



Small Practice Support Session Professional Indemnity Insurance

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26 October 2022

Tips for Renewal

- Does your firm operate a system for recording, monitoring and reviewing key dates which includes a procedure for absenteeism?
- Supervision - setting aside a regular time slot to review workloads, check for progress and inactivity, prioritise work and to deal with problem cases?



Tips for Renewal

- New clients/new matters - Whether the matter is within your firm's capability, capacity and competence?
- Are you aware of any disputes, questions or queries arising from the provision of undertakings given or accepted by your firm?



Tips for Renewal

- Have you received correspondence from any financial institution threatening legal action or a complaint
 - ❖ in relation to a delay in registration or
 - ❖ non-compliance with an undertaking given by your firm?



Tips for Renewal

- Over the past 5 years has the firm faced:
 - ❖ one or more impersonation fraud attempts,
 - ❖ payment diversion attempts or other fraud attempts involving impersonation of partners, directors, officers or employees?



Remember Murphy's Law and Holohan's commentary



Murphy's Law:

"If anything can go wrong it will, and at the worst possible moment."

Holohan's commentary on Murphy's law:

"Murphy must have been a bloody optimist".

Complaints

Deal with complaints quickly – avoid a complaint to LSRA.

Make careful enquiry

- ✓ Regularly check with staff to see if there is any file worrying them (that may give rise to a claim).
- ✓ If an employee has left, carry out a review of files.
- ✓ Even if an employee has not left, carry out a review and audit of files.



Checking systems

- ✓ Check that files being handled by the appropriate person.
- ✓ Check your undertakings register, critical dates system, etc.
- ✓ Check your cyber security.
- ✓ Check that your data is properly protected.



Working with your broker

- ***Be completely honest*** with yourself and with your broker.
- ***Work with your broker and insurer*** - this will lead to the best possible outcome of any claim/circumstance notified



