

**IMC Conference**

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**IT: Pioneering Professional Indemnity**

**POLICY ISSUES**

Andrew has focussed on the insurer's relationship with the insured – the need to understand the insured's business and to be in a position to guide the insured in relation to claims and future claims. The claims team is there to help develop the business, not to raise technical reasons why the insurer should not pay.

My topic of policy issues in a sense could conflict with that philosophy. If the aim is to build business relationships, should an insurer be taking any policy points? Clearly it is a commercial decision for each insurer (depending upon their wording). However, IT claims are notoriously expensive and as we shall see, they do give rise to a greater risk of, for example, late notification than certain other classes of PI cover. In the circumstances, it does seem fair and reasonable that, where an insured's conduct has caused a serious policy issue to arise, the insurer owes it to its shareholders (leaving aside any regulatory aspects) to investigate and consider taking a point.

In IT claims, the following policy issues can be particularly relevant:

- Late Notification
- Non-disclosure/misrepresentation
- Deliberate breach
- Onerous contract
- Contrast other PI
- Relationship issues

**1 LATE NOTIFICATION**

## 1.1 What does the insurer need to prove?

The usual rules apply:

- (i) Condition precedent?
- (ii) Breach?
- (iii) Prejudice?
- (iv) Restriction of the late notification remedy? Is there a special institution or other restrictive contractual wording?

### 1.1.1 Condition Precedent?

The insurer only has the right to repudiate a claim for late notification in the event that the notification clause is a condition precedent. If the clause is not a condition precedent, the insurer's right can only be to damages for breach of condition (if any).

In *Friends Provident –v- Sirius*, it was argued that there was an intermediate condition category between a condition precedent and a non-condition precedent. It was argued that where a breach of such an intermediate condition had serious consequences, the insurer should be entitled to repudiate the claim. The Court of Appeal rejected this. The notice clause was in that case held to be an “ancillary provision” and this could only give rise to a claim for damages for loss (if any). The court had already found the clause was not a condition precedent.

The requirement that a clause be a condition precedent is sometimes underestimated or misinterpreted. I have seen carefully drafted IT policy wordings which did not achieve the desired condition precedent status despite an insurer's best intentions and a professional draftsman having been used.

As is well known, any doubt in interpreting policy wordings tends to be decided in favour of the insured.

The factors which may be relevant to whether or not a clause is a condition precedent include the following:-

- **Wording of the notification clause**

**Contrast:**

“We will not pay a claim unless prompt notification is given .....” (condition precedent type wording),

with the following:

*“The insured must notify promptly so that the insurer can investigate the claim”* (not condition precedent type wording).

Is it clear and unambiguous wording? Will the insured understand the serious consequences if there is no compliance? If not, the court will be reluctant to hold that the clause is a condition precedent.

- **Is it a catch-all provision?**

For example, such a provision might be:

*“Observance of all the insured’s obligations in this policy shall be a condition precedent to any insurer liability”.*

I have seen this wording or similar in an IT policy.

It seems clear. Since the notification clause can be framed as an obligation on the insured, and was in the policy I have in mind, on the face of this wording, the notification clause should be a condition precedent. However, matters are not always as they seem.

In one case, the Court of Appeal had to consider similar catch-all wording in relation to a specific requirement that the insured keep a wages book. It was held that the requirement was not a condition precedent. The Court of Appeal said:

*“Any other construction would convict the society of having issued a tricky policy calculated to deceive and entrap the unwary....”*

*“I think it is the duty of all insuring companies to state in clear and plain terms, as condition precedent those provisions only which are such.....”*

- **Trivial and serious breaches?**

If the catch-all encompasses trivial and serious breaches with the result that the insurer can, on the face of the policy, seek to repudiate the claim for a trivial breach, this makes it less likely that the court will hold that the clause is a condition precedent at all.

For example, in one IT policy, there was an obligation to acknowledge a letter of claim within 21 days of receipt in the event of a claim. Due to catch-all wording encompassing that obligation, there was a possibility that the insurer could repudiate the claim simply because the acknowledgement was sent on the 22<sup>nd</sup> day. This encompassed a trivial breach and made it less likely that the relevant wording of the policy was a condition precedent.

