MARSH JLT SPECIALTY

INSIGHTS | APRIL 2020

Directors and Officers Liability Insurance 2019 Pricing Index

Pricing trends by segment, sector, and programme component

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Introduction

Pricing for commercial directors and officers liability (D&O) insurance in the UK increased nearly 50% on average in 2019, according to analysis by Marsh JLT Specialty. This followed a 35% pricing increase in 2018. The increases accelerated in the second half of 2019 and show no sign of slowing in 2020.

As we publish this report in April 2020 during the COVID-19 pandemic, the market has continued to deteriorate. Insurers are increasingly concerned, with a wave of insolvencies and plaintiff lawyers filing COVID-19-related securities class actions. Capacity has continued to reduce and some companies may find D&O insurance unavailable, even at multiples of their previous pricing. The information contained in this report, which focuses on 2019 and prior, does not reflect the additional volatility the pandemic has brought to the D&O market. Creative solutions are required in this rapidly changing environment.

The UK commercial D&O insurance market began to see occasional pricing increases in the most high-risk areas of the market in 2017 – for example, large US-listed companies and industries such as pharmaceuticals and energy. In 2018, more insureds experienced increases, and the increases became larger, with double-digit price rises more common. By 2019, nearly all D&O renewals experienced a pricing increase, with many insureds also facing forced retention increases and, for some risk profiles, significant capacity contractions. This was a reversal of over 15 years of decreases in the D&O market.

Pressure on pricing is likely to continue, as 2019 saw some insurers stop writing D&O insurance altogether and no new capacity entered the market. Insurers that continue to participate are rationing capacity, and many have minimum attachment points, making capacity on the lower portions of programmes scarce. Most insurers say they have no pressure on top-line growth as they focus on profitability – resulting in most of them being willing to walk away from business if they cannot achieve desired premium.

Increased Claims Costs

Insurers report that both claims frequency and severity are increasing. US securities claims, historically the most severe type of D&O claim, have seen an increased rate of filing that has been sustained for three years. There have also been significant derivative claims settlements, a D&O exposure that underwriters had viewed as more benign.

Outside the US, increased regulatory investigations and criminal prosecutions have resulted in more D&O claims payments. Increasingly, the Serious Fraud Office and Financial Conduct Authority in the UK, the Department of Justice and Securities and Exchange Commission in the US, and similar regulators and prosecutors around the world seek to hold directors, officers, and corporate managers accountable for their actions.

Regardless of the underlying type of claim, insurers report that the cost to defend claims has increased. Hourly rates have risen, and time spent on cases is increasing as cases become more complex. Many investigations involve multiple insured individuals – all with separate counsel reviewing years' worth of communications and documentation, sometimes in multiple languages, and across multiple territories and legal systems. This complexity can increase both the time spent and the number of legal experts required.

At the same time, the plaintiffs' bar have demonstrated their creativity. One good example is the rise in so-called "event-driven" litigation, when the announcement of an adverse corporate event becomes the hook for a shareholder action or derivative claim. Examples include announcements regarding cyber-attacks, privacy breaches, #MeToo-related allegations, health and safety failures, product failures, involvement in the sale or distribution of opioids, and disclosure of bribery investigations.

Navigating the Market

Given the state of the market, preparation for renewal is especially critical. Companies should expect a more challenging underwriting process, with insurers asking more detailed questions and requiring more access to senior individuals within the company. Although it is important to start the process early, buyers should be prepared for significant changes on short notice given the market's fluidity and volatility. Keeping in close contact with your risk adviser to understand and navigate the evolving market is essential.

D&O: Metrics and Highlights

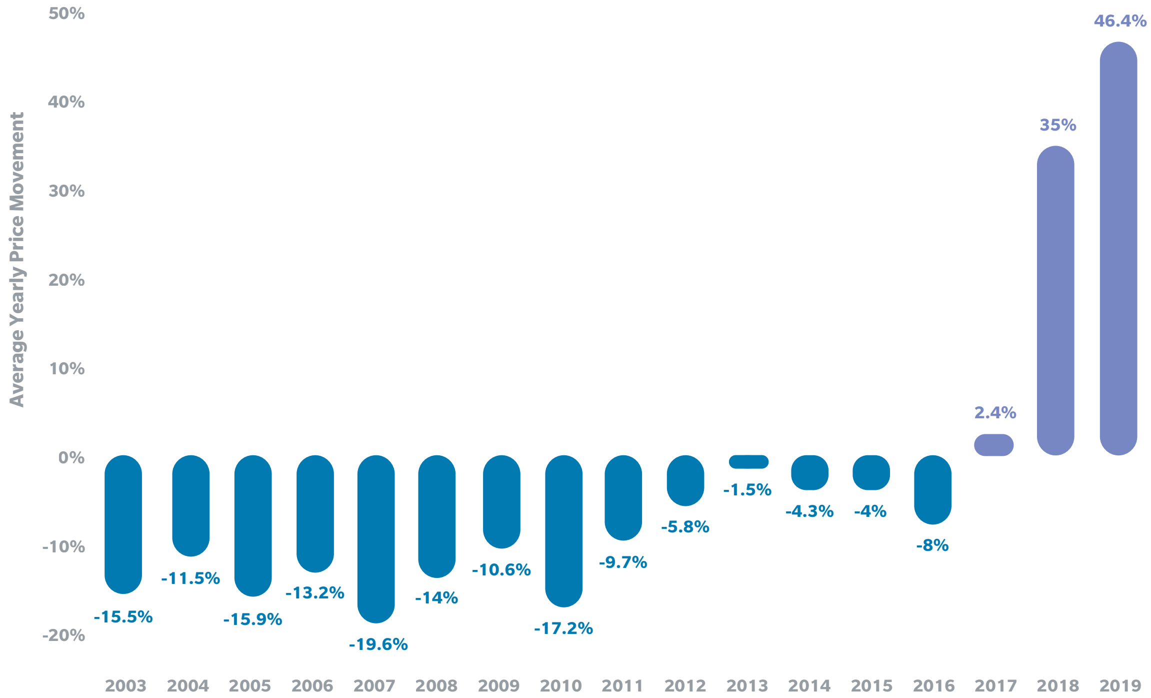
After a decade of declining prices, D&O prices increased for the third year in a row in 2019. The 2019 increases were on top of those seen in 2018, and reflect a D&O market that continues to struggle with rising claims costs (see Figure 1).

Figures 1 and 2 provide an overview of pricing change for an entire D&O programme. This is a snapshot of the whole market, from private SMEs through to some of the world's largest multinational companies.

FIGURE 1

D&O prices increased considerably in 2018 and 2019.

