

1 September 2020

OPEN INDUSTRY LETTER

Non-Payment of Professional Indemnity Insurance Premium and Excesses – Insurer concerns for the forthcoming Solicitors renewals

Over the last few months, the International Underwriting Association (IUA) have been engaged with the Solicitors Regulation Authority (SRA) on the increasing concerns held by Insurers on the non-payment of premium and policy excesses and the availability of continued, non-cancellable cover, including for Extended Policy Periods and, where applicable, six years run-off cover. These issues are addressed in the SRA Minimum Terms and Conditions (MTC), which are periodically negotiated with insurers.

The purpose of this Open Letter is to flag our concern on the limited progress made and the potential implications looking ahead to the forthcoming solicitor renewals.

The lack of cancellation rights for non-payment of premium or excesses in the MTCs has long been a concern for Insurers. However, it is clear that this will shortly become significantly more problematic due to the deteriorating economic environment. To pre-empt potential disruption and manage this concern we approached the SRA to propose the following changes to the MTCs:

- Allowing the policy to be cancellable in the event of non-payment of premium;
- Allowing the payment of run-off premium to be compulsory for such cover to incept;
- Allowing the payment of excesses to be made mandatory and, where not complied with, the ability to off-set excesses against claims payments.

The following arguments support the urgent need for change:

1. Even prior to Covid-19, many solicitor firms were facing economic pressures. Recent analysis by litigation funder Augusta Ventures of the accounts of 40 LLP law firms with a combined revenue in excess of £15bn found 55 per cent had insufficient cash to cover one month's expenses. Many smaller firms are similarly challenged, as noted in a recent Law Society survey that reported that 71% per cent of high street law firms believe they may have to close their businesses in the next six months as result of the crisis. Though there have been similar solvency concerns in the past, notably following the 2008 financial crisis, the effects of Covid-19 are undoubtedly more systemic and potentially more deeply damaging. In short, the economic difficulties are clearly only going to get worse in the immediate and near future, with a greater likelihood of a large number of firms not being in a position to pay excesses, premium and ultimately becoming insolvent and/or unable to practice.
2. The deteriorating economic climate means that the credit risk taken on by insurers for non-payment of excesses and premium risks reaching commercially unacceptable levels and may lead to a restriction in the availability and affordability of PII across the board. Credit

risk of this magnitude is not assumed by Insurers of any other professions, neither in relevant MTCs nor in the open PII market. Given the ease in which Insurers can move capital within their organisations, it is unrealistic and counter-productive to expect them to take on such risk in times when the likelihood of non-payment will be significantly heightened.

3. The fact that Insurers are now seeing an increase in the request for payment of premium by instalments is indicative of the economic pressures that many solicitors are facing. Insurers have shown their willingness in other classes of insurance and with other PII professions to work with clients who are struggling to mitigate the short-term economic effects of Covid-19. However, the complete lack of any protections around payment of premium make it far more difficult for Insurers to offer similar assistance to solicitor firms who are in temporary financial difficulty, without taking on significant and often unacceptable credit and cash-flow risk.
4. The lack of a right to offset claims payments with unpaid excesses and premium further exacerbates the negative impact of non-payment of premium on insurers.
5. The reporting process to the SRA where non-payment occurs has, we respectfully suggest, not led to any tangible improvements for Insurers who, despite the disciplinary process for regulated firms, continue to assume the increasing risks of non-payment.
6. The current situation is contrary to established contract and insurance law principles and goes far further than other regulated professions and, indeed, the rules of the Financial Conduct Authority.

Ultimately, PI insurers could be on risk for seven years regardless of payment of premium or excess. This includes unlimited access to very broad Any One Claim cover in that period. From a prudential, professional standards and equity perspective this is unacceptable.

We understand that amending the MTCs is not straightforward and can take time. Discussions with the SRA and the Law Society have ultimately led to a situation where there will be no amendments to the MTCs for the October 2020 renewals. The SRA are undertaking a number of measures to mitigate the non-payment issue in the short term, for example reviewing their supervision and enforcement processes and effective communications with regulated firms. These steps are welcomed but will do little to address the core concerns of Insurers and the likely effect of those concerns at forthcoming renewals.

So what could we see in those renewals? Though each Insurer will take their own commercial approach, certainly one can expect tighter restrictions on premium payment terms. Moreover, Insurers will likely become more selective in their risk appetite. This may well disproportionately affect smaller conveyancing firms, who generate much lower premium and may be especially impacted by Covid-19 and the lack of 'high-street' business. As the vast majority of firms fall within this bracket, the overall impact could be widespread.

Whilst Insurers are looking to pre-empt a potentially huge impact on the profession, it should be made clear that there is no proposed change to the scope of insurance cover offered to solicitors. The primary objective is to more effectively and equitably manage policy mechanisms; to ensure that solicitors pay for the cover that is being provided to them. This will actually benefit the majority of firms as Insurers will be able to better evaluate and price their existing and future portfolios and also provide a significant degree of confidence for their long-term ability to provide solicitors PII. Moreover, greater protections for Insurers around excess payments will give them more confidence and create greater flexibility in their insurance terms, for example, possibly allowing for higher excesses in return for lower premiums. The current lack of protection stifles product innovation.

We understand that one of the core tenets of the MTCs and the SRA's raison d'être is consumer protection. Key to achieving that is the availability of affordable and effective PII for regulated firms. But the continuing inability of Insurers to manage their policies in respect of premium and excess payments, heightened by the ongoing Covid-19 crisis, undermines the willingness of insurers to offer PII and thus threatens the long-term stability of the MTC process. Clearly, a restriction in the availability and/or affordability of PII would ultimately lead to consumer detriment and this is what we are looking to avoid.

We understand the difficulties facing many firms at this time. Our continuing goal is to provide ensure that there is sufficient and affordable PII capacity available for regulated firms at a time when it needs it most. We will continue our engagement with the SRA but, regrettably, meaningful change will not be in place before October and the implications of this will be seen in due course.

ENDS

Note on the International Underwriting Association

The International Underwriting Association of London (IUA) represents international and wholesale insurance and reinsurance companies operating in or through London. It exists to promote and enhance the business environment for its members. It currently has 63 members writing business in London. As part of IUA's member services, it runs the Professional Indemnity Forum (PIF), which constitutes around 35 insurers providing professional indemnity cover for UK and international risks across a wide range of professions. Cumulatively, they provide the majority of PII cover currently available for SRA regulated firms.

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