- **Separation of general conditions and notification clause**

As you know, insurers sometimes use general condition wording at the beginning of the policy which may set up the condition precedent, with the notification clause appearing somewhere else in the policy. A catch-all provision is often structured like this. The greater the separation between the general conditions and the specific notification wording (in one IT policy I reviewed there was a significant separation), the harder it is for the insured to work out the possible impact of the wording and therefore the greater the risk that the court would find the notification clause is not a condition precedent.

- **Use of the words “condition precedent”**

As everyone knows, the use of the words “condition precedent” is not conclusive, but it certainly helps the insurer in arguing that a clause is a condition precedent.

- **Other provisions of the policy**

The policy has to be construed as a whole. If, for example, the condition precedent wording is used in one part of the policy but not another, this may make it much harder if not impossible to argue that the latter wording takes effect as a condition precedent.

In the *Sirius* case (see above), the notification clause did not include the words “condition precedent”, but other clauses in the policy did use those words. The Court of Appeal held that compliance with the clause was not a condition precedent to liability.

## 1.1.2 Breach

If the condition precedent is breached, the insurer can repudiate the claim, unless the clause was a condition precedent in relation to the whole policy (which would not usually be the case in a late notification situation).

- **Notification within a specific period**

The notification clause may require notification within a certain number of days or weeks. The relatively recent case of *Diab –v- Regent Insurance [2006]* involved a clause which required notification within 15 days. It was held by the court that this should not be construed absolutely literally and notification which was outside that 15 day deadline could still be a valid notification provided it was not too far outside.

- **Notification within a reasonable time**

This alternative wording was considered in *Shindean Limited –v- AXA (UK) plc [2006]*. The relevant documentation under the notification clause was not provided for 2½ years. It was held by the Court of Appeal that this was not a provision of documentation within “a reasonable time”.

The court clarified that whilst prejudice caused to the insurer could be relevant to what was regarded as “reasonable”, there was no absolute rule that without prejudice, a delay could not breach the reasonable notice provisions.

(I am not certain how much one should read into the court’s findings in this case however. It seems reasonably arguable to me that there was prejudice in any event, albeit that the court proceeded on the basis that there was none. The court did accept that the insurer was, by the time of production of the documentation, about to become a party to the litigation and that, had production been effected earlier, this

might have enabled the insurer to avoid participation. That would seem to me to give rise to some crystallised prejudice).

### **1.1.3 Prejudice?**

Is prejudice required in order to invoke a late notification clause?

It is not strictly required under the case law. However, prejudice can influence the court's view as to whether or not there was a condition precedent in the first place, and whether a late notification clause has been breached.

Further, many insurers will only repudiate a claim on a commercial basis if there is real claims handling prejudice, notwithstanding the strict position.

### **1.1.4 Special institution clause**

For solicitors, the remedy is reimbursement only under the minimum terms. There is no repudiation. For surveyors, compensation for prejudice only is allowed.

In relation to IT policies and the IT industry, there is no such special institution clause.

In an IT policy therefore, if there is a clear condition precedent and a breach, the insurer can, subject to commercial considerations and the specific wording, invoke their rights under the late notification clause and repudiate the claim.

## **1.2 Brokers/insured's perspective**

The question arises what a broker/insured should look out for when circumstances arise which may trigger a late notification clause.

### **1.2.1 Read the clause**

The wording of the clause will make a difference. Some IT policies will require circumstances which “**may**” give rise to a claim, but some require circumstances which are “**likely**” to give rise to a claim. Likely has been held to mean more than a 50% chance.

What period does the insured have to notify? It is clearly prudent to assume that the strict period will apply.

What does “circumstances” mean? This arises in many areas of professional indemnity. It does depend on the definition of the wording of the policy, but in general one is looking for an allegation of fault and a demand for action.

IT disputes can give rise to specific problems in relation to assessing circumstances and the risk of a late notification, and the broker’s role in assisting the insured, may be particularly important in this area of professional negligence.

IT disputes often arise out of ongoing projects. This brings with it a number of complications.

First, there may be foreseeable **teething problems**. It is expected in IT projects that things will go “wrong” from time to time. There will be bugs, system integration issues, server issues, memory leaks etc. It is inevitable therefore that there will be issues raised by the customer which need to be addressed and their contractual arrangements often envisage this. The difficulty is identifying at what point the normal “to and fro” of a project becomes a “circumstance”.

