

## Questions & Answers with Griffiths & Armour

**Q. In the PI market in general, we've seen pressures on pricing resulting in significant increases for our clients across the last 2 renewal cycles in particular. What is the panel's view on how much longer we can expect this to last?**

This is very difficult to predict as there are numerous factors which have led to the market correction which we are now seeing. With almost 20 years of downward pressure on rates, and many insurers still experiencing continued deterioration in claims reserves from past years, there is unlikely to be a quick and sudden turnaround in market conditions or appetite. As mentioned during the webinar, there are significant pressures on insurers to remediate their PI books after successive years of serious unprofitability. There will also be other factors specific to individual industries which will continue to have an impact and the potential for a recessionary driven claims environment to come could prolong the current hardening conditions.

**Q. Because the hospitality industry now has to take customers details, if a broker does not offer third party cover this would be an E&O claim?**

Assuming you are referring to not recommending insurance covers which a client may need then this, if it resulted in uninsured losses, result in a negligence claim against a broker for failing to properly assess that clients demands and needs and place covers that meet them.

**Q. What is the position with regard to brokers if they have a Covid exclusion on their PII policy? Does this now mean that the particular broker is non-compliant?**

The picture is fluid so we cannot speak with any certainty on what the wider market was doing around applying Covid exclusions to broker PI policies. Firms should carefully consider whether to accept a full exclusion and obtain legal advice if necessary. The rules surrounding the PI requirements that insurance brokers must follow are covered in the FCA's MIPRU requirements. These are widely drafted from the perspective of what risks their policies need to cover and it is possible that the FCA could deem Covid exclusions to be non-compliant. We expect the FCA will be looking at this closely so we would suggest brokers should keep a close eye on developments.

**Q. Is it prudent for brokers to notify their own PI insurers that they are aware of circumstances that could give rise to a claim, even if no direct intimation of one at this stage?**

Brokers should carefully check the notification provisions within their PI policies but, in order for circumstances to be deemed valid notifications under, typically there would need to be either:

- a) a specific complaint, claim or allegation of negligence (whether that turns out to be justified or not) made by one of the broker's clients; or
- b) a concern from the broker that there is a potential claim that can be advanced against them in relation to their professional advice; or
- c) a firm identifying that there has been a potential deficiency in their own performance.

If there are no complaints so far about the broker's services and the broker themselves do not have any internal or private concerns, then it is unlikely that insurers would accept them as a valid notification but this may largely depend on how wide or narrow their particular policy wording is.

**Q. If a case goes to the FOS and they find in favour of the broker/insurer; could the client still go to court and the decision is then overturned?**

Consumers do not have to accept the final decision and can withdraw from the FOS process at any stage in order to take the dispute to the Court instead. Whilst FOS decisions do not constitute legally

binding precedents, they may provide a reasonable indication of the likelihood of success in subsequent Court or ADR (Alternative Dispute Resolution) proceedings.

**Q. I have been asked to provide insurance expertise on a local radio station call-in for local businesses on Covid-19 issues. What are PI insurers views of this?**

The first point to make clear is that any comments or contribution through media channels is better advised against. As well as possibly being dangerous for an individual or firm, there are potential negative consequences for the wider broking profession. In such uncertain times, and with opportunistic claims firms looking for insight and avenues to explore, any public statements or comments are open to interpretation and can be taken out of context by others in order to work up their own version of the truth to target brokers or encourage litigation.

Although we doubt that PI insurers have the ability to directly prevent their broker policyholders to contribute or make statements, I expect they would take a dim view and could have implications at future renewals. There is also the danger that a firm could prejudice its own defence to complaints and claims by making comments in the public sphere.