SOURCE: MARSH JLT SPECIALTY



Even with the steep increases in 2018 and 2019, D&O pricing remains well below the height of 2002 (see Figure 2), which some underwriters are seeking a return to. While pricing in the overall D&O market is increasing (see Figure 3), there is variability in different pockets of the market (see page 7 for more information).

Even with the steep increases in 2018 and 2019, pricing remains well below the height of 2002.

FIGURE 2

Despite increases, D&O prices remain well below 2002 pricing.

SOURCE: MARSH JLT SPECIALTY

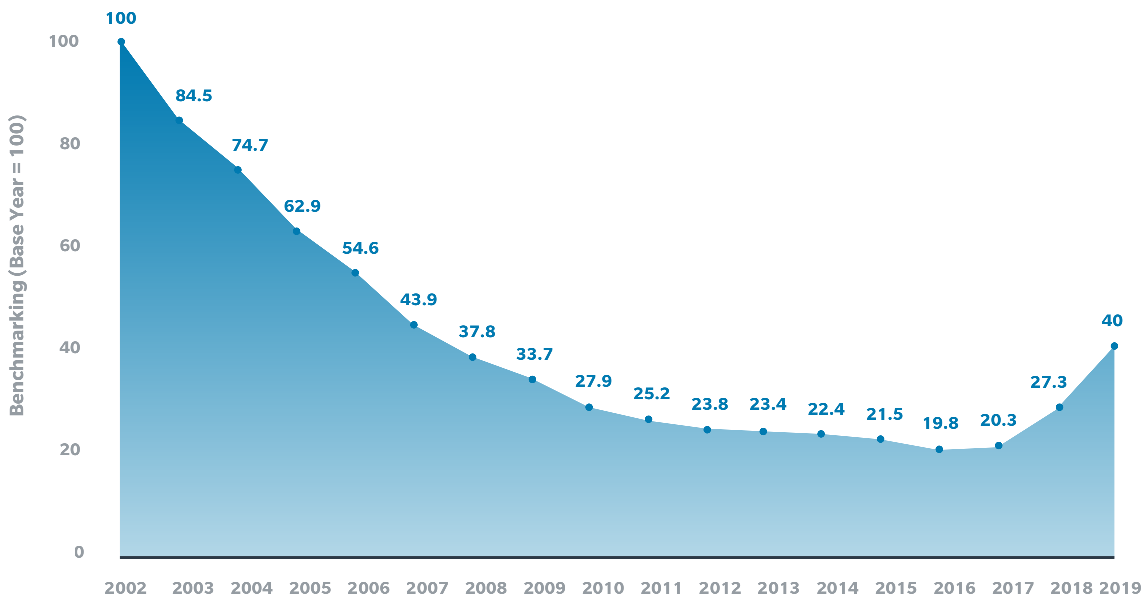


FIGURE 3

Analysis of pricing by quarter shows a market steadily increasing.

SOURCE: MARSH JLT SPECIALTY

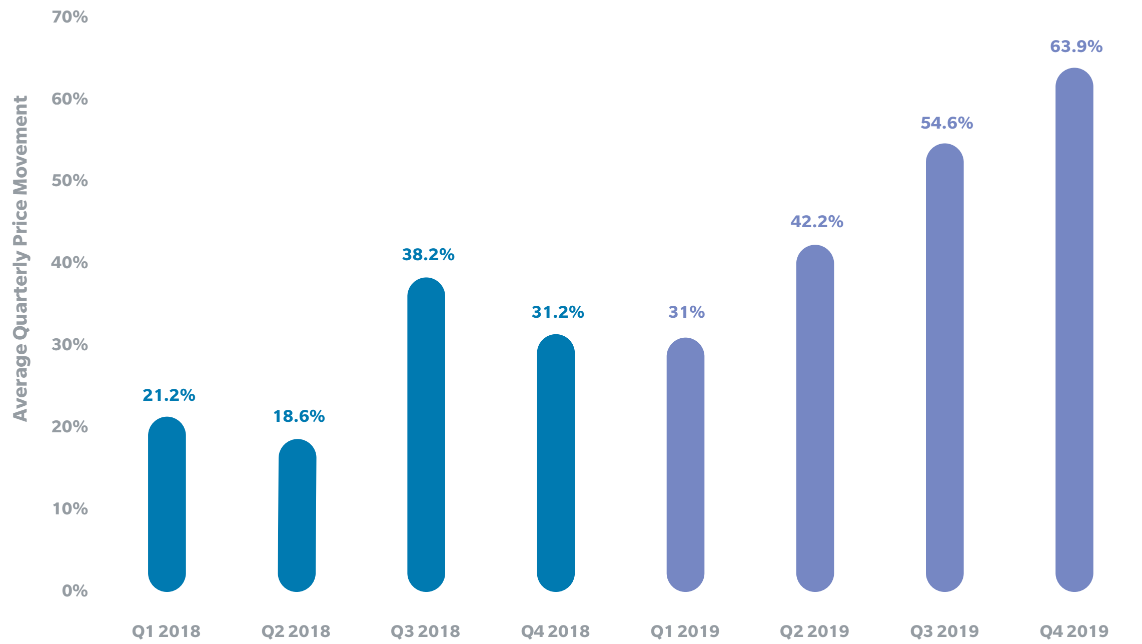
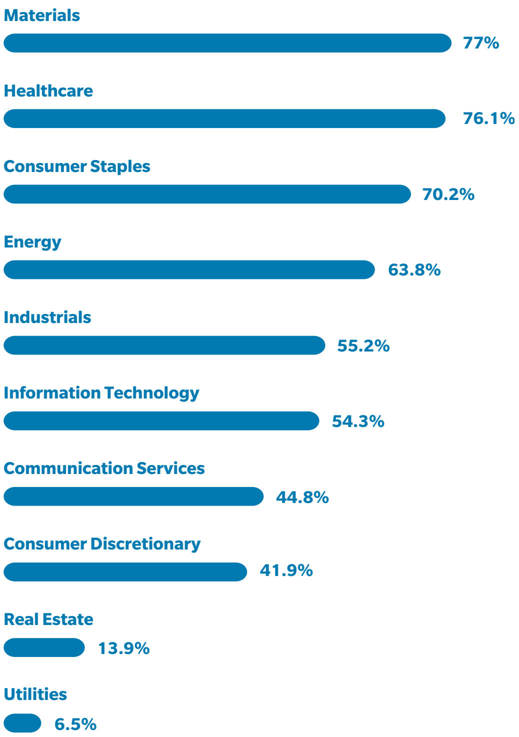


FIGURE 4

Price changes varied considerably by sector in 2019.

SOURCE: MARSH JLT SPECIALTY



All sectors experienced an increase in 2019, on average, although some individual accounts received overall price decreases at the start of the year. Few sectors are immune from significant increases (see Figure 4).