C V Wedgwood, the famous historian, once wrote an essay on whether history is an art or a science. She goes into a long intellectual analysis on the point, putting the arguments for an art and then a science, and ultimately concludes that:

*“History is..... an art,.....like any other science”!*

The same might be said in relation to identifying circumstances. This is neither an art nor a science and it is often difficult to identify one, right answer. Even experienced solicitors and barristers find it difficult to find the right point in the chronology of a project at which a notification should take place or should have taken place. It is an area which is ripe for litigation. It is therefore an area where the broker’s role in assisting the insured becomes particularly important, particularly if the broker has specific, specialist experience of IT projects and IT policies.

A second issue which arises from the ongoing nature of an IT project is **that matters will escalate over time**. One has to view these matters in context. If the customer says that

they have a slow system due to a minor memory leak, and the IT supplier says that they will correct it over night and does so, that is not notifiable. However, if the memory leak is still causing problems two months later, and “go live” has been seriously delayed, or the customer has lost business as a result, then this is very likely to trigger the notification clause. There is no one correct answer which covers all situations.

Further, the insurer will not want a long laundry list of every single glitch which occurs in the IT system throughout the project. Having said that, the question of late notification is often viewed retrospectively looking back on the project and there is a tendency to argue that notification should have been made on a comprehensive basis.

A third point relates to the **evidential position**. In IT projects, it is often the case that the complaints log has not been completed accurately or properly and that the email traffic between customer and IT supplier is huge. Further, the email traffic may be somewhat indecipherable.

Finally, it is also necessary to consider **the wording of the notification clause**. Does the wording require an objective or subjective circumstance? I had to advise on one IT policy where the insured’s “awareness” was critical. This imported a subjective recognition on the part of the insured which meant that they had to understand that the customer had a problem which was causing it loss. This potentially restricted the insurer’s rights. It is particularly relevant over a long project.

Again, the broker can help here by talking through the notification clause with the insured and if necessary getting clarification from the insurer as to how they interpret it in practice so that the insured has real, concrete guidance as to what genuinely triggers the clause.

Views of insurers may differ, so it is worth clarifying in each specific case.

## **1.2.2 Insured’s internal notification procedures**

Often the internal procedures simply do not work. Consider two potential situations:

- (a) A manager or financial director may have responsibility for notifying claims/circumstances; but the technical team are dealing with problems on the

ground and the two simply do not talk to each other. Andrew has already addressed similar communication issues in a claims context.

- (b) The IT supplier is a multiple office company and office one (perhaps HQ) notifies claims, but office two in a different location completely is implementing the system on the ground. Again, they do not talk to each other.

Communication is at the heart of good compliance with this sort of policy and in IT cases the separation between claims notification and the project on the ground can sometimes be particularly acute.

As a result, problems in the project can turn nasty and simply slip through the net.

As we know, communication issues arise in all walks of life.

There is a story about General Franco at the time when he was lying on his death bed. One of his helpers entered the room and indicated that hundreds of people had congregated outside his house. Franco asked why they had come. His helper said they had come “to say goodbye”.

Franco replied “Oh, where are they going?”

Another example: Dr Bob in the Muppets. The nurse at the operating table turns to Dr Bob and says “Dr Bob, Dr Bob I think we lost him”. Dr Bob replies: “Well he can’t have gone far, he was here a minute ago”.

If it can happen to Franco and Dr Bob, it can happen to your IT professional insured.

The broker can, at the time the proposal is first put together, establish the internal procedures for notification and certainly once the policy is issued this can be gone through in some detail. Early due diligence is likely to ensure that serious problems do not fall through the net with potentially perilous results, from the insured’s point of view, given that there is no special institution wording.

### **1.2.3 Seriousness of the situation**

In my experience IT suppliers do sometimes struggle to get to grips with their policy wordings and to understand their obligations. Of course, this is true of all classes of professional, but I have come across it more in relation to IT insureds than in relation to certain other professionals.

Further, it is of course a requirement of certain IT contracts that professional indemnity insurance should be in place and there is in some cases a tendency to see the insurance as simply a contractual requirement.

The broker can bring home the key provisions of the policy, including the late notification clause and the seriousness of the situation if compliance is not adhered to.

The advice has to be, if in doubt, at least notify the broker and take advice. If in doubt, communicate, both internally and externally.

