

Covering all angles

Law firms' increasing all-round focus on protecting partner assets, with more insurance cover and more risks insured, is revealed in our fourth annual Professional Indemnity Survey of Top 100 firms in the United Kingdom.

At one time law firms thought a professional indemnity policy was their risk management. As the results of this survey show, time has moved on.

We know from the work we do for large law firms that their attention to risk management issues has increased significantly in the past few years, seeking more in depth advice on a wide range of risk-related matters in the United Kingdom and overseas, such as professional indemnity, anti-money laundering, conflicts and information barriers, secondment liabilities, merger and lateral hire due diligence, training in risk management and online testing. Our clients are particularly interested in benchmarking – knowing what other firms like theirs are doing.

We have sought to capture some of the data which is otherwise unobtainable – not limited by reference to the experience of one insurer or one broker. This year more firms than ever replied, particularly the larger ones.

This year's survey enquired about other types of law firm insurance cover

as well as asking about the professional indemnity renewal process which firms went through in 2006.

Additional questions this year centred on two types of policy which have been gaining in momentum in recent years.

The first related to so-called 'Lifeboat' policies. The name 'Lifeboat' was first used by St Paul Travelers but the terminology is commonly used in referring to other providers' products too. These are policies which, with some variations in approach and detail, protect members of Limited Liability Partnerships (LLPs) from residual personal liability.

The second new question asked whether firms had management liability policies. These policies are the professional firms' equivalent of Directors and Officers cover for the management team, though again there is variation in cover. Take up has been increasing in the United States over the past few years and we thought the time was ripe to find out about their take up here.

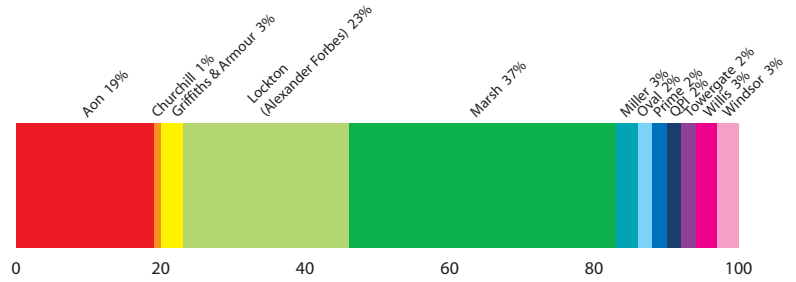
Choice of Broker

Who is your broker?

We expected significant movement of personnel between brokers to be reflected in the number of firms changing brokers, and nearly one in six did so, as against seven per cent in last year's survey. However, the number changing was less than the previous high of nearly one in five in 2004.

Marsh increased their share from 31 per cent to 37 per cent and moved up into first place, with Alexander Forbes (acquired by Lockton after the renewal, 38 per cent last year down to 23 per cent) moving down into second, closely followed by Aon who increased their share from 9 per cent to 19 per cent. The top 10 and nearly all the top 20 firms responding were split fairly evenly between Aon and Marsh, the exception using Windsor.

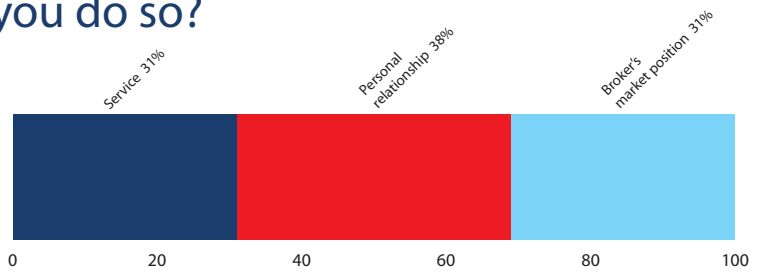
New entrants to our tables this time were Miller and Prime Professions.



If you changed broker, why did you do so?