Working with your broker and the Law Society

Make brokers
work for
commission

Do not rely
on one
broker

Prepare early

Variable
renewal
dates

Society's
Finance
Scheme

Guidance on
the website

Law Society support

PII helpline
01 879 8707

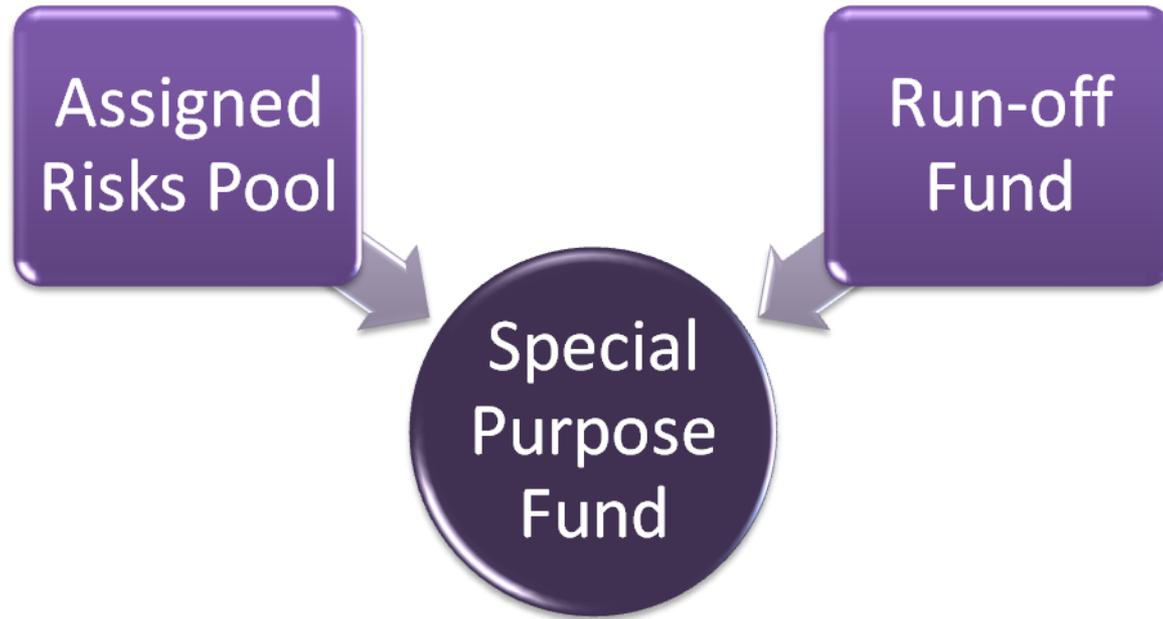
Email:
piihelpline@lawsociety.ie

Helpline is
available
Monday – Friday
10am – 4pm

Firm PII information
online @ Find a Firm
search facility

www.lawsociety.ie/PII

Special Purpose Fund established 2011



Special Purpose Fund Manager

- The SPF Manager has responsibility for managing both the Assigned Risks Pool (“ARP”) and the Run-off Fund (“ROF”). However, each fund is a separate entity
- The position of the SPF Manager was awarded to DWF Claims (Ireland) Limited .
- The SPF Manager is appointed by the Law Society but acts on behalf of the participating insurers. The Law Society does not run the SPF.

Manager: DWF Claims (Ireland) Limited, 5 George’s Dock, IFSC, Dublin 1

Phone: +353 (1) 790 9444

Fax: +353 (1) 790 9401

Email: spf@dwfclaims.com

Assigned Risks Pool

- The ARP is the insurer of last resort for solicitors unable to obtain cover in the market and provides cover at a lower level than that available in the market – e.g. no commercial conveyancing.
- Now part of SPF but pre-dates it.
- The ARP premium is much higher than general premium in the market – likely to be higher risk and also to disincentivise.
- If the firm does not pay the ARP premium, the firm is closed as a defaulting firm.



Assigned Risks Pool

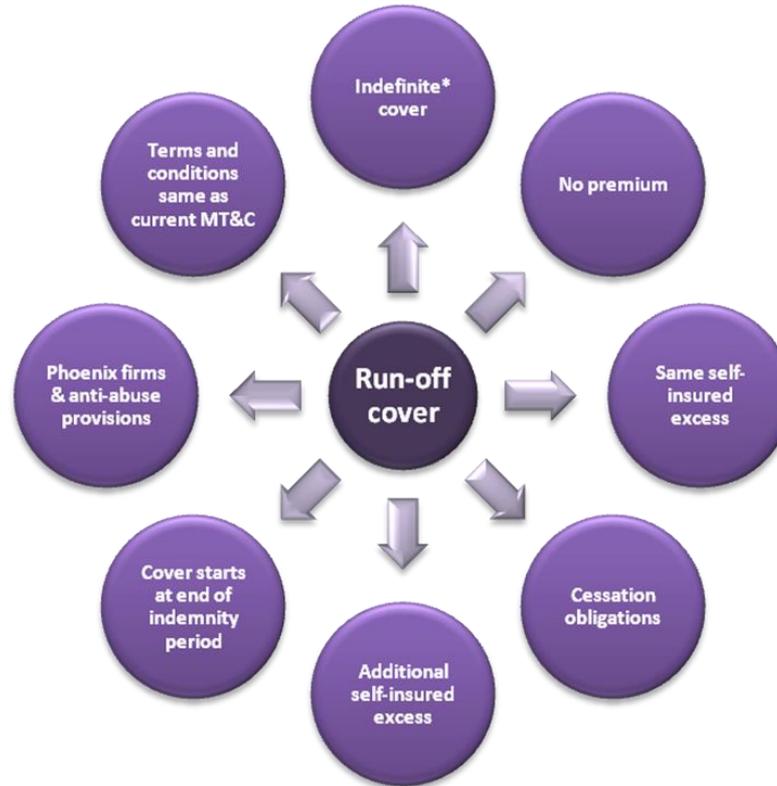
- Aggregate limit of €1.5 million (rather than each and every claim).
- Exclusion of all claims by financial institutions.
- New entrants to the ARP can only remain in the ARP for a maximum of 12 months.
- There is a prohibition on start-up firms entering the ARP.



Run-off fund – Established 2011



Run-off fund – Established 2011



Run off cover established 2011

- Phoenix firm provisions are in place to prevent abuse of the ROF by:
 - ❖ firms closing to dump their claims into the ROF, and
 - ❖ then reopening in another form.



