



PROFESSIONAL
SERVICES FIRMS

London Market update Covid-19

April 2020



Aside from the shock to our daily lives and the emotional stresses created by Covid-19, it is also clearly changing the way professional service firms, of all types, conduct business. A few firms may take it in their stride and may have already been accustomed to remote working, but for the vast majority this is a completely new way of working.

It is inevitable that from a risk perspective this new way of working will throw up new challenges. It will also increase the potential for mistakes to be made and malpractice claims to be brought against firms.

Before Covid-19 hit, the Professional Liability insurance market landscape was already changing, particularly for large law firms.

A combination of social inflation resulting in ever-increasing awards and/or settlements and a prolonged soft market had led to unacceptable underwriting results. We were already seeing sharply higher rates even for those firms that had not suffered losses. Insurers were cutting capacity, leading to many programs being restructured to find the most price competitive result.

Regrettably Covid-19 has only exacerbated the problems. Professional Liability insurers just don't know what impact it will have on the insurance market, other than it will almost certainly be negative. It is usual in times of economic downturns for claims frequency to accelerate as clients look to blame their professional advisers for their own poor business decisions.

We therefore thought it might be helpful to highlight some of the issues Professional Liability insurers are already looking at and how we believe firms should be addressing their increased exposures. It must be stressed that this is not an exhaustive list and we do not have all the answers.

We hope the following can act as an aide memoir for firms as they grapple with their new business model.

Financial

Insurers will want to understand the immediate financial repercussions. Have firms gone into debt?

How are their accounts receivables (AR) standing up and how are firms managing fee collections?

What measures have been taken to curb expenses, have there been any headcount reductions or are there any plans for such?

Which areas of practice are suffering?

Operational/remote working/communication

How are the firm's IT systems standing up to the demands of remote working?

How is the firm addressing heightened cyber risks as hackers try to take advantage?

What procedures are being put in place to supervise work and ensure that no attorney can work in their own small silo?

What actions have been taken to reinforce standards/requirements in respect of privacy and security of client information?

Many attorneys may be suffering from increased mental health problems. What process has been put in place to identify such problems and act upon them both in respect of clients and the attorney's own wellbeing?

What has been communicated to clients?



Risk Management

Has the firm changed/tightened any of its Risk Management procedures due to Covid-19?

As ARs come under greater pressure, what controls are being put in place to ensure the firm's attorneys do not accept sub-par clients?

Force majeure and material adverse change clauses. Has there been any systematic review of such clauses on current deals to determine what options are available and advise clients of their options?

Has there been a review of engagement letters, outside counsel guidelines and have any changes been made? Also, have contractual arrangements with vendors been reviewed?

Docketing/Diary systems. How are these systems performing? Are key dates on all major transactions being reviewed to ensure deadlines are not missed?

Are Merger & Acquisition deals in the pipeline being reviewed to consider the clients/other parties' options and advise the clients of risks and actions to be taken to mitigate such risks?

What, if any, additional Risk Management procedures have been put into place or how are existing procedures being reinforced?

SUMMARY

There probably is no right or wrong answer to many of these points. The important point from underwriters' perspective is that firms are carefully looking at how the new way of working may change their exposure and are taking concrete actions to mitigate such exposures. Those firms that can articulate this well will undoubtedly get better results than those who are unable to in what was already a very difficult market.

SPEAK DIRECTLY TO OUR TEAM

For more information on how we can help, please contact:

Nick Lewin

Director & Partner

E nlewin@paragonbrokers.com

T +44 (0)20 7280 8231

M +44 (0)783 742 3280

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