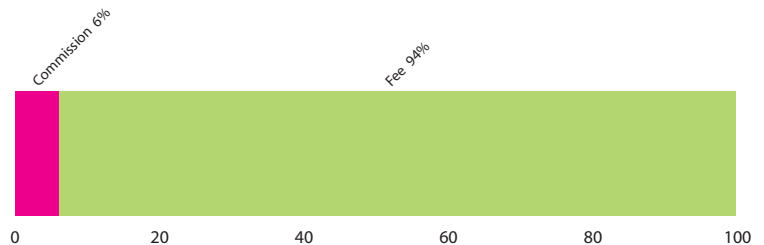
Service, personal relationship and broker's market position were given as the reasons in almost equal measure.

Note: One firm changing broker did not respond to this question.



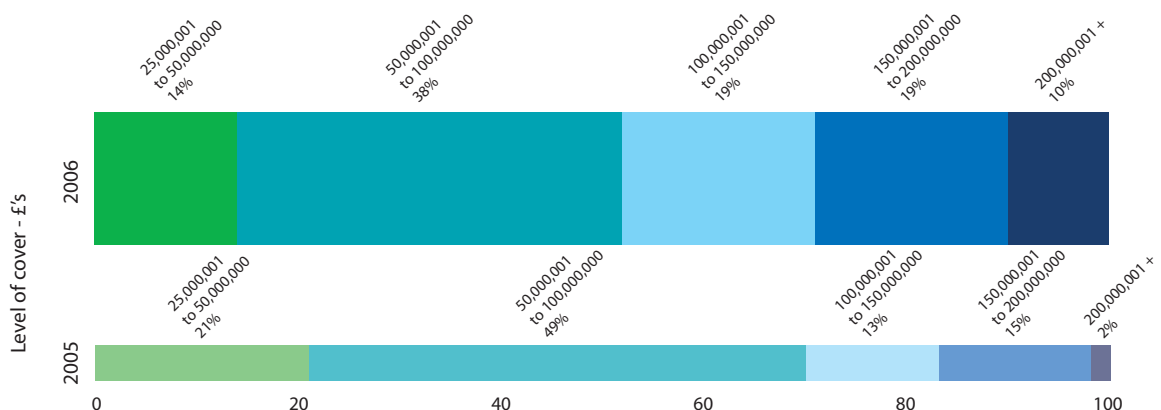
What was the basis of payment to your broker?

94 per cent of respondents pay a fee, 6 per cent commission (as against 9 per cent last time). One firm was half fee, half commission. We wonder how long commission arrangements will continue to exist, given the inherent tension they create.



Cover

How much cover did you obtain?



Last year we noted that firms were buying more cover. We know through our clients that the larger firms have been increasing and in many cases doubling their excesses since the open market began in 2000, freeing up cash to spend on the higher levels of cover.

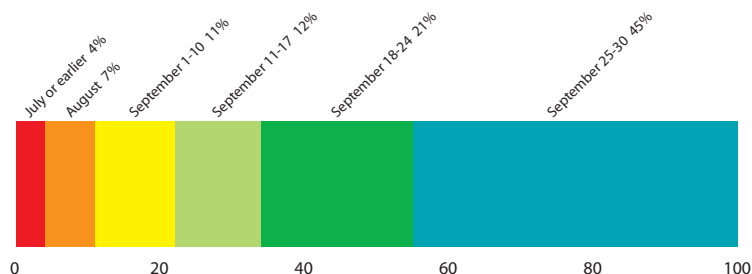
This year, as last year, our survey revealed a marked increase in the number of firms with high levels of cover - 10 per cent bought over £200 Million, and a further 19 per cent had in excess of £150 Million. This may in part have been influenced by the increased level of response from the very largest firms this year, so we undertook further analysis.

We reviewed the responses of 42 firms who also replied to last year's survey. A remarkable one in six of those had moved into a higher bracket, continuing last year's similar trend which we attributed then to revised policy wording in the 'aggregation clause', enabling insurers to apply one policy limit to multiple claims more often.

Least anyone might have any residual suspicion that LLPs would purchase lower limits of cover, just over half (16 of the 31 LLPs responding) bought over £100 Million cover; ten unincorporated practices bought that level.

