

SRA Consultation – Professional Indemnity Insurance: Affirmative Cyber Cover

As you will be aware, Aon is a leading broker for Solicitor firms. We have a team of in excess of 40 people in the UK dedicated to these firms. We handle over 50 of the larger SRA regulated firms. We place over £10 billion of total PI limits across these firms. We place a significant portion of this total, representing over £115 million of premium, in the London market.

We do have a focus on the larger end of the profession and as such, most of our clients purchase limits significantly higher than the £3m compulsory requirement. While only the first £3m is governed by the Minimum Terms and Conditions (MT&Cs), most firms maintain coverage at least as broad through the full limits they purchase. Further, most large firms, maintain coverage that is somewhat broader than the MT&Cs, in large part due to their long-term relationship with insurers who have spent a substantial amount of time underwriting their risk. Over the past several years, this extensive PI underwriting process has encompassed cyber exposure along with many other areas of a firm's professional business which would normally be assessed when considering an offer of insurance terms.

As an organisation, we have been negotiating silent cyber clauses since late last year, for clients across industries, but the negotiations for the professions have been particularly challenging as the approach taken by PI insurers has been more restrictive than in other lines of cover.

Our role is to advocate on behalf of our clients to ensure they and their customers are protected to the extent possible, for risks arising out of their professional business. In that capacity, we feel it is important that we share our views on the SRA's proposal. We would welcome the opportunity to discuss our thoughts with you.

1. Do you agree with the proposed change to our MTCs?

Our view is that the underlying premise, which we understand is to maintain the full breadth of the current MT&Cs, is correct. We would not wish to see any limitation on that coverage. We do not agree that the proposed approach to amending the MT&Cs, by excluding cover broadly and then carving back all of the cover that is compulsory, is the best way to protect law firms and their customers from PI risk.

2. Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

Our concern is that the use of any exclusion would limit the coverage for many firms for which brokers have successfully negotiated broader terms than the MT&Cs. They and we have worked hard to develop insurers' understanding of their risk and to provide coverage with which both sides are comfortable.

3. Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

The proposed exclusion is the widest type available on the market, permitting cover to be excluded for losses "*in any way in connection with*" cyber acts, malware, computer and infrastructure failures and data protection breaches. Given most law firms use computers for the overwhelming majority of their work, it is probable that such a broad exclusion will have unintended consequences. The effect would be to bring those firms back to the minimum coverage required under the SRA rules.

In doing so, the addition of the proposed exclusion would certainly reduce the scope of consumer protection currently in place for many firms and may, in fact, impact the terms and conditions which law firms have in place with their clients as regards liability.

Our view is that there is no need to amend the MT&Cs with a cyber exclusion, as has been proposed. Rather, we would recommend that the requirement of Lloyd's and others to identify cyber coverage is handled through an affirmative cyber cover statement that applies to the cover provided by the MT&Cs. This will reinforce to insurers that the MT&Cs must apply in full, irrespective of whether the loss was caused by a cyber act, incident or data breach. The manner in which insurers treat any cover that they may offer that extends beyond the minimum requirements of the SRA will be a matter for negotiation, as per the current situation. There is no need to deal with it in the minimum terms.

There are several examples of affirmative clauses currently in wide use in the London market for other lines of cover (D&O, for example) and in other industries (Financial Institutions, for example). We feel this affirmative cyber cover approach is much better for law firms and ensures continuity of protection for consumers. There should be no ambiguity that a PI matter (whether an actual claim or potential claim) triggered by a cyber event is covered under the MT&Cs.

4. Are there any other impacts which you think we need to consider?

The consultation committee may also be (wrongly) assuming that any liabilities which are excluded by the proposed clause would be covered under a standalone cyber policy. We have found that this is often not the case.

Cyber policies provide several valuable first party covers and limited third-party privacy and security liability cover, where the liability arises in the context of a security or data breach. Such cover is not intended to be and does not operate as broad civil liability cover and is certainly not intended to be a back stop or gap filler for any cover which is being lost under a PI policy. Cyber policies are not underwritten (in terms of the analysis of the insured's risk) or priced to cover hefty PI exposures. This is reflected in the level of retentions, limits and price in cyber policies when compared to PI policies. PI and cyber policies address and mitigate different risks.

Moreover, cyber insurers are aware of what is happening in the PI market in terms of the application of silent cyber exclusions and are nervous that their policies may be seen as potential dumping grounds for excluded PI risks. This has led to several leading primary cyber insurers seeking to impose broadly worded professional services exclusions on their cyber policies. Pressure is therefore being exerted from both directions, resulting in a substantial risk of claims falling through the cracks between the two covers (assuming the law firm even purchases cyber cover in the first place).

To summarise, we do not agree with the proposed change to the MT&Cs and recommend that the SRA insist that participating insurers are required to affirm that the MT&Cs do provide coverage for cyber events. We would welcome the opportunity to discuss this with you.

About Aon

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