## **2. NON DISCLOSURE/MISREPRESENTATION**

### **2.1 What is it necessary to prove?**

Very briefly, as you know the *Pan-Atlantic* case requires:

- (i) Materiality: the prudent underwriter test. Would the non-disclosed/misrepresented material have influenced the judgment of a prudent underwriter?
- (ii) Inducement: did the non-disclosed/misrepresented material induce this particular underwriter to underwrite on the terms which he or she underwrote.
- (iii) Institutional restrictions: is there a restriction, for example, that the insurer can only rely on the non-disclosure/misrepresentation remedy in the event that the insured was not acting in good faith?

As you know, materiality can be established by a basis of the contract wording .

In relation to IT insurance, there are no specific institutional restrictions in general and often the straightforward *Pan-Atlantic* tests are therefore applied in assessing non-disclosure/misrepresentation.

## 2.2 Reform?

The Law Commission have prepared a report which could have the effect that the standard rules on avoidance are varied.

It is perceived that there are a number of problems with the current law. For example, basis of the contract clauses make all answers in the proposal form contractual warranties even if the terms are not found in the contract itself. Insurers may also have rights to avoid in relation to matters which are simply not material.

Further, it is perceived that it is not fair on an insured that their duty of disclosure is defined by reference to what a “prudent insurer” might think is material. If the insured took an honest and reasonable view as to what should have been disclosed, should that not be enough?

In addition, under the current law, the insurer does not even need to show that he or she would have declined the risk in the event that the non-disclosure/misrepresentation had not been made, nor is it necessarily the case that the non-disclosure/misrepresentation needs to have caused any loss.

These rules therefore give a very broad right to the insurer to avoid the policy and it is perceived that the law simply goes too far.

The Law Commission are considering altering the prudent insurer test to a reasonable insured test of materiality and restricting avoidance to a situation where the insured has behaved fraudulently. They are also giving consideration to more proportionate remedies in other situations. Thus, for example, if the insurer would have excluded a particular type of claim, had there been no non-disclosure/misrepresentation, then the insurer should not be obliged to pay the claim, but if the insurer would simply have charged a higher premium, the claim should be reduced proportionately to the underpayment of the premium.

It remains to be seen to what extent the Law Commission’s proposals will ultimately be implemented.

To some extent they reflect the commercial practice of many insurers in any event, as you will all be aware.

However, in relation to IT insurance, given that there is no special institution restriction, there is at least in theory the scope for insurers to invoke the full breadth of the law at present and to avoid policies. The temptation is there given that IT claims are, as we have heard, very expensive and expert intensive.

## 2.3 Insured/broker

What can the insured/broker do to reduce the risks of avoidance, given the above?

First, it is necessary to **understand the seriousness** of a non-disclosure or misrepresentation. Again, in my experience IT insureds often do not understand this and the broker can play a role in bringing home to the insured the significance of signing the proposal form.

Further, this is once again an area where **due diligence** can be done and the insured's internal procedures investigated. Does the insured have multi offices? How do they communicate with each other? Is there a multi-jurisdictional aspect? Where are the gaps in communication? What checks are made in relation to known circumstances etc when the proposal form is signed? Are there letters of claim or claim forms stuffed somewhere in a drawer in one office, whilst the person at HQ is signing the proposal form?

In the IT context, professional indemnity insurance is to some extent still an emerging market. As above, some IT insureds will regard it as simply a requirement of their contract. This is particularly the case if they have not been involved in claims previously. The focus may be on the deal and the project and less on what could go wrong. Given the potentially expensive nature of IT claims and the fact that losses can be great, this becomes particularly significant. In my experience, understanding of the policy terms is more prevalent among, for example, solicitors, than it is among IT insureds.

The broker can also draw the insured's attention to the key **provisions of the proposal form**. Are there questions about sub-contractors? The insurer may well want to know whether or not they are taking on errors by a sub-contractor who may be insolvent by the time a claim is notified. This is relevant in an IT context as much as it is in a construction context.

What exactly is the insured's business? Do they design software or are they installing standard software?

Is there a **contractual threshold**? In some policies, the insurer has to be specifically notified of a contract over a certain value and approve it. This is an important provision and in my experience is sometimes invoked by insurers where the insured gets it wrong.

It is important that the insured is honest about the **forms of IT communication** used in its business. Can third parties get access to their website? Do they use "use nets"? What cyber liabilities might arise? If the insurer's questions are searching and well structured, these sorts of issues may well have to be covered. What general internet security is provided? Is it possible that through a fault in the IT supplier's system, while they are on site, the customer's IT system may become accessible to hackers? Clearly, there are potentially serious business consequences.

