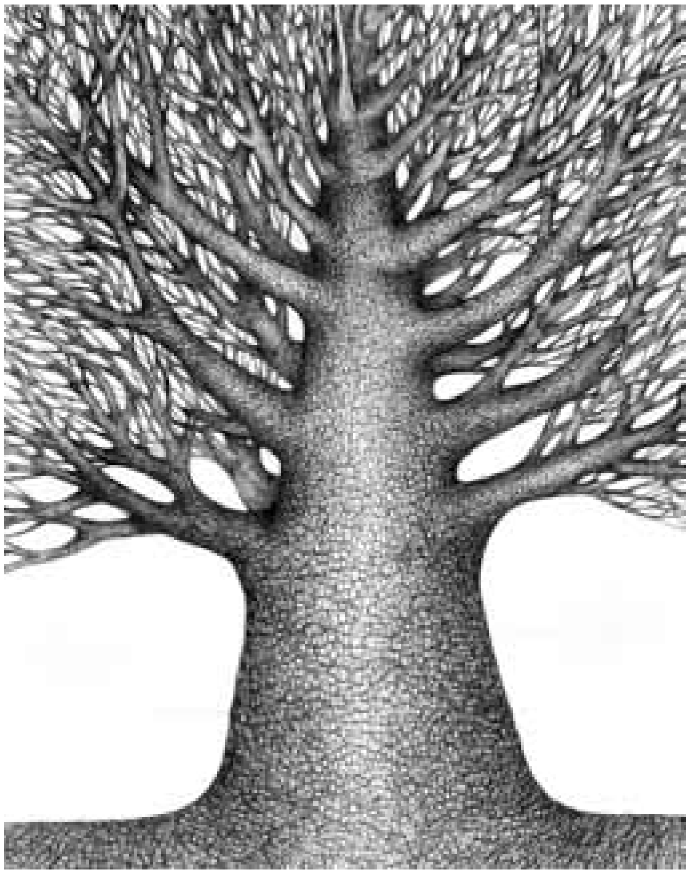
Branching out



The SRA's review of the insurance market may be disappointing but there are steps firms can take to make them more insurable, says **Susanna Heley**

'Root and branch' reviews have become very popular in the post-Clementi world. They are the answer to every regulatory issue; real or perceived. So it's no surprise that after three consecutive years of difficult indemnity renewals, the Solicitors Regulation Authority commissioned a root and branch review of client financial protection arrangements. Whether small firms will be enthused by the findings of the review is open to debate.

The SRA began making changes to the indemnity insurance regime last year, with some changes to the successor practice rule and the curtailing of the maximum period a firm can remain in the assigned risks pool – the profession's insurer of last resort. These changes were made in an effort to mollify insurers facing the fall out from the first recession involving open market insurance.

It will come as no surprise to learn that this recession, like the early '90s recession, has precipitated large numbers of claims. According to the independent review commissioned by the SRA, conveyancing is still the major risk area, accounting for around 85 per cent of claims in the ARP – many of which are brought by lenders; this explains both insurers' reluctance to underwrite firms heavily weighted toward conveyancing and the devastating cull of lenders' panel firms.

Despite a number of concessions to insurers, including the abandonment of mandatory cover for defence costs in disciplinary proceedings, a number of qualifying insurers withdrew from the market last year. Added to the demise of Quinn which had a large market share, mostly encompassing small firms, it is no wonder firms had a tough time.

Cold comfort

With this in mind, the conclusion of the SRA review – that the profession remains best served by the open market – may offer little comfort. Other suggestions emerging from the review seem targeted at making the market more palatable for insurers: the abandonment of the single renewal date, changes to the minimum terms, further changes to the ARP. These may have the effect of easing future renewals – if and when they are ultimately adopted.

From an insurer's perspective, the profession at large is hardly a safe bet at present. Although large firms will rarely present a bad risk, the poisoned chalice of mandatory contributions to the ARP – effectively insuring those firms deemed uninsurable (sometimes unfairly) by the limited pool of indemnity insurers – is a massive deterrent to insurers; similarly the inability to decline cover save on very limited grounds is a disincentive. This year has seen inventive attempts by insurers to structure premiums to minimise exposure to the ARP but, in practice, this manoeuvring simply tweaks the relative liabilities among qualifying insurers, it does nothing to address the causes of the problems.

So, what can we do about it? How can we persuade insurers that we're not such a bad bet after all? Well, there is good news mixed with the doom and gloom. Changes to the indemnity regime are likely to reassure insurers; more generally, changes to the regulatory regime are likely to appeal to insurers, in particular the requirement that each firm should have compliance officers for finance and administration and for legal practice from October. The abandonment of the single renewal date will allow for additional flexibility with the possibility that firms could negotiate cover for periods other than a full year.

Get connected

Perhaps more importantly, there are practical steps firms can take now. The replacement of the code of conduct from October (assuming all goes to plan) is the perfect opportunity for firms to take a long hard look at their risk management procedures, staff awareness and training. Why not get your insurer involved? Let them give you advice on risk management; show them that you are willing to take risk management seriously and you are likely to earn serious brownie points, making the prospect of a smooth renewal that much more likely.

Start planning now for renewal this year. Make friends with your broker – take them to lunch. Use the opportunity to ask your broker or your insurer what steps you can take to make your firm more insurable. Just by asking the questions and paying attention to the answers, you will improve your standing with your insurer.

Arrange risk awareness seminars for your staff. It is no good having a risk management policy if staff don't know how to identify and avoid risk and this has to be ingrained in a firm's culture from the ground up. Getting everyone involved in risk management will stand your staff and your firm in good stead, both in the eyes of your insurer and in the new world of outcomes focused regulation.

Why not start your own 'root and branch' review?

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