Utilities and real estate saw the lowest average increases. Sectors with the highest increases include those viewed by the market as particularly challenged (for example, healthcare and materials), and sectors that may have enjoyed particularly low pricing through the soft market, so increases are large in percentage terms (for example, consumer staples and industrials).

Over the past 10 years different components of D&O insurance programmes have experienced different pricing movements (see Figure 5).

Increases on primary were stable across 2018 and 2019. In 2018, excess increases generally followed the primary increases. But 2019 saw this trend reverse, with pricing increases in the excess and Side A Difference in Conditions (DIC) components of programmes outpacing the percentage increase on the primary layers.

FIGURE 5

Excess pricing increases surpassed primary increases.

SOURCE: MARSH JLT SPECIALTY

Year of Inception	Primary	Excess	DIC	Total Programme
2010	-10.71%	-20.62%	-9.33%	-17.21%
2011	-6.41%	-6.79%	-20.59%	-9.70%
2012	-2.69%	-6.17%	-1.74%	-5.79%
2013	0.71%	-1.88%	1.25%	-1.54%
2014	-5.28%	-7.94%	-11.22%	-4.28%
2015	3.48%	-7.68%	-6.05%	-4%
2016	-3.12%	-7.58%	-7.31%	-8.01%
2017	1.76%	5.12%	-1.46%	2.41%
2018	30.16%	35.97%	14.73%	28.24%
2019	39.51%	73.79%	52.35%	46.37%

Public D&O

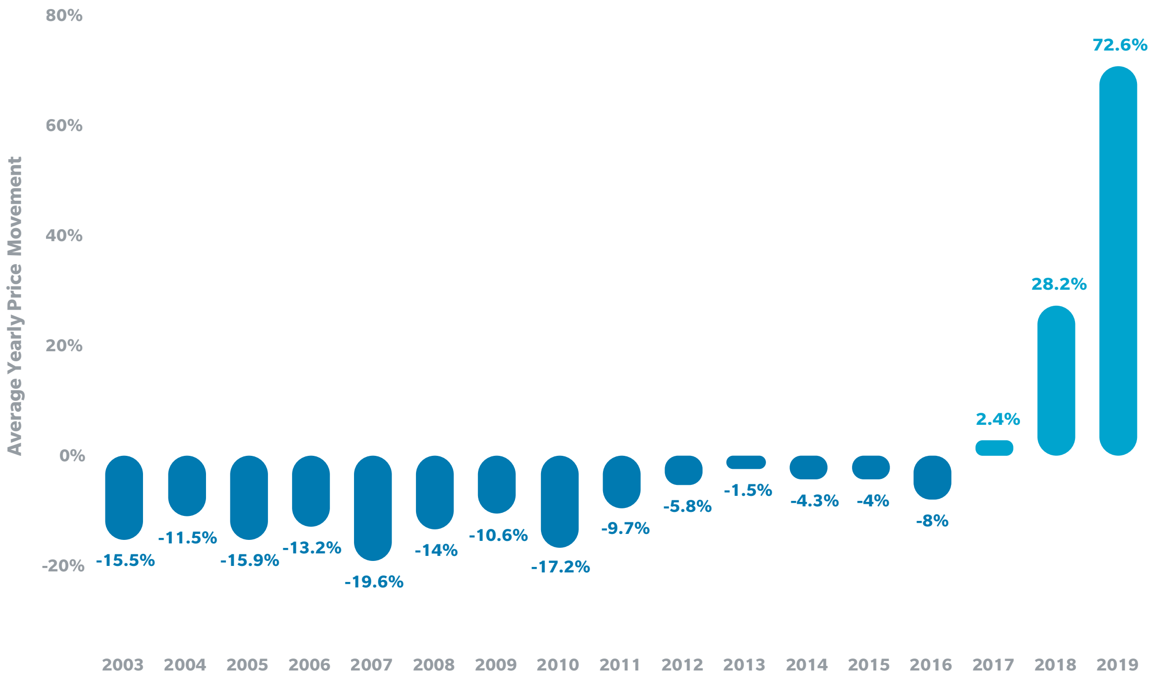
D&O insurance programmes for publicly traded companies showed a more dramatic price increase in 2019, compared with D&O insurance programmes overall (see Figure 6).

Markets are controlling the capacity deployed on publicly traded accounts, resulting in an overall restriction of capacity and requiring restructuring of many programmes. Shareholder and stakeholder activism is causing concern for D&O insurers as they are increasingly cautious about their public company portfolio.

FIGURE 6

2019 saw by far the most dramatic price increase.

SOURCE: MARSH JLT SPECIALTY



Public D&O business is analysed in four overlapping segments:

1. FTSE 100.
2. FTSE 250.
3. All public companies that have shares traded on the US national exchanges (including direct listings, Level 2 american depositary receipt (ADR) and Level 3 ADRs).
4. Public companies that have either shares traded over-the-counter in the US or no US trading at all.

Markets are controlling the capacity deployed on publicly traded accounts, requiring the restructuring of many programmes.

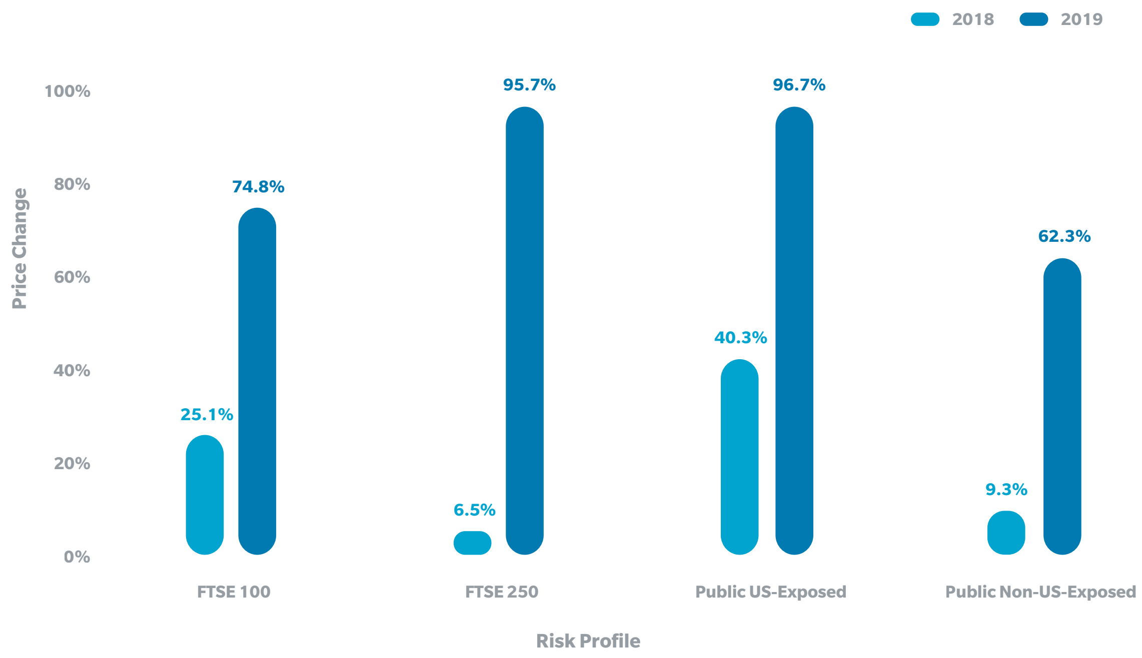
Reviewing these overlapping segments side-by-side reveals some trends. The conventional wisdom that larger companies and US-exposed companies pose greater D&O risk seems to be reflected in the 2018 pricing increases. Those segments had significantly greater increases than the combined FTSE 250 or the non-US-exposed segments.

