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 1. Does the broker have a duty to draw Underwriters' attention to an unusual contract term?
 2. If so, is that duty owed to Underwriters and/or to the insured?
 3. When a broker describes renewal terms as “as expiring”, is the Underwriter obliged to double-check?



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SMCR – FCA Directory Persons data – upcoming submission deadline for solo-regulated firms

Solo-regulated firms are required to submit their Directory Persons data by either 18 March 2021 or 31 March 2021 under the FCA’s Senior Managers and Certification Regime (SMCR) requirements.

- if you are submitting data for 10 or more individuals, such information must have been submitted by 18 March 2021 using a template which allows firms to add or amend multiple entries¹; or
- if you are submitting data for fewer than 10 individuals, such information must be submitted by 31 March 2021 using a single entry form for a single record notification.

Directory Persons Data is submitted via the FCA’s Connect portal. Connect has a new Directory Persons form which offers the two methods of adding or amending Directory Persons data as set out above.

The FCA has published FAQs and a series of user guides to assist firms in the process of submitting and amending Directory Persons data.²

What is Directory Persons data?

Directory Persons consist of:

- all Certified staff (those holding a certification function under the SMCR);
- directors who are not performing Senior Manager Functions (both executive and non-executive); and
- other individuals who are sole traders or Appointed Representatives (including those within Appointed Representatives) where they are undertaking business with clients and require a qualification to do so.

Directory Persons data includes:

- name and any previous names;
- roles with start and end dates; and
- activities undertaken

Customer-facing roles requiring a qualification must include the following information:

- customer engagement methods;
- workplace location (where relevant); and
- memberships of professional bodies.

Accordingly, firms will need to assess and certify individuals as Directory Persons. The FCA’s Policy Statement (PS19/7) provides further background about certified and assessed persons and information for preparing a Directory Persons submission.³ In particular, the FCA has advised that firms consider page 5 of PS19/7, which sets out a full list of all the information that is required to be submitted for certified and assessed Directory Persons.

Financial Services Register

Directory Persons information will be made publicly available, on an ongoing basis, on the Financial Services Register later this year. In doing so, the FCA aims, pursuant to its SMCR objectives, to allow consumers and professionals to check the details of key individuals who have been assessed and certified as suitable for such roles.

Therefore, firms should ensure that they keep the Directory Persons information they already submit for use on the Financial Services Register up to date.

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Footnotes

- ¹ The template for adding multiple entries can be accessed here: <https://www.fca.org.uk/publication/forms/directory-persons-multiple-submissions-template.xlsx>
The template for amending multiple entries can be accessed here: <https://www.fca.org.uk/publication/forms/directory-persons-multiple-submissions-amend-template.xlsx>
- ² The FAQs can be accessed here: <https://www.fca.org.uk/publication/documents/directory-persons-questions-answers.pdf>
The user guide for adding/amending single entries can be accessed here: <https://www.fca.org.uk/publication/systems-information/single-add-amend-user-guide.pdf>
The user guide for adding multiple entries can be accessed here: <https://www.fca.org.uk/publication/documents/user-guide-multiple-add.pdf>
The user guide for amending multiple entries can be accessed here: <https://www.fca.org.uk/publication/documents/user-guide-multiple-amend.pdf>
- ³ FCA Policy Statement PS19/7 can be accessed here: <https://www.fca.org.uk/publication/policy/ps19-07.pdf>



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“It is hoped that getting a head start in renewal discussions will provide firms with the maximum amount of time to explore options and address any exposure concerns with insurers.”

Footnotes

- [1 https://www.lawgazette.co.uk/news/solicitors-face-hardest-pii-market-for-20-years/5107687.article](https://www.lawgazette.co.uk/news/solicitors-face-hardest-pii-market-for-20-years/5107687.article)
- [2 https://www.legalfutures.co.uk/blog/renewing-your-pii-this-spring-heres-what-you-need-to-know](https://www.legalfutures.co.uk/blog/renewing-your-pii-this-spring-heres-what-you-need-to-know)
- [3 https://www.lawgazette.co.uk/practice/start-planning-for-october-renewals-now/5107667.article](https://www.lawgazette.co.uk/practice/start-planning-for-october-renewals-now/5107667.article)
- [4 https://www.lawgazette.co.uk/roundtables/hard-times-pii-roundtable/5107670.article](https://www.lawgazette.co.uk/roundtables/hard-times-pii-roundtable/5107670.article)
- [5 https://www.lawgazette.co.uk/news/solicitors-face-hardest-pii-market-for-20-years/5107687.article](https://www.lawgazette.co.uk/news/solicitors-face-hardest-pii-market-for-20-years/5107687.article)
- [6 https://www.lawgazette.co.uk/roundtables/hard-times-pii-roundtable/5107670.article](https://www.lawgazette.co.uk/roundtables/hard-times-pii-roundtable/5107670.article)
- [7 https://www.lawgazette.co.uk/practice/start-planning-for-october-renewals-now/5107667.article](https://www.lawgazette.co.uk/practice/start-planning-for-october-renewals-now/5107667.article)

Law Society Gazette predicts hardest PII market for 20 years

In the wake of a recent roundtable on the solicitors' professional indemnity insurance market, and in anticipation of the upcoming round of renewals in March and April, the Law Society Gazette has predicted that solicitors are “facing the hardest market for indemnity cover since demutualisation over 20 years ago”.¹

The Gazette's outlook is supported by other industry sources. In an article for Legal Futures, Mark Rowson, senior vice-present at Lockton, noted that solicitors faced difficult conditions in the October 2020 round of renewals, and it is not anticipated that this will have improved this March and April.²

Although there have been indications since 2019 that the PII market was hardening,³ at the roundtable Michael Young, director at Lime Solicitors (part of Shakespeare Martineau) suggested that conditions have worsened as a result of the indirect impact of Covid upon the legal sector. Mr Martin observed that it is thought that remote working creates increased risk and more opportunities for data breaches.⁴

The Gazette indicates that the Law Society is reporting anticipated premium increases of anywhere from 5% to 50%, at a point when firm turnover is reported to be down 10% on average.⁵ Moreover, in addition to increased premiums, there is anecdotal evidence that solicitors also face other types of onerous conditions: at the roundtable, Brian Boehmer, a broker at Lockton, noted that two market insurers are currently requiring personal guarantees.⁶ In Mr Boehmer's view, this in part arises out of insurers' concerns over the SRA's minimum terms and conditions, and in particular the requirement for insurers to cover PI claims even in circumstances where premiums have not been paid.

Those with policies renewing in March and April are likely to have already made preparations. However, given the current state of the PII market the Gazette's advice for those with upcoming October 2021 renewals is to start making plans already.⁷ It is hoped that getting a head start in renewal discussions will provide firms with the maximum amount of time to explore options and address any exposure concerns with insurers.

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Read part one: Insurance Brokers' E&O duties regarding unusual policy terms: Is there a “duty to nanny?” – <https://www.hfw.com/Insurance-brokers-E-and-O-duties-regarding-unusual-policy-terms-is-there-a-duty-to-nanny-Mar-20>

Read part two: Contract Certainty and Policy Renewals: Underwriters' reliance on brokers' “All as expiring” statement – <https://www.hfw.com/Contract-Certainty-and-Policy-Renewals-Underwriters-reliance-on-brokers-all-as-expiring-statement-March-2021>

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