

Solicitors Claims Review 2018

Made possible



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Current Claim Trends

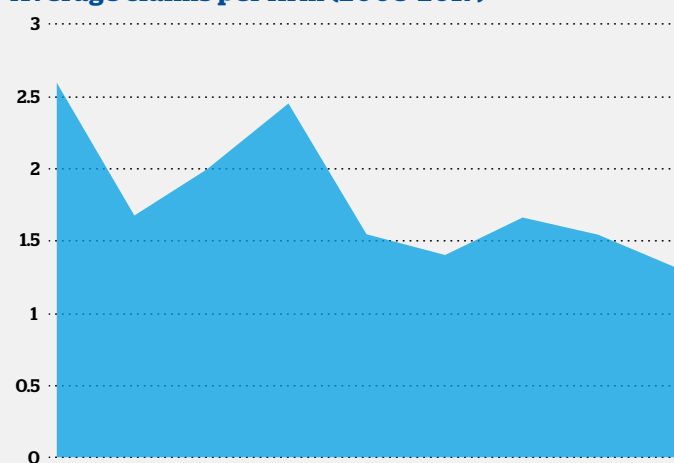
Professional Indemnity insurance has been flagged by Lloyd's to be one of the two worst performing classes of insurance in recent years. This is particularly true of Solicitors professional indemnity, where claims have exceeded premiums for many insurers in several years out of the last decade.

While numbers of claims have fallen from their 2011/12 peak, a 'soft' insurance market, combined with rising claim values (fuelled both by a rampant property market and higher court settlement figures) has meant that the solicitors market remains a high risk sector for insurers.

The number of claims against solicitors in England & Wales has reduced from a peak in 2008, but ongoing increases in claim values have offset much of the benefit of this reduction in volume.

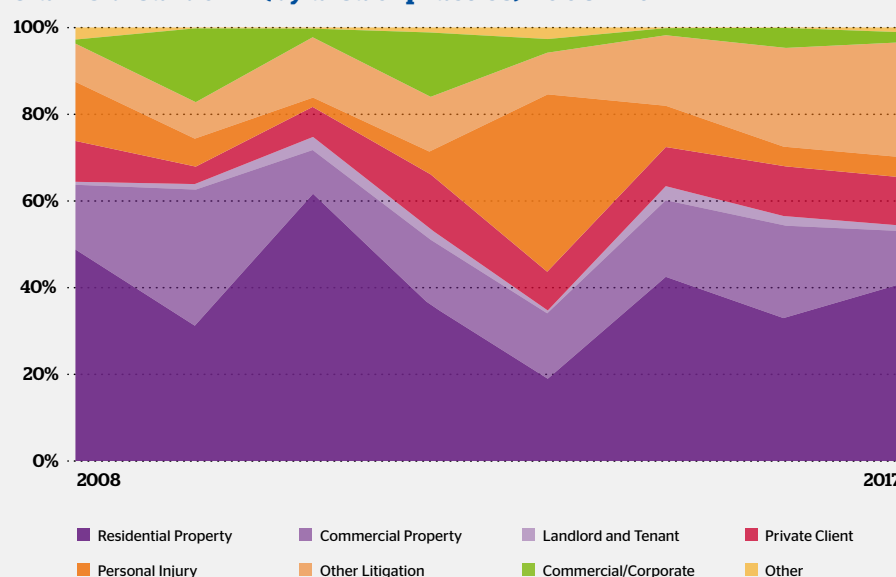
The areas of practice generating the majority of claims have not altered significantly. For high street firms, the emphasis remains on residential property, followed by litigation and private client work. For larger commercial firms, the emphasis is typically on commercial property, commercial litigation and corporate work. Corporate work tends to produce relatively few claims by number, but some of the highest individual claims have arisen from large-scale commercial/corporate deals.

Average claims per firm (2008-2017)



QBE Solicitors Claims Data 2008 - 2017

Claims breakdown (by area of practice) 2008 - 2017



QBE Solicitors Claim Data 2008 - 2017

QBE Top 5 Causes of Claims against Solicitors

The types of error leading to claims also continue to reflect many familiar themes: client and matter management issues produce the vast majority of claims.