In 2019, there was a change in underwriters' perception of FTSE 250 companies. Larger FTSE 100 companies and US-exposed companies experienced higher increases than in 2018, but the change in pricing increases year-over-year was greatest for the FTSE 250 (see Figure 7). This reflects the relatively lower price per million base of such accounts, and resultant larger percentage increases as the market moved to higher base premiums for all FTSE accounts.

FIGURE 7

FTSE 250 companies saw the most dramatic change in percentage price increases in 2019.

SOURCE: MARSH JLT SPECIALTY



1. FTSE 100

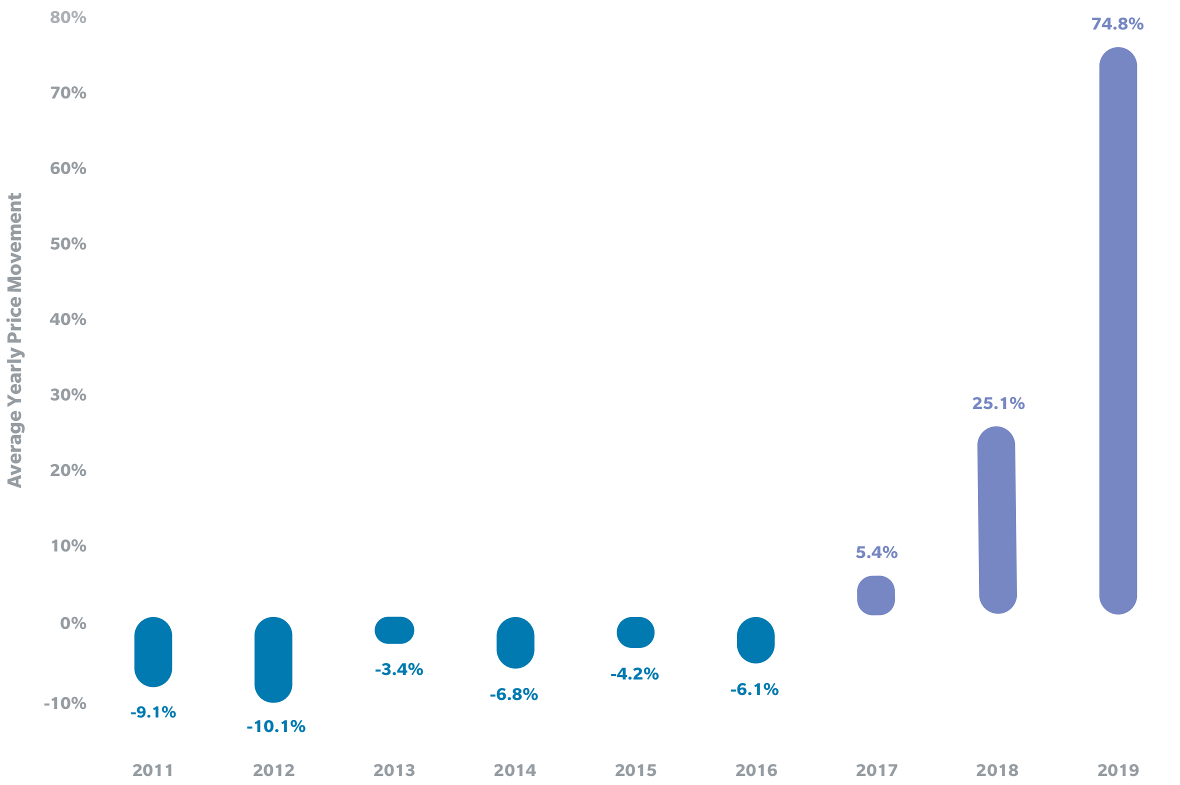
FTSE 100 companies experienced significant price increases in 2019, on top of 2018 premium increases (see Figure 8).

Historically viewed as relatively benign compared to their US or Australian counterparts, the largest UK-traded companies are under increasing scrutiny due to growing regulatory and criminal proceedings affecting large and multinational companies.

FIGURE 8

FTSE 100 company premiums changed dramatically in 2019.

SOURCE: MARSH JLT SPECIALTY



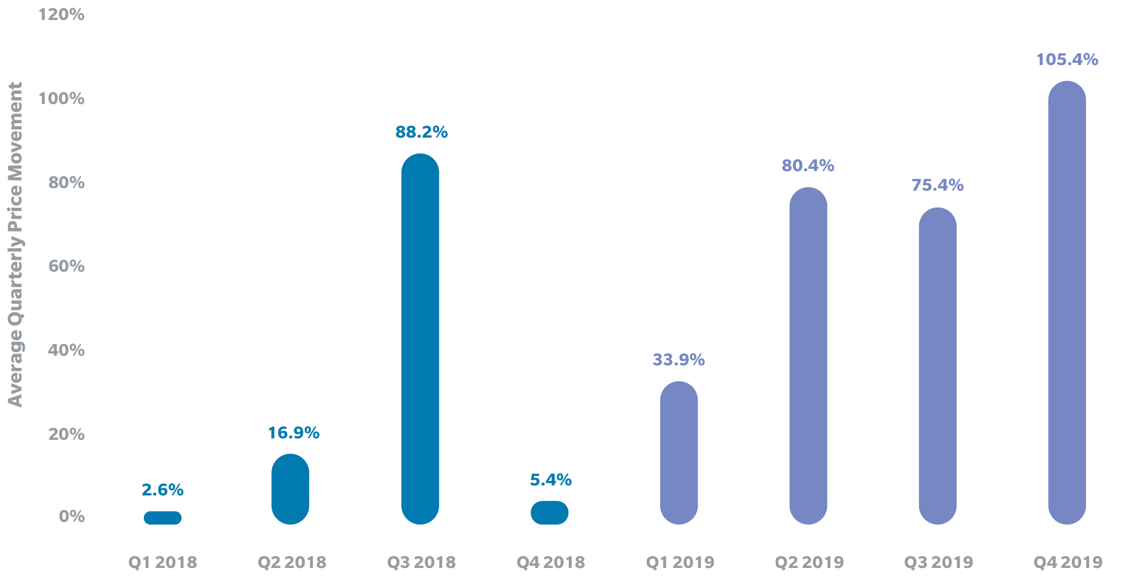
The largest UK-traded companies are under increasing scrutiny due to growing regulatory and criminal proceedings.