When did you finalise this year's cover?

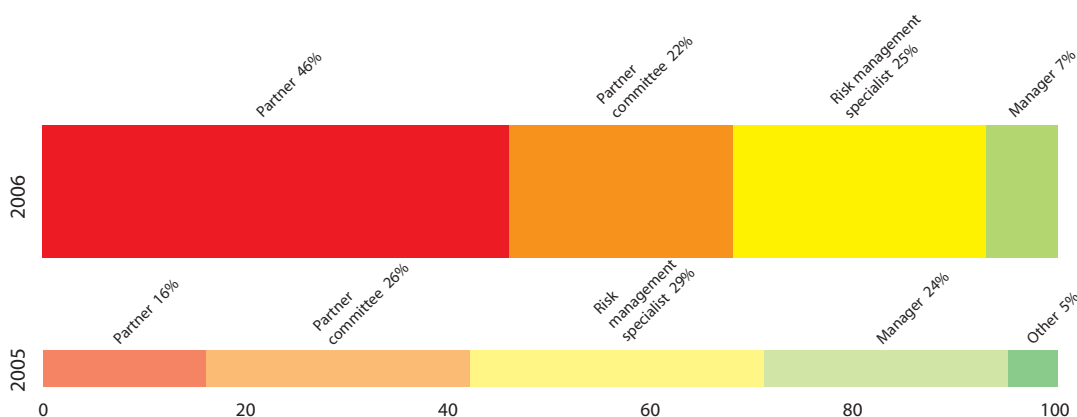
This year even more of the action took place at the end of September – two thirds in the last two weeks, and a remarkable 45 per cent in the last week, up from 32 per cent last year. We believe that this is indicative of the continued state of the market – highly competitive with low premiums (reduced from last year for compulsory primary cover), and firms having an offer but holding on to see if they could improve on it. As appears below, few changed insurers, suggesting that shopping around was generally with a view to negotiating the best deal with existing insurers. For the second year running, no firms were late renewing.



Note: We have excluded Scottish firms from this table as their renewal date is 1 November rather than 1 October for England and Wales, but all renewed between August and October.

Systems

Do you have a person responsible for risk management?



Partners are back in fashion with a significant increase on last year. Last year we noted the rise of risk managers and partner committees, and we attributed this in part to a move away from entrusting risk issues to partners who had a full time commitment to other aspects of the practice.

From our knowledge of many of the firms concerned we do not believe the change in this year's figures indicates complacency.

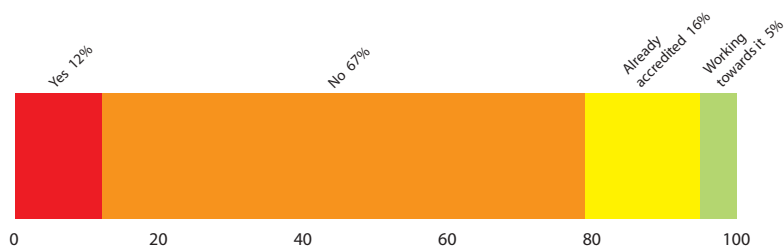
Instead there are many firms with partners devoting half or more of their time, even full time, to risk management.

More detailed questioning on the topic might reveal the underlying reasons for these changes but we are conscious of the need not to trespass on respondents' time too heavily in this way. There appears to be no correlation between firm size and the approach adopted.

Are you considering Lexcel accreditation?

Across the profession, the number of firms accredited or seeking accreditation for Lexcel, the Law Society's quality kite mark, is generally increased. Clients frequently ask in tender documents whether law firms are accredited under the various quality marks available. Recognition of Lexcel's role as a framework for managing risk can be found not only among accredited firms and some insurers, but in the guidance notes to the new Code of Conduct which is expected to be in force later this year. Even firms who do not wish to seek accreditation may find the standard useful as a checklist for enterprise-wide management of risk.

The Code of Conduct will impose a statutory duty on firms to manage risk and ensure business continuity, and guidance notes indicate that Lexcel and other quality standards will be indicative of compliance.