[Click on the sections below to view each set of risk controls.](#)

Preventing 'Failure to Advise' Claims - Self Audit Checklist

Risk Controls	Your Risk Audit	Improvement Actions
Detailed, Accurate Scoping Do fee earners have some form of template or workflow process that helps ensure that key questions are asked, and issues identified up-front?	<input type="checkbox"/>	
Meaningful Engagement Letters Is your engagement letter template annotated to prompt fee-earners to consider issues of scope?	<input type="checkbox"/>	
Does your engagement letter template include a section on exclusions from advice?	<input type="checkbox"/>	
Are engagement letters subject to review and audit?	<input type="checkbox"/>	
Are engagement letters reviewed and revised where required during a transaction when the scope changes?	<input type="checkbox"/>	
'Unbundled' services Do you avoid providing restricted, discrete elements of advice on a transaction (often sought by clients seeking to save money)?	<input type="checkbox"/>	
Where instructions are accepted in which the client has restricted the scope, is this specifically referenced in the letter of engagement?	<input type="checkbox"/>	
Where you do offer such services, are they categorised as 'higher risk' and therefore subject to stricter oversight or other suitable risk control?	<input type="checkbox"/>	
Have fee earners been trained that, even where you are not advising on a matter, it is likely to still be incumbent on the firm to advise the client that a risk exists on which they should obtain advice?	<input type="checkbox"/>	
Meeting Notes & Follow-up Emails/Letters to Clients Are fee-earners trained on the importance of taking & retaining on file detailed meeting notes?	<input type="checkbox"/>	
Do you have recommended procedures or practices in place which help ensure that robust contemporaneous notes are taken in important meetings (e.g. taking a junior fee earner into a meeting to take notes)?	<input type="checkbox"/>	
Are meetings routinely followed up by written communications with the client summarising key issues discussed, decisions made, action points, and deadlines?	<input type="checkbox"/>	
Do you have template reports and documents which include a list of potential issues to reference/flag to clients?	<input type="checkbox"/>	
Do they ask questions that encourage fee earners to identify key risks and controls?	<input type="checkbox"/>	

Preventing ‘Failure to Advise’ Claims - Self Audit Checklist continued

Risk Controls	Your Risk Audit	Improvement Actions
Plain English Guides for Clients Do you produce any summary guides for clients that explain the process and key issues relevant to certain transaction types?	<input type="checkbox"/>	
If yes, do they include information that reduces the risk of mistaken assumptions by clients regarding the transaction?	<input type="checkbox"/>	
Are they sent out or otherwise provided to clients as part of the engagement process?	<input type="checkbox"/>	
Checklists and Aides Memoire Do fee earners have access to and use checklists and aides memoire?	<input type="checkbox"/>	
If yes, do such questionnaires ask questions that encourage fee earners to identify specific risk issues and controls? (Checklists where possible should avoid encouraging a ‘tick-box’ mentality, and be designed to encourage active consideration of key risk issues).	<input type="checkbox"/>	
File Audit Do you have a file audit or review process that includes checks on the sufficiency of advice given to the client, as evidenced by the file?	<input type="checkbox"/>	

Preventing 'Failure to Follow Client Instructions' Claims - Self Audit Checklist

Risk Controls	Your Risk Audit	Improvement Actions
Confirming Instructions Is there a consistent practice of client instructions received verbally, being confirmed in writing by fee earners?	<input type="checkbox"/>	
Are fee earners trained to consider possible changes in scope, risk profile, cost-benefit and time when receiving instructions during the course of a transaction?	<input type="checkbox"/>	
Engagement Letters Do you make it clear to clients that they cannot assume that an email instruction has been received or read and that urgent instructions should be followed up by a telephone call to the fee earner in question?	<input type="checkbox"/>	
Handover/Instructions involving Multiple Parties Do fee earners ever 'double up' on transactions to both reduce risk generally, and improve continuity in event of absence?	<input type="checkbox"/>	
Does the firm have systems and procedures which ensure that file hand-overs, including in cases of unexpected absence, are well managed, and provide sufficient information to enable matters to be completed with the minimum additional risk?	<input type="checkbox"/>	
Where multiple departments are involved in a matter, is there a single main point of contact for the client?	<input type="checkbox"/>	
Where the client has more than one professional adviser on a matter, is the engagement letter & file clear concerning who is responsible for addressing particular aspects of the transaction?	<input type="checkbox"/>	
Supervision Do the firm's systems help identify matters that may not be progressing as they should (e.g. inactive file reports)?	<input type="checkbox"/>	
Are ongoing files appropriately supervised to ensure that critical tasks are undertaken (timeously)?	<input type="checkbox"/>	

Preventing Delay Claims - Self Audit Checklist

Risk Controls	Your Risk Audit	Improvement Actions
Diary Systems Do you have a robust shared or central diary system (which includes a back-up diary system in case of failure) which is properly used by fee earners across the firm?	<input type="checkbox"/>	
Are critical dates in high value and other high risk matters given a 'second pair of eyes' check at an early stage?	<input type="checkbox"/>	
Do you have guidance and aides memoires that are used to assist the correct identification of critical dates (this is particularly pertinent for teams involved in all types of court work)	<input type="checkbox"/>	
Management Reports Are reports run on upcoming critical dates (or similar equivalent) and used to prompt supervisory checks?	<input type="checkbox"/>	
Are reports run on inactive file & outstanding positive account balances - which may indicate incomplete work and delays?	<input type="checkbox"/>	
Are timelines built into any work-flow systems, where applicable?	<input type="checkbox"/>	
Review Meetings Do you have a process for reviewing the progress of ongoing matters? (e.g. routine or regular file review meetings which focus on high risk matters and imminent/recently passed critical dates).	<input type="checkbox"/>	