The pricing increases for FTSE 100 companies took off in the second quarter of 2019, and stayed elevated throughout the year (see Figure 9).

FIGURE 9

FTSE 100 company prices have remained elevated since Q2 2019.

SOURCE: MARSH JLT SPECIALTY



As with the overall trend for publicly traded companies, excess layer increases tracked those of primary layers in 2018 (see Figure 10). But excess insurers required higher percentage increases in 2019 to continue to deploy capacity on FTSE 100 companies. Side A DIC layers had the lowest increases on a percentage basis across both 2018 and 2019.

FIGURE 10

Excess insurers required higher percentage increases in 2019.

SOURCE: MARSH JLT SPECIALTY

Year of Inception	Primary	Excess	DIC	Total Programme
2011	-5.8%	-5.3%	-21.4%	-9.1%
2012	-2.9%	-9.6%	-4.2%	-10.1%
2013	-0.9%	-4.3%	2.4%	-3.4%
2014	-7.3%	-13.6%	-12.2%	-6.8%
2015	1.1%	-8.1%	-4.8%	-4.2%
2016	7.2%	-7.1%	-7.4%	-6.1%
2017	1.9%	11.1%	-1.9%	5.4%
2018	33.4%	31.1%	11.4%	25.1%
2019	68.7%	96.6%	29.2%	74.8%

2. FTSE 250

Companies in the FTSE 250 experienced the largest premium change of any D&O segment analysed in this report – jumping from a modest average 6.5% increase in 2018 to 95.7% in 2019 (see Figures 11 and 12).

The dramatic shift reflects the D&O market's overall concern for publicly traded companies, combined with the comparatively low base premiums that had historically been charged in this segment when compared with large public companies. Even with the recent dramatic increase, the average rate per million of capacity paid by FTSE 250 companies is 32% lower than by their larger FTSE 100 counterparts.

FIGURE 11

The average rate per million of capacity paid by FTSE 250 companies is still much lower than for FTSE 100 companies.

SOURCE: MARSH JLT SPECIALTY

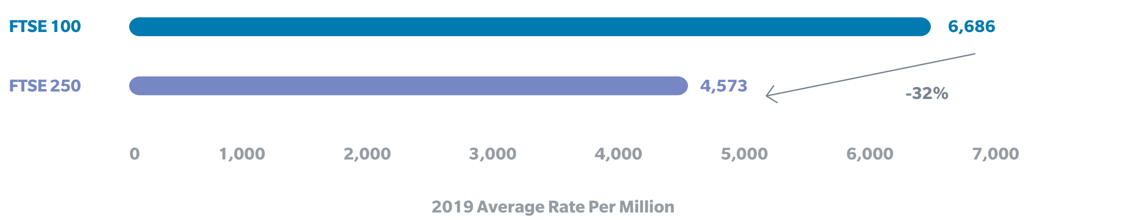


FIGURE 12

In 2019 FTSE 250 companies experienced the largest D&O percentage pricing increase of all.

SOURCE: MARSH JLT SPECIALTY

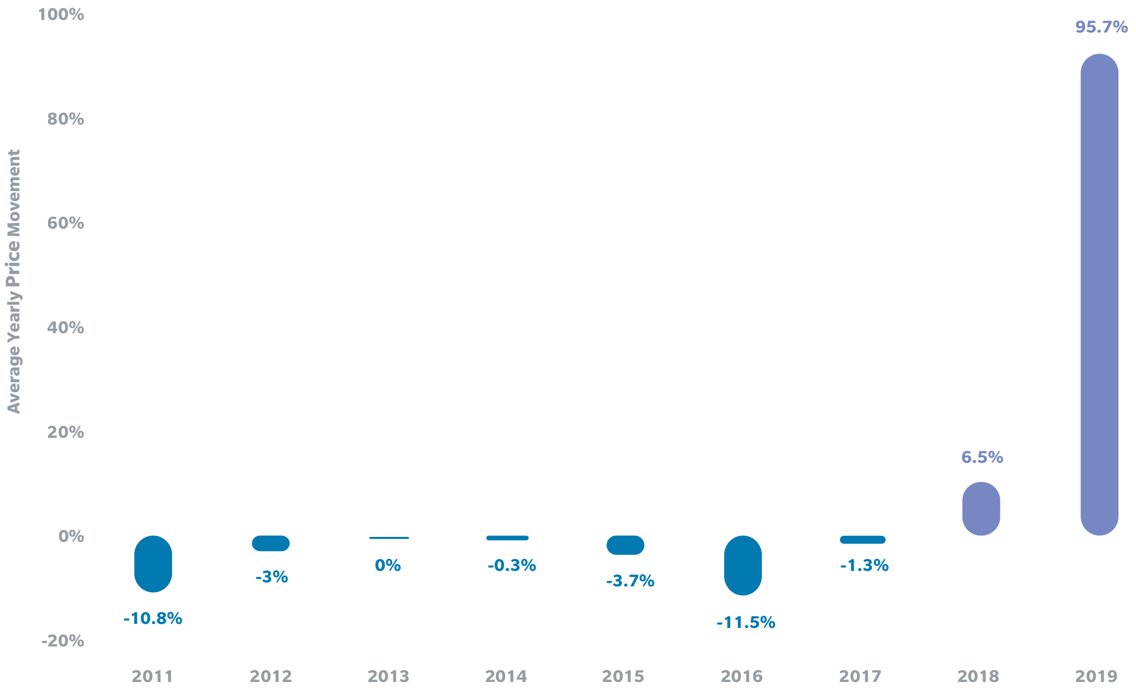
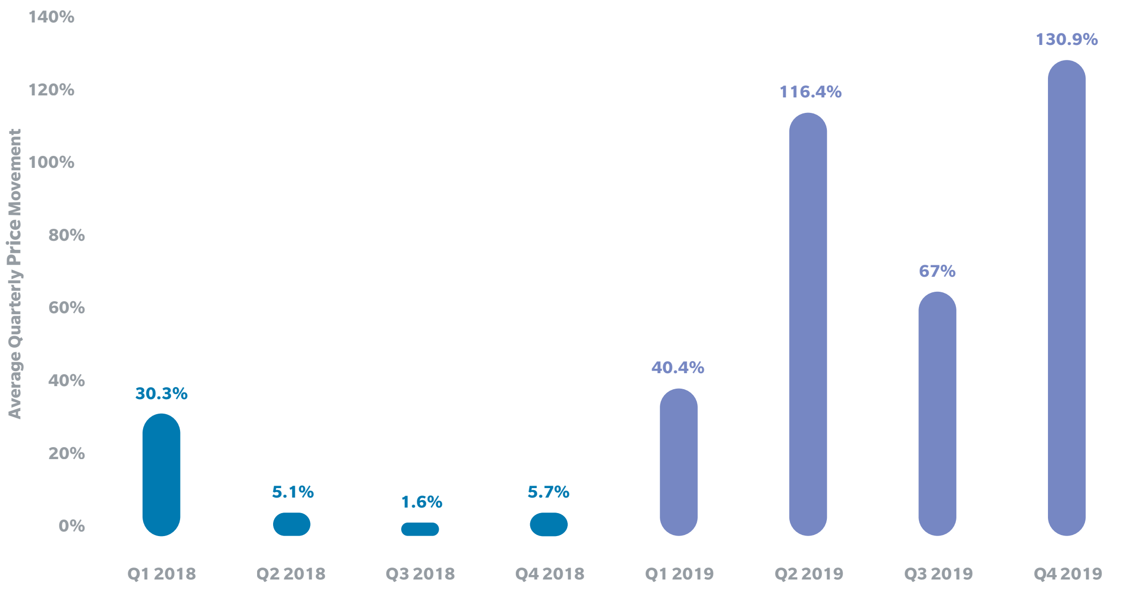