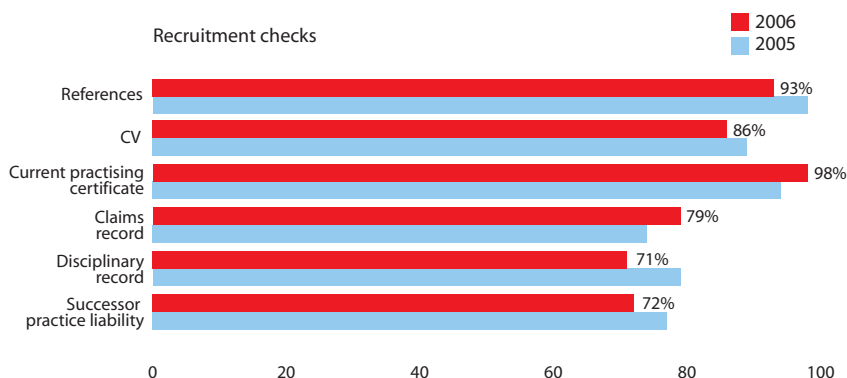


The reduction in survey respondents considering or seeking accreditation is not, however, a great surprise, given the increase in larger firms participating, as take up among larger firms has generally been low. No firm in the top 30 is accredited but one is considering it. Others considering it are below the top 50.

When making lateral hires what checks do you make?

There have been slight reductions in some lateral hire checks since last year, though the figures are still significantly higher than when we started these surveys four years ago.

We have been aware of a number of serious problems arising from lateral hire partners acquired by large firms, including alleged multiple dishonesty claims, and the case for zero tolerance on these basic checks is compelling, though there are many other checks which should also be undertaken.

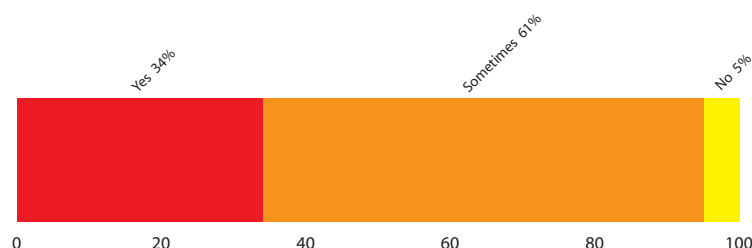


Do you limit liability contractually?

Last year we asked this question for the first time and found that only 9.3 per cent of firms did not limit liability at all, as against 80 per cent in the City of London Law Society's survey in 1999. This year it is down to 5.3 per cent.

The number responding 'Yes' rather than 'Sometimes' is down from 38.9 per cent to 34 per cent. However, we doubt many firms limit liability 100 per cent of the time, even ignoring any issues on the provisions relating to contentious business in section 60 (5) of the Solicitors Act 1974.

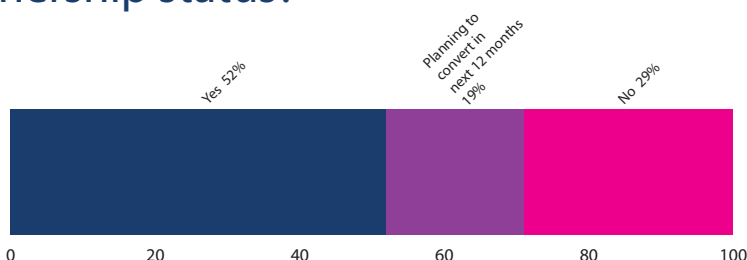
It is another area where more detailed questioning might reveal rather more but we have had to take account of the limits which may be imposed on respondents' time. Nonetheless it is an area where a



number of firms have asked if we could undertake further research to identify benchmarking criteria for different market sectors and if there were evidence of a willingness to participate we would be happy to undertake the research.

Do you have Limited Liability Partnership status?

Limited Liability Partnership status has gained further ground this year with over half the respondents (52 per cent) now having converted and only 29 per cent having no plans to do so.