Preventing Drafting Error Claims - Self Audit Checklist

Risk Controls	Your Risk Audit	Improvement Actions
Precedents Do you have a comprehensive and up-to-date precedent bank in all departments?	<input type="checkbox"/>	
Is access to particular precedents restricted to fee-earners in the relevant department?	<input type="checkbox"/>	
Do you ensure that fee-earners work from latest version precedents only? (e.g. do you prevent/disallow the download and saving of documents onto local computer drives, whereby out of date versions might be used as a starting point for a new matter? Do you have practice management systems which require fee earners to work from precedents only?)	<input type="checkbox"/>	
Version Control Does your document management system make it more difficult to use an old draft rather than the latest version?	<input type="checkbox"/>	
Supervision Is there a practice of second-pair-of-eyes checks on high risk matters* and matters where one template document is going to be used across a wide range of matters (e.g. a lease template for a client to be used across multiple properties).	<input type="checkbox"/>	
* Are there clear, consistently applied criteria for what constitutes high risk in respect of the values, potential cost of failure, or other relevant factors?	<input type="checkbox"/>	
File Notes Are fee earners trained to use (and retain on file) post-meeting emails/action trackers to agree post meeting actions (which include drafting updates)? Are these retained on file?	<input type="checkbox"/>	
Do fee earners keep annotated draft documents on [electronic] file archive, to evidence discussions?	<input type="checkbox"/>	
Do you have any additional risk controls in place to reduce the risk of claims arising from alleged drafting errors in 'eleventh hour' negotiations? (e.g. client required to sign off on annotated drafts to evidence agreement)	<input type="checkbox"/>	

Preventing Failure to Register Deeds and Charges Claims - Self Audit Checklist

Risk Controls	Your Risk Audit	Improvement Actions
Post Completion Checks Do you have a post completion/ file close checklist that includes a substantive check on the effective registration of deeds and charges.	<input type="checkbox"/>	
Diary and Case Management Systems Do fee earners enter registration deadlines in a central diary system?	<input type="checkbox"/>	
Do you have a case management system that flags the registration requirement?	<input type="checkbox"/>	
Do you have a process for tracking registrations that have been rejected?	<input type="checkbox"/>	
Post Completion Team Do you use a specialist post-completion team or individual (e.g. paralegal/legal executive(s)) to aid processing efficiency?	<input type="checkbox"/>	

Preventing Fraud Claims - Self Audit Checklist

Risk Controls	Your Risk Audit	Improvement Actions
Client and Transaction Vetting Do fee earners (not support staff) complete substantive risk assessments on clients and transactions (that extend well beyond pure AML) before being able to open a new matter?	<input type="checkbox"/>	
Are high risk matters clearly defined & escalated to the MLRO or other senior manager for review?	<input type="checkbox"/>	
Cyber Security Does your firm undertake simulated phishing testing at least annually?	<input type="checkbox"/>	
Does your firm ever undertake simulated vishing (telephone fraud) testing?	<input type="checkbox"/>	
Does your firm have, or is working towards Cyber Essentials or higher accreditation?	<input type="checkbox"/>	
Awareness Training Do you provide fraud & social engineering training for all staff at least annually?	<input type="checkbox"/>	
Accounts Controls Do you train staff not to accept bank details (including changes to bank account details) by email, or at least obtain confirmation of client account details by telephone, using a number held on the original file?	<input type="checkbox"/>	
Do you obtain client account details at the start of a transaction?	<input type="checkbox"/>	
Do your accounts team act as a second control on payments (e.g. do your accounts team cross check payment details before processing a payment?), or do you have alternative 'sign-off' checks on payment instructions in place?	<input type="checkbox"/>	
Has your team, including accounts had training on frauds and scams? (e.g. 'friday fraud', payments to third parties, splitting payments between multiple accounts)	<input type="checkbox"/>	

QBE Risk Solutions

QBE has a specialist Risk Solutions team available to assist your practice with a range of risk management issues. All insured practices have access to:



QBE's own in-house risk advisers for ad hoc guidance and advice



our online risk management toolkits,



a wide range of guidance articles



pre-negotiated discounted access to a range of specialist providers

Contact Us for more information

Risk Management Advice

via your broker, your usual QBE contact, or rs@uk.qbe.com

QBE Risk Solutions

Website

QRisk Self-Assessments and Knowledge Centre

Support.Qrisk@uk.qbe.com
(or use existing logins)



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