FIGURE 13

A push for price increases began in Q1 2019 and continued for the rest of the year.

SOURCE: MARSH JLT SPECIALTY



A push for pricing increases in the first quarter of 2018 seems to have lost steam for the rest of the year. It began again in 2019, and gained momentum and continued for the rest of 2019 (see Figure 13).

Insurers' changing approach to this segment in a short time period is stark. In 2016, significant competition drove average decreases of nearly 20% in primary pricing (see Figure 14). By 2019, sentiment had shifted dramatically and the limited number of insurers willing to write primary received nearly 90% increases, on average. Similar to other segments, excess insurers had higher pricing increases, but the difference between them and the primary was much smaller than in the FTSE 100 segment.

FIGURE 14

The difference between excess and primary insurers' price increases is much smaller than in the FTSE 100 segment.

SOURCE: MARSH JLT SPECIALTY

Year of Inception	Primary	Excess	DIC	Total Programme
2011	-7.5%	-10%	-16.7%	-10.8%
2012	-2.6%	-3.9%	2.3%	-3%
2013	1.9%	0.2%	-2.6%	0%
2014	-2.3%	0.5%	-7.9%	-0.3%
2015	8.4%	-6.9%	-9.2%	-3.7%
2016	-19.2%	-8.9%	-8.2%	-11.5%
2017	1.7%	-1.7%	-0.9%	-1.3%
2018	14.7%	12.2%	1.9%	6.5%
2019	91.6%	115.7%	26.7%	95.7%

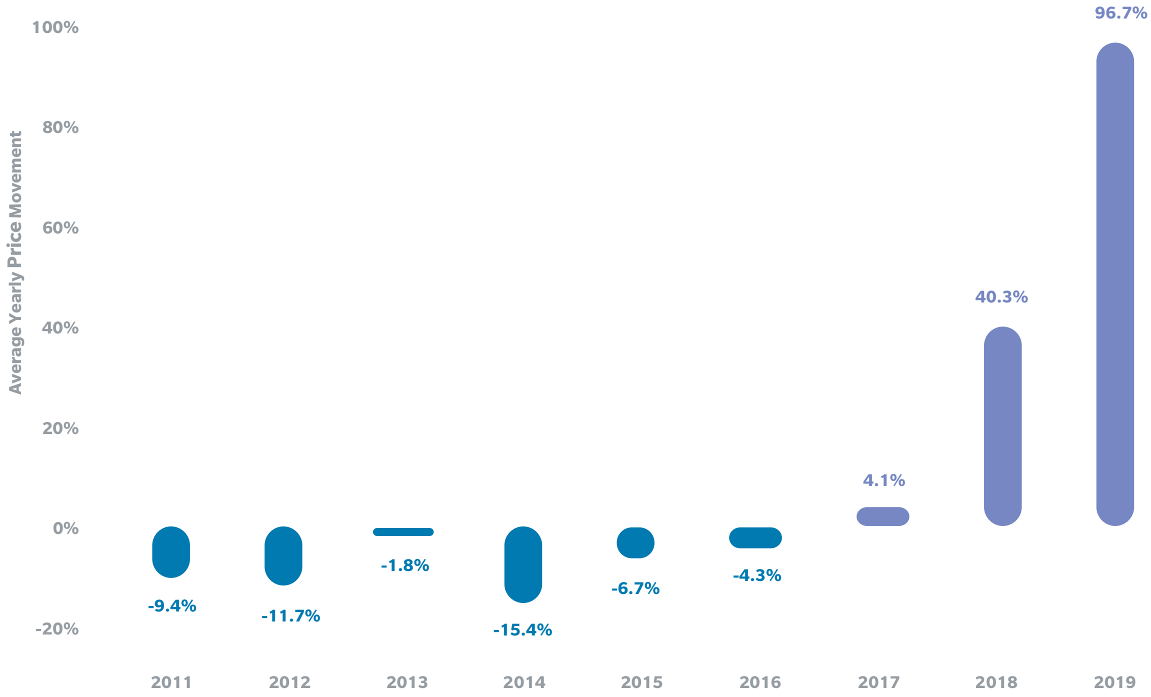
3. Public US-Exposed

Pricing for companies with US-securities exposure nearly doubled in 2019, on average (see Figure 15). Companies with securities traded in the US had the largest average pricing increases in 2018 of all segments reviewed in this report. The 2018 increases did not make these companies exempt from the 2019 increases experienced in other segments. Pricing for US securities exposed companies nearly doubled, on average, in 2019.

FIGURE 15

Pricing for US securities exposed companies nearly doubled in 2019.