As Andrew has indicated, many claims arise from integration issues. The IT supplier does not understand the business requirements of the customer and the business in turn does not understand the IT product and what it will provide for it. It is no good if the IT system brilliantly produces an invoice at stage two of an ordering process if in fact the business requirements are set up for the invoice to be provided at stage four. This happens in real life and happened in one case I have handled.

The IT insured does also need to be honest about the amount of bespoke which it does.

### **3. DELIBERATE BREACH**

There is often an exclusion for deliberate breach. This obviously arises in other professional policies, but it can have a particular relevance in IT policies.

This is due to the nature of IT projects and the fact that problems are often escalating over some time. They then culminate in a meltdown at which point it is not that uncommon that the IT insured may threaten to walk off site. It may be that the customer had stopped paying or it may be that the parties have simply fallen out to such an extent that they cannot work together. This sort of situation is much less likely to arise in solicitors' insurance or indeed in other professional insurance.

Clearly, there is a real risk that if the IT provider walks off site, they will commit a repudiatory breach of the contract. It is then open to the customer to accept that repudiatory breach and sue for damages. It may well be that the IT insured was in the right up to that point. It may also be that it was a remediable situation. Once the walk out has occurred, however, the balance may well shift and a situation where the IT insured was in the right or it was remediable may suddenly be turned in to a much nastier situation. It is generally important that the insurers are involved early and that the insurer has the opportunity to guide the insured, with of course the broker's advice, through this sort of situation. The IT insured should generally maintain the moral high ground and not exacerbate any legal liabilities which may have been incurred.

I had a similar example to this not too long ago where there was a threat to walk out, but the IT insured was persuaded to return to site within a very short period of time.

#### **4. ONEROUS CONTRACTS**

An onerous contract clause is generally aimed at a situation where the IT insured has failed to use reasonable care in under-pricing or over-promising in order to get the deal. The question may be whether the IT insured could reasonably have expected to be able to perform in accordance with their promises.

Expert evidence may well be needed to establish whether or not the clause is triggered.

However, such expert evidence may well need to consider the whole nature of the project and the history of the project in order to get to grips with the extent to which the under-pricing or over-promising has occurred and thereby to consider what the position might have been at the outset. This may be a situation therefore where the insurer reserves their position with investigation to be carried out later, although clearly such reservations are unsatisfactory from everyone's point of view in many cases.

The onerous contract clause is not invoked by insurers in that many cases, partly because it is not that easy to prove that it is triggered, but I have certainly seen cases where it is invoked.

The broker again needs to explain to the IT insured that this is a specific IT orientated clause which can trip them up if they overdo it. It is important that they document how they costed the project and how they propose to resource it.

The documentation from the tender and any due diligence should also be kept and should be in as good a state as possible. Andrew has already touched on what often happens in reality: often in IT claims, the quality of the documentation is extremely poor. Even the basic contractual documentation may not be in place or not in place properly.

It is quite a job to reconstruct what happened and why after the event. This may of course work in the IT insured's favour if the insurer cannot prove that the onerous contract clause is triggered, particularly given there is a reasonably high burden of proof. On the other hand, if the IT insured has kept very good documentation to show that it acted reasonably at all times, this may be even more in their favour and may save time and costs.

## 5. CONTRAST OTHER PI

I set out below some brief examples.

### 5.1 Scope of Cover

An IT supplier supplies (or may supply) goods and services. This makes it a slightly different insured to, say, a solicitor.

Scope of cover may include an unintentional breach of contract:

- (i) due to defects/problems with software/hardware; or
- (ii) due to services not being to specification or of sufficient quality.

It should also include negligence and often a contractual duty to use reasonable skill and care.

There may also be a general civil liability scope of cover, perhaps with an exclusion for breach of contract save in the specified categories.

The scope of cover extends to defects with products therefore and certain additional contractual liabilities which may go beyond the scope of other professional policies.

From an insured's perspective the broker/insured will want to check how far the contractual cover extends. Complete contractual coverage would be unusual, but some policies are wider than others.

### 5.2 Exclusions

It is clearly important for the broker to give clear advice to the IT insured as to the impact of exclusions. IT policies are a good example of a situation where insurers may (although I am sure none of the insurers present would do this) provide with one hand and take away with the other. In other words, the scope of cover may appear to cover an area, but the exclusions make clear that certain subject matter is not covered.