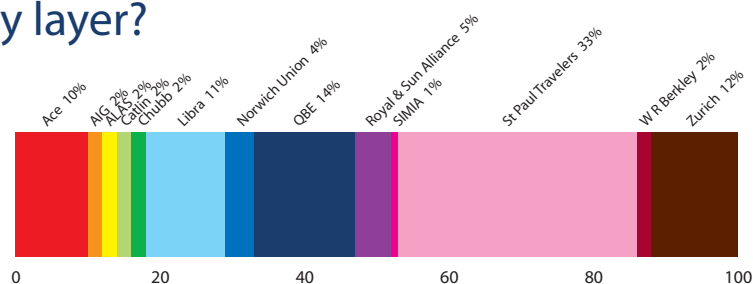
Key points from the survey –

1. Firms are implementing a wider range of measures to protect partner assets including increased professional indemnity cover, conversion to Limited Liability Partnerships, and limiting liability contractually.
2. Many firms are taking out 'Lifeboat' and management liability insurance as well.
3. One in six firms changed brokers, but only 3 per cent changed insurer.

Choice of Insurer

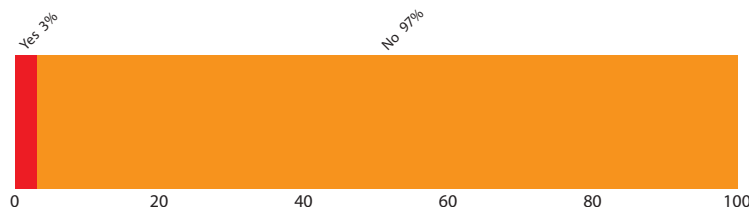
Who is the insurer of your primary layer?

St Paul Travelers, QBE and Zurich all showed increased market share among respondents. There were reductions for Ace and Royal and Sun Alliance among others.



Did you change insurer this time?

Only 3 per cent changed this year, down from last year's already low figure of 7.4 per cent. Cost was the only reason. Firms doubtless recognise the value of continuity of cover in terms of both relationships and avoiding coverage disputes. In each case those who moved still obtained cover with one of the top three insurers.



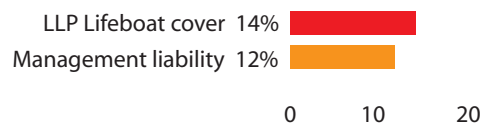
Other Insurance

Do you have any of the following insurance?

As we explained in the introduction at the start of this report, we asked for the first time about take up of 'Lifeboat' policies to protect the residual personal liabilities of LLP members. 14 per cent of respondents had such cover.

We also asked about management liability policies, which protect the management of the partnership or LLP from liability incurred in that capacity, and 12 per cent had bought policies. There was little overlap - 4 per cent had this and Lifeboat.

We expect that both these will be growth areas over the coming years. They demonstrate a wider recognition of the risks faced in practice.



Notes on data

We invited the top 100 UK law firms to respond. 59 replied across the spectrum from magic circle to the smaller firms. Where charts contain data for more than one year, references to a given year refer to the data we collected in that year and which is contained in the following year's survey. Data for the 2005 year, for example, is contained in our 2006 survey.

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Frank Maher and Sue Mawdsley, Partners

Our services

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- Implementation
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- Protection of partner assets
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Regulatory Compliance

- Professional Conduct issues
- Conflicts
- Anti Money Laundering
- Disciplinary

Partnership

- Agreements
- Disputes

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- Defending claims
- Coverage
- Strategies
- Successor Practice, mergers and acquisitions

Training

- Risk management
- Anti-money laundering
- Professional conduct



We were finalists for The Lawyer Niche Firm of the Year 2006, are recommended in Legal 500 for defendant professional indemnity, and won the Law Society's Gazette Centenary Award for Excellence in Risk Management.



We have advised one in five of the top 100 UK law firms, including some of the largest, and our client base is from London to Australia.

Partners Frank Maher and Sue Mawdsley frequently speak at global events on risk management, insurance and anti-money laundering issues.

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