SOURCE: MARSH JLT SPECIALTY



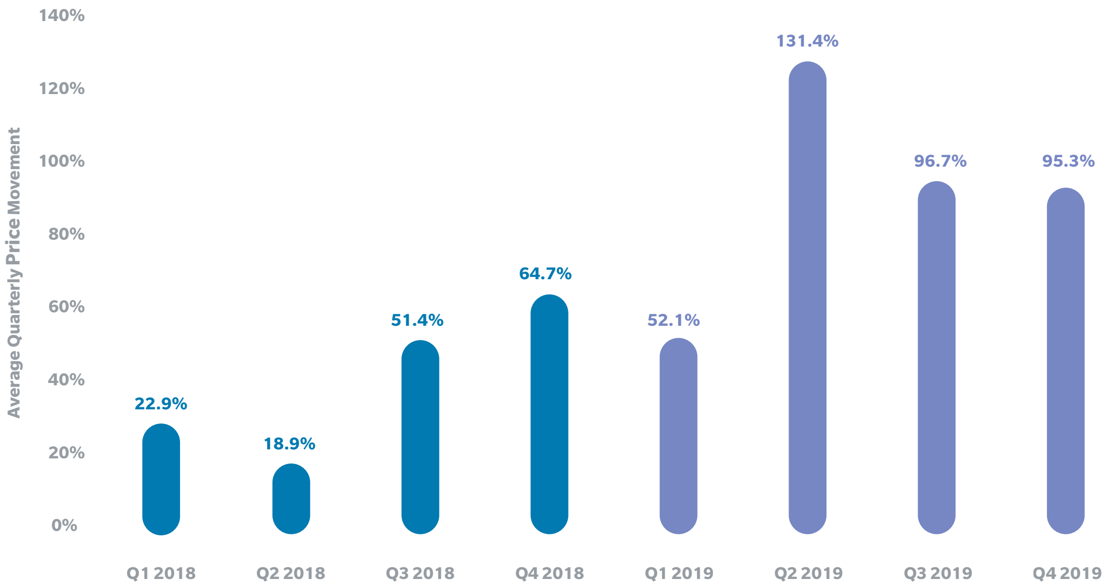
The rise in the number of securities class actions has been well documented, with NERA Economic Consulting reporting 433 federal securities class actions filed in 2019. This was the third consecutive year with more than 400 filings. According to NERA, federal securities cases between 2016 and 2019 were the highest recorded since the Private Securities Litigation Reform Act was passed in 1995, when excluding the IPO laddering cases filed in 2001.

The increase in securities class actions resulted in price increases of over 18% for each of the last eight quarters.

FIGURE 16

The final three quarters of 2019 saw increases of near or over 100%.

SOURCE: MARSH JLT SPECIALTY



The increase in securities class actions resulted in price increases of over 18% for each of the last eight quarters (see Figure 16). The final three quarters of 2019 saw increases of near or over 100%.

Unlike other segments, average price increases on excess layers have been higher than primary for the last three years for US-exposed companies (see Figure 17). This reflects the severe nature of these claims, which can exhaust whole insurance towers if there is a large settlement.

FIGURE 17

Price increases on excess layers have been higher than primary in the last three years for US-exposed companies.

SOURCE: MARSH JLT SPECIALTY

Year of Inception	Primary	Excess	DIC	Total Programme
2011	-5.8%	-4.2%	-23.3%	-9.4%
2012	-3.8%	-11.2%	-3.8%	-11.7%
2013	-1.2%	-1.7%	3%	-1.8%
2014	-7.4%	-16%	-14%	-15.4%
2015	3.6%	-6.4%	-5.7%	-6.7%
2016	1.4%	-6%	-5.8%	-4.3%
2017	0%	11.9%	-0.3%	4.1%
2018	33.6%	50.9%	21.5%	40.3%
2019	73.4%	123%	61.1%	96.7%

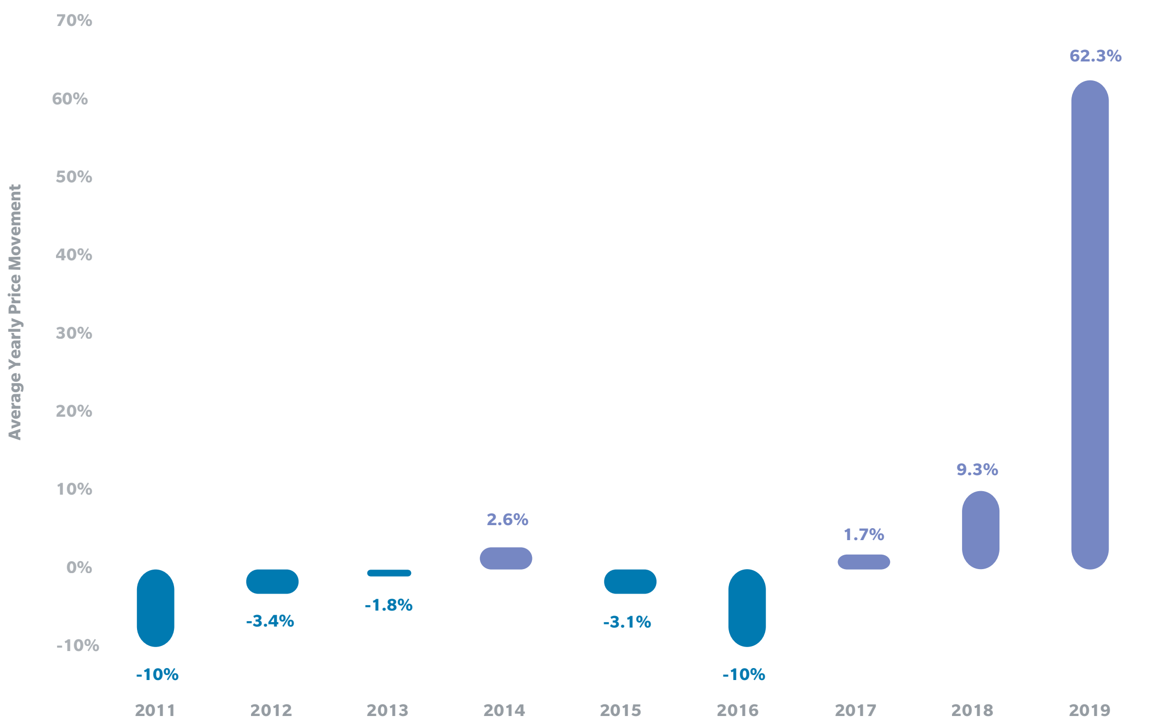
4. Public Non-US-Exposed

Publicly traded companies without US securities exposure, overall, saw the lowest percentage increases of any publicly traded segment analysed by Marsh JLT Specialty (see Figure 18). Yet the 62% average increase in 2019 was substantial, and much higher than the average increase of just under 10% in 2018.

FIGURE 18

Publicly traded companies without US securities exposure typically saw the lowest percentage increases of any publicly traded segment.