Run off cover established 2011

New firm is largely similar to or has succeeded the ceased practice

Two or more firms can be treated as each being phoenix firms

The new firm meets the definition of succeeding practice

Phoenix Firm

Designation as phoenix firm is at the absolute discretion of the PII Committee

Run off – Avoiding abuse.

- The ceasing firm entering the ROF is required to sign a declaration stating that the principal(s) have no intention in forming a succeeding practice at any time in the future, and confirming that all claims and circumstances have been notified to their existing insurers up to the expiry of the firm's insurance.
- A “phoenix capture” system is run by the Society to identify any phoenix firm that attempts to open in practice and such firms will be designated as phoenix firms by the PII Committee.



Run off – Avoiding abuse.

- Phoenix firms are required to declare and cover the new firm as a succeeding practice to the ceased firm in order to be permitted to commence in practice. Such insurance should cover all claims against the ceased firm since the date of cessation.
- Insurers will have a right of reimbursement for claims already paid by the ROF for the ceased firm.
- Phoenix firms that do not obtain the required succeeding practice insurance will not be allowed to practice.



Run off cover established 2011

- Compliance by ceased firms whilst high was not universal.
- Ceased firms need to assist SPF Manager with claims, access to documentation et cetera.
- Amendments made to Regulations from 1st December, 2017 to create bands of cover depending on compliance.
- Aim is to increase compliance and decrease ROF exposure in the event of non-compliance.

