Society believes that good quality risk management policies and procedures and their diligent implementation is a worthwhile exercise in its own right, quite apart from its expected impact on renewal of professional indemnity insurance, because it will result in a more productive and more efficient firm and better service to clients; in short, a better run firm.

Useful Contacts

1. **List of Qualified Insurers**

View current [list of qualified insurers](#)

2. **List of Brokers**

View current [list of brokers](#)

3. **Law Society Helpline**

The Law Society has put in place a helpline to assist firms in dealing with the professional indemnity insurance renewal process. The helpline can be contacted by phoning 01 879 8790 or emailing piihelpline@lawsociety.ie. The helpline is manned by solicitors employed by the Law Society. The helpline will be available Monday to Friday, 9am to 5pm.

4. **List of Risk Management Consultants**

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In each case, if you click on the name of the company concerned you will be connected to the website of the company which describes the services provided by that company and gives contact details.