SOURCE: MARSH JLT SPECIALTY



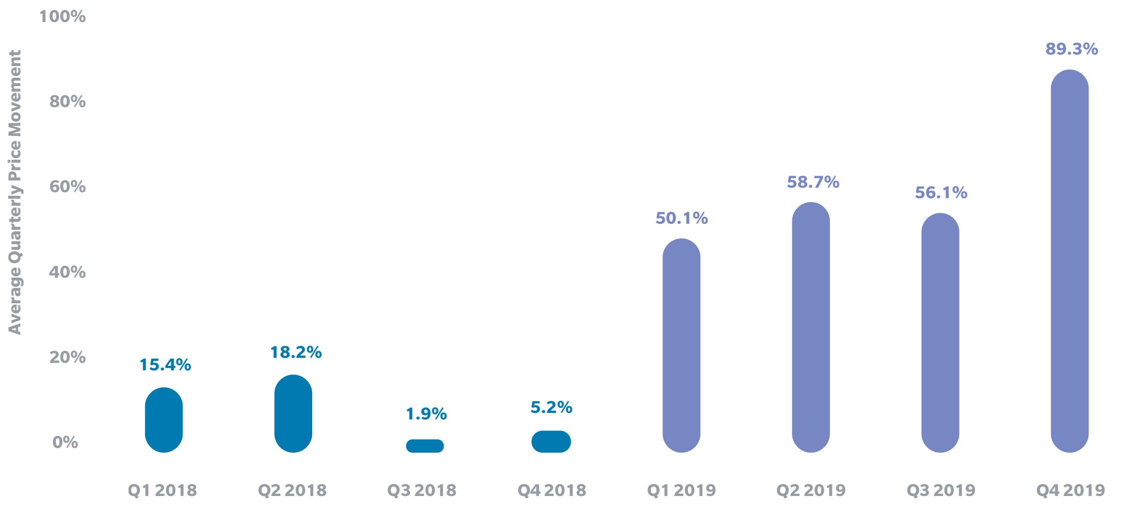
Percentage increases for non-US-exposed companies was relatively flat through the first three quarters of 2019 – then prices nearly doubled, on average, in the fourth quarter.

The percentage increases for non-US-exposed companies was significant, but relatively flat through the first three quarters of 2019; then prices nearly doubled, on average, in the fourth quarter (see Figure 19). By contrast, increases seen at the beginning of 2018 tapered off in the second half.

FIGURE 19

Prices nearly doubled for non-US-exposed companies in Q4 2019.

SOURCE: MARSH JLT SPECIALTY



As with the overall publicly traded cohort, non-US-exposed companies typically saw larger increases coming from primary increases in 2018, but much higher percentage increases in their excess layers in 2019 (see Figure 20).

FIGURE 20

Non-US-exposed companies typically saw much larger increases in excess layers in 2019.

SOURCE: MARSH JLT SPECIALTY

Year of Inception	Primary	Excess	DIC	Total Programme
2011	-7%	-9.4%	-15.2%	-10%
2012	-2.2%	-4%	0%	-3.4%
2013	1.4%	-2%	-1.5%	-1.4%
2014	-4.1%	-2.5%	-6.7%	2.6%
2015	3.6%	-8.5%	-6.6%	-3.1%
2016	-5.6%	-8.5%	-8.3%	-10%
2017	2.5%	2.5%	-2%	1.7%
2018	23.8%	12.8%	2.1%	9.3%
2019	50.8%	80.9%	50.6%	62.3%

Private Firms

Privately held firms have not been exempt from D&O price increases (see Figure 21). They consistently received increases over the course of 2019 – with increases averaging about 31%.

FIGURE 21

Private firms consistently received price increases in 2019.

SOURCE: MARSH JLT SPECIALTY

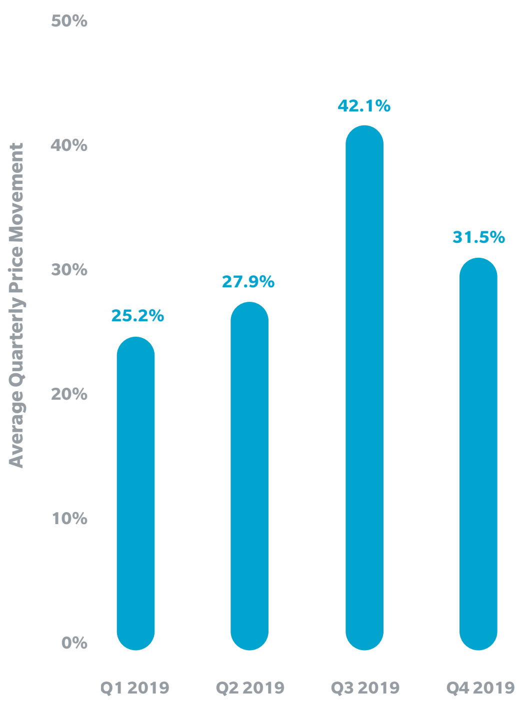
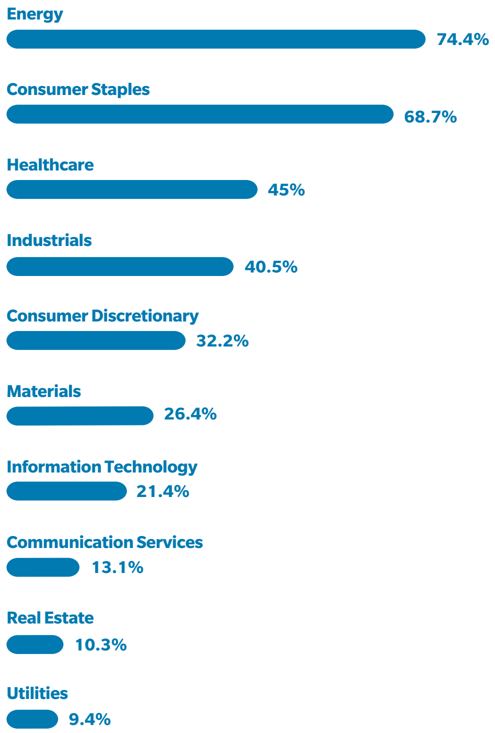


FIGURE 22

Price increases varied widely for private firms depending on sector in 2019.

SOURCE: MARSH JLT SPECIALTY



Additionally, there is pressure on retention levels and limits for the corporate legal liability cover often included in private company D&O forms.

Private companies' sector could make a significant difference in their overall pricing increase (see Figure 22). Consumer staples and energy companies saw increases averaging over 50%.

Communication services, information technology, real estate, and utilities all experienced lower-than-average pricing increases for private companies.

Private companies' sector could make a significant difference in their overall pricing increase.

Methodology

The *Directors and Officers Liability Insurance 2019 Pricing Index* uses placements from the Marsh's UK & Ireland team subsequently processed by the data and analytics team. The index currently contains more than 2,340 D&O insurance programmes.

The index tracks D&O insurance price movements over time; this is calculated as the variation year-over-year of the rate per million on the total programme for the same client in consecutive years, provided there were no significant changes to the programme structure. In the course of the analysis, some obvious outliers may have been adjusted or excluded to provide a fairer and more uniform analysis.

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