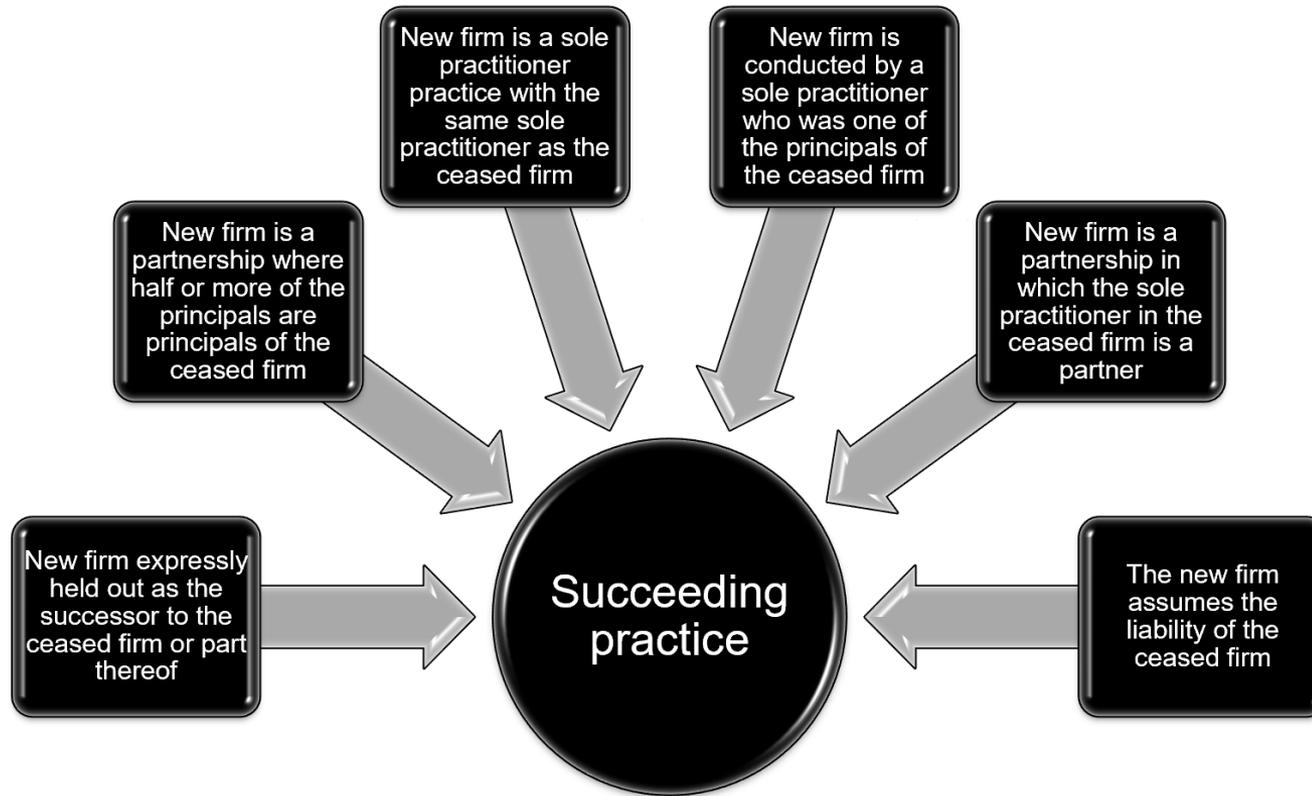


“He’s in compliance ... but don’t think he won’t bite.”

Run off cover Bands

- Compliant firms will have cover in the ROF with the same minimum terms and conditions as those that exist in the market.
- Non-compliant firms will have reduced cover in the ROF with the same minimum terms and conditions as those which exist in the market, with the exception that there will be no cover for claims by financial institutions.
- ARP run-off firms will continue to have cover in the ROF at the same level as exists in the ARP, with aggregate cover and no cover for claims by financial institutions.

Succeeding Practice Rules



Is it or is it not succeeding practice?

- A firm is NOT a succeeding practice if any of the following apply:
 - ❖ None of the conditions in the definition of succeeding practice apply.
 - ❖ Another practice is or was held out as a succeeding practice.
 - ❖ A sole practitioner retires and passes their files to another firm that does not hold itself out as a succeeding practice.



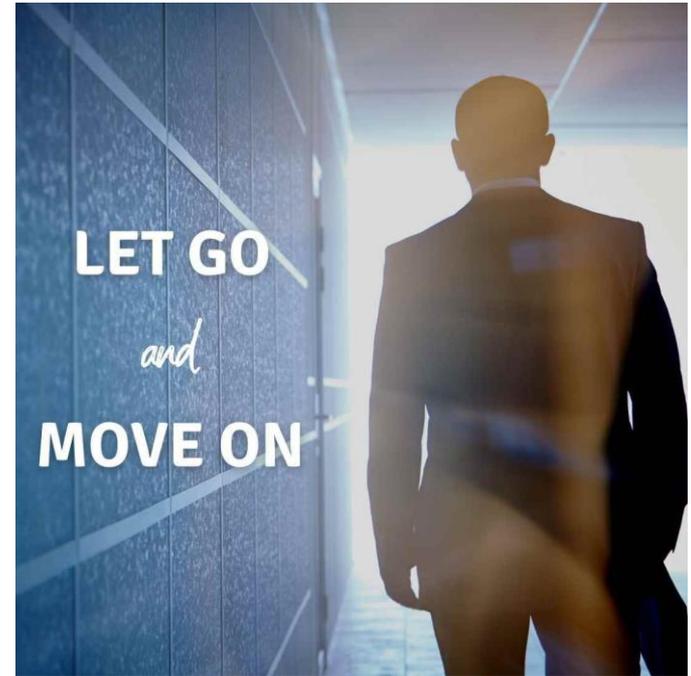
How to avoid being regarded as a succeeding practice.

- Do not include any reference to the ceased practice on any of your firm's business stationery including notepaper, business cards, website, email signatures, or invoices.
- Do not advertise the fact that your firm has taken on the business of a ceased practice.
- Do not lead clients of the ceased firm to believe that your firm is a continuation of the ceased firm.



How to avoid being regarded as a succeeding practice.

- Despite being desirable in business development terms, do not use the name of the ceased firm for promotional or any other purpose.
- Send a formal written notification to the Law Society of Ireland that your firm is not a succeeding practice to the ceased firm.
- Make it clear to clients of the ceased firm that while you are happy to act for them, they are very free to retrieve or move the file (including deeds, Wills et cetera).



Ceased firms – clients.

- Make a clear distinction between your firm and the ceased firm.
- Make it clear that your firm is a separate practice – it is not a continuation of the ceased firm.
- Inform the clients that your firm has reached an agreement to take on the files of the ceased firm in order to offer a continuity of services to its clients to ensure that there is no disruption in the handling of their legal affairs.



Ceased firms – clients.