Classic exclusions in an IT policy might include:

- (a) Loss arising from failure to take reasonable steps to remedy or rectify any defect in deliverables (software/hardware) and/or services.
- (b) Cost of repair, upgrade, refund, recall etc of deliverables.
- (c) Viruses, worms etc.
- (d) Claims arising from interruption of internet access.
- (e) Cyber cover. Is the insurer really offering cyber cover or excluding it? Sometimes it is an optional module.
- (f) Special “hacker” provisions: problems caused by hackers may be excluded.

### **5.3 Aggregation clause**

In IT policies I have seen, there tends to be a wider aggregation clause than in certain other professional policies. This is certainly the case when compared with solicitors’ policies. Claims arising from the same original cause or source or a repeated or continuing problem are often aggregated.

These clauses therefore may give the insurer more scope to argue that there is only one indemnity limit and equally one excess.

## **6. RELATIONSHIP ISSUES**

There are for the reasons touched upon above, very often policy issues which are identified when the claim is notified.

These may be late notification, non-disclosure, onerous contract or other issues.

The insurer then has to decide immediately whether to take the points or to reserve the position whilst an investigation is carried out. In the latter situation the claim may be dealt with whilst the policy investigation is taking place. This causes serious relationship issues. It is of course the case that this occurs in relation to other professional risks, but in my

experience the problem is more acute in IT cases where the nature of IT projects give rise to a greater likelihood of conflict between the claim investigation and the policy investigation.

Once insurer's rights are reserved, a situation which of course many insurers would seek to avoid if possible, however tactfully this may be put to the insured, it is then a difficult matter for the solicitor handling the case to manage the situation.

The insured will wonder whose side the insurer is on and whose side the solicitor is on. They clearly may face an expensive claim and yet the insurer and the solicitor seem more concerned in their eyes with trying to decline cover. They may bring their broker and their own legal representation to the first meeting. In my experience, the whole situation is more fraught in IT cases than in other professional situations.

The solicitor has to be particularly careful in relation to conflicts of interest and to give the appropriate transparent advice at the outset. Unfortunately such advice may in itself exacerbate the situation.

Clearly, the net result is that the insurer will only seek to reserve the position and get into this situation if there really is something which should be investigated, but in the IT context, there often is a potential issue.

This situation often arises against the backdrop of an ongoing project where, as above, the IT insured may be threatening to walk off site.

The ongoing nature of the project and the fact that the IT insured and the customer may well be locked into a scenario where neither can simply walk away in reality without leaving a horrendously messy situation means that the scope for commercial resolution is often critical. Again, this gives rise to different relationship issues to other claims including claims against solicitors. The dynamics may well be different in an IT context.

Once again, the broker can play a big role in educating the IT insured through this process and in helping to bridge the relationship issues which arise. Further, the broker can assist as a conduit in terms of ensuring that information is provided which helps to resolve the policy points at an early stage. The broker can also facilitate a commercial resolution of the policy side of the equation at least, which may open up the resolution of the claim as well.

I am sure this would not affect any of the brokers here, but occasionally there is of course a situation where the broker is potentially embarrassed if they have been giving advice in relation to a matter such as notification as the project progressed.

## **CONCLUSIONS**

IT is still an emerging area of professional indemnity. What IT providers do in their businesses is in some respects different to, say, solicitors, surveyors or accountants.

The provision of systems and products and services; the language and world of the IT specialist (which obviously can be quite impenetrable at times); and the sheer cost and length of IT projects, all give rise to points of distinction. The scope of cover can also be unique in some respects.

Further, there may be more scope for policy issues to arise with all the relationship implications that that has.

In addition, some of the exclusions are particularly designed for IT insurance and do not arise in many other professional policies.

In terms of the insurers, there tends to be a relatively small group of leading insurers who provide the bulk of the cover in this area at present.

In a world of excess capacity in a soft PI market, other insurers may look to get more deeply into this area. This might be particularly the case if for example the solicitors' book is in the long term as unprofitable as has been suggested.

The current lead players are very sophisticated and have come to terms with their pioneer status in this area. They have adapted traditional principles of underwriting and traditional policy wordings, and indeed their approach to claims handling, in order to reflect and accommodate the special and unique aspects of IT professional insurance. New entrants to this sub-market would need to do likewise if they are to successfully follow the pioneers.

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