

Browne Jacobson survey finds 38% of insurers considering pulling out of the solicitors PII market

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A survey carried out by the UK and Ireland law firm Browne Jacobson and the International Underwriting Association, suggests solicitors may face severe problems with the renewal of their professional indemnity insurance going forward.

38% of the insurers participating in the survey said the recent decision in Discovery Land v Axis had made them consider pulling out of the solicitors professional indemnity market entirely.

The Court of Appeal decision earlier this year in Discovery Land v Axis has caused concern in the insurance market for solicitors, due to its very restrictive approach to the aggregation of claims for the purposes of the limit of indemnity under the Solicitors Regulation Authority (SRA) minimum terms and conditions (the MTC).

Of the SRA participating insurers who responded to the Qualtrics survey (which was done anonymously and with the results subject to a sensitivity analysis), 69% of the respondents said that they would 'definitely change' their underwriting strategy this year, with more than half of them saying their pricing would increase and a third stating they would write less primary layer business.

The survey also asked insurers to provide some data on the typical PII premiums paid by both chartered accountants and licensed conveyancers. The results suggest chartered accountants typically pay a median premium that is 2% or less of their annual turnover and that for licensed conveyancers the figure is closer to 3%.

The Discovery Land judgment and earlier decisions have meant primary layer insurers are paying much more for claims than expected, with the excess layers not being engaged as much as they should.

The MTC were amended in 2005, supposedly to make the aggregation of multiple claims easier. However, the recent court decisions have confirmed this is not happening in practice, as it still contains a restrictive 'act or omission' type aggregation wording.

These results compare with the published data from the FCA, which shows that IFA's premiums are 2.7% of their annual turnover and the figure for insurance brokers is 1.9%.

However, the research carried out by the SRA last year shows that the median figure for solicitors' premiums is much higher, at 5% of annual turnover.

Ed Anderson, a PII partner at Browne Jacobson, said:

"The results of the survey are very concerning for the profession and for clients. Solicitors already pay far too much for their PII compared to other professionals – more than double in most cases - and ultimately it is the clients who bear the cost of that. The difference is now going to get even greater.

"The dominant reason for the additional cost is that the MTC are unnecessarily restrictive for insurers and when compared to the minimum requirements, if any, of other comparable professions. We also asked the market what difference it would make if the MTC had an 'originating cause' type aggregation wording and 75% confirmed they would have a greater appetite for writing solicitors' business if it did.

“Just that one small change to the MTC would therefore have a marked effect on pricing and with little impact on client protection, given that many firms of course buy excess layer insurance cover in any event. There is no doubt that amending the MTC is the single most effective change the SRA and the Legal Services Board could introduce to reduce the cost of legal services to consumers.”

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