- Remember that the files belong to the client – give them the option
- ❖ to nominate your firm as their new solicitor,
- ❖ to have the file sent on to another nominated solicitor, or
- ❖ to have the file returned to the client.



Client accounts and PII.



Client accounts and PII.

- Principals of solicitor firms have a personal liability for any deficit of client monies, even when the deficit arises as a result of fraud committed against the firm, such as cybercrime.
- The principals must reimburse the client account for any client monies fraudulently taken in order to rectify the deficit.



Client accounts and PII.

- The terms of the existing minimum terms and conditions are sufficiently broad to cover the loss suffered by a law firm in circumstances such as fraud or cybercrime where the client suffers a loss as a result of this event and subsequently makes a request or demand for, or intimates an intention to seek compensation or damages from, a solicitor firm in respect of such loss.



Client accounts and PII.

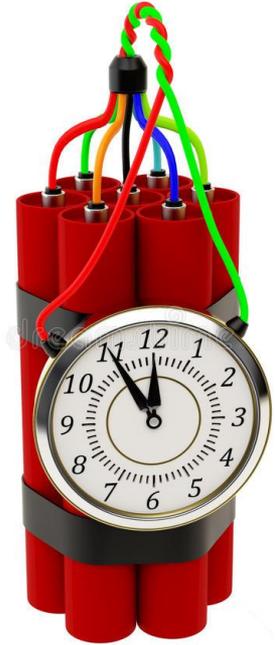
- The existing minimum terms and conditions also cover rectification of a deficit on the client account of a firm where such deficit is caused other than by fraud or dishonesty, and where an award or order has been made against the firm, or principals of the firm, requiring rectification of the deficit.



DEFICIT

Client accounts and PII.

- Solicitor firm may wish to cover any misappropriation of client moneys from the firm's own funds as soon as possible for reputational reasons, the avoidance of litigation, or otherwise. Solicitor firms should ensure that they do not rectify any deficit caused on the client account due to misappropriation of client moneys lost (other than by reason of fraud or dishonesty of the solicitor firm) in advance of a claim by the client, or receipt of a notification or a requirement to rectify the deficit from the Law Society, as the firm's professional indemnity insurance cover will not be triggered and the firm could be left without cover for the loss.



Client account deficits – appropriate action.

- The solicitor firm should notify the Law Society of the deficit on the client account due to misappropriation of client funds (not due to fraud or dishonesty of the solicitor firm) immediately on becoming aware of same. The Society may also otherwise become aware of the existence of the deficit.
- The Law Society shall carry out an inspection of the firm, and produce an investigation report.
- The matter shall be put before the Law Society's Regulation of Practice Committee for consideration, with the principals of the firm attending the meeting.



Client account deficits – appropriate action.

- The Regulation of Practice Committee may direct that an application be made to the High Court for an order requiring the solicitor firm to rectify the deficit on the client account with a stay of 14 days, or such other stay period as the committee deems appropriate.
- The solicitor firm shall be notified of their requirement by letter from the Law Society to rectify the deficit within the stay period, or the Law Society will apply to the High Court for an order for rectification. This letter is defined under the professional indemnity insurance regulations as the “*notification of a requirement to rectify*”, which definition also sets out the content of the letter.



Client account deficits – appropriate action.

- Professional indemnity insurance cover for the firm is triggered when the “notification of a requirement to rectify” is received by the solicitor firm from the Law Society, whether the solicitor firm then chooses to rectify the deficit using their own funds (and recovers from the insurer), or the firm’s insurer rectifies the deficit.
- If the deficit is not rectified by either the firm or the insurer within the stated stay period, the Law Society’s application to the High court for an order for rectification will proceed.



Client account deficits – appropriate action.

PII cover solely refers to deficits on the client account. If non-client moneys are misappropriated from non-client account, this is not a covered event. Consequential first party expenses such as PR and client notification costs are also not covered. Solicitor firms should obtain separate cyber-cover should they wish to insure against such events

Deficits on the client account caused by fraud or dishonesty of the solicitor or firm as the insured are not covered.

Any misuse of this coverage for the benefit of a solicitor, clients, or third parties, is likely to be dealt with through ordinary insurance law principles such as unjust enrichment and subrogation.

Limiting your liability.

- Pursuant to s.26A of the Solicitors (Amendment) Act, 1994 (as inserted by s.44 of the Civil Law (Miscellaneous Provisions) Act, 2008) solicitors may cap liability in a contract between solicitor and client once cap not less than the amount of professional indemnity insurance cover for the time being in effect in respect of firm, which in turn must not be less than the minimum level of cover, as specified from time to time in regulations under paragraph (b) of s.26(4) of the Solicitors (Amendment) Act, 1994.
- J.W.T. (Joe Walsh Tours) Limited –v-. McCarthy & Others [1991] I.L.R.M. 913



Limiting your liability - LSRA 2015.

Limitation of legal practitioner's liability by contract

48. (1) Subject to *subsections (2) and (3)*, a contract between a legal practitioner and a client of the legal practitioner that any description of civil liability incurred—
- (a) by the legal practitioner arising from his or her practice as a legal practitioner in respect of the provision of legal services to the client be limited to an amount specified or referred to in the contract, or
 - (b) by a partner, employee, former partner or former employee of the legal practitioner arising from that legal practitioner's practice as a legal practitioner in respect of the provision of legal services to the client be limited to an amount specified or referred to in the contract,
- shall be binding on and enforceable by—
- (i) if *paragraph (a)* is applicable, the legal practitioner and the client, and
 - (ii) if *paragraph (b)* is applicable, the partner, employee, former partner or former employee of the legal practitioner and the client.
- (2) Nothing in *subsection (1)* shall affect the operation of—

Limiting your liability - LSRA 2015.

- (a) section 40 of the Sale of Goods and Supply of Services Act 1980, or
 - (b) Regulation 6 of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995).
- (3) The amount referred to in *subsection (1)* in respect of a description of civil liability the subject of the contract concerned shall be not less than the minimum level of cover, as specified from time to time in regulations made under *section 47* or section 26 of the Act of 1994, as the case may be, for indemnity against losses arising from those classes of claims which come within that description of civil liability and which relate to the legal practitioner concerned and the class of legal service concerned, and accordingly any such amount which is less than such minimum level of cover shall, by virtue of this subsection, be deemed to be increased to such minimum level of cover, and such contract shall be binding and enforceable accordingly.

FIRM'S PII DETAILS ARE PUBLIC!

- Section 47 of the Solicitors Act, 1954 as amended by the Solicitors (Amendment) Act, 1994 requires that a register available to the public be maintained to include:
 - ❖ the full name of the solicitor,
 - ❖ the place or places of business,
 - ❖ the date of admission as a solicitor, and
 - ❖ particulars of professional indemnity insurance cover.

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Admitted 1983

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 www.holohanlaw.ie

DX DX 2004 Cork

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❖ particulars of professional indemnity insurance cover.

Holohan Lane LLP

📍 Solicitors
Water-view House
16 Sundays Well Road
Cork
T23 Y952
DX 2004 Cork

The data displayed below is the data held by the Law Society as of 09 August 2022. [View our Disclaimer](#)

Minimum Compulsory Professional Indemnity Insurance Details

Start Date: 01.12.2021

End Date: 30.11.2022

Cover Amount: €1,500,000 each and every claim

Insurer

AIG Europe S.A.
30 North Wall Quay
IFSC
Ireland 1

Please note that the information listed pertains to mandatory solicitors' professional indemnity insurance only. Queries relating to any other forms of insurance should be made to the firm.

EU (Provision of Services) Regulations

S.I. No. 533/2010

22. (1) Every provider of a service shall make available the following information to a recipient of the service:

...

(k) if the provider is required to hold professional liability insurance or a guarantee, information about the insurance or guarantee, in particular—

- (i) the contact details of the insurer or guarantor, and
- (ii) the territorial coverage of the insurance or guarantee.



STATUTORY INSTRUMENTS.

S.I. No. 533 of 2010

EUROPEAN UNION (PROVISION OF SERVICES) REGULATIONS
2010

Essential General Practice Update Kerry 2022

PII helpline
01 879 8707

Email:
piihelpline@lawsociety.ie

Helpline is
available
Monday – Friday
10am – 4pm

Firm PII information
online @ Find a Firm
search facility

www.lawsociety.ie/PII