Further changes to the *Professional Indemnity Insurance Regulations*

The Law Society has very reluctantly felt obliged to make further changes to the *Professional Indemnity Insurance Regulations*, in order to do what it can to encourage a viable stable market. John Elliot offers this article as a practical guide

As has been explained by the president of the Law Society in his recent letter to members, the Law Society has very reluctantly felt obliged to make further changes to the professional indemnity insurance (PII) regulations, in order to do what it can to encourage a viable stable market.

This article is intended as a practical guide to the profession regarding these further changes. The article does not set out a definitive statement or interpretation of the law. The article is a guide to changes that directly affect solicitors' firms and does not address issues affecting only insurers. The article is based on the assumption that coverage terms offered to your firm do not exceed the mandatory minimum terms and conditions.

Key messages

Act immediately. The assigned risks pool (ARP) is the safety net for firms unable to obtain cover in the market. The ARP will be suspended for the next indemnity period. Therefore, it is absolutely imperative for all firms intending to continue in practice after 30 November 2009 to obtain PII cover with a qualified insurer by this date.

The mandatory renewal date of 1 December 2009 is rapidly approaching, and the Law Society urges all firms that have not already done so to contact brokers and/or insurers to ensure that proper arrangements are made to provide all information that will be required to obtain quotes, and thereafter to seek a number of competitive quotes with a view to securing PII cover on the minimum terms and conditions as soon as possible.

Fully complete the proposal forms. Any misrepresentation or non-disclosure in placing the insurance has the potential to reduce the effective level of cover for your firm or remove cover for your firm altogether and, in certain cases, the cover for claimants that are financial institutions, depending on the operation of the minimum terms and conditions in the circumstances in question.

It is critically important that your firm fully and properly completes all sections, without exception, on proposal forms. In addition, you should attach any additional information you think may be prudent to ensure that there is no misrepresentation or non-disclosure in placing the insurance.

Insurers will be very focused on your firm's claims experience. Your firm's commentary on any claims will be important, so insurers can see the claims in context – and any action taken to minimise any future claims of the type involved. Your firm should also obtain a printout of paid claims and reserves from the firm's existing insurer and, if there are significant sums for outstanding claims, add a commentary on future prospects. Your firm should canvass internally to identify any claims or circumstances not yet reported, for prompt notification prior to inception of the new policy.

PII Tables. See the New PII Changes Table and the Consolidated PII Changes Table

Shop around. PII is likely to be more difficult to obtain than in previous indemnity periods, and that against the background of there being no ARP safety net. Therefore, it is prudent to seek quotes for PII from a number of different sources to maximise the chances of having cover in place by the renewal date. In addition, it is expected that there will be a significant variation in levels of premium quoted by different insurers, and having a number of different quotes will increase the chances of your firm obtaining the best available terms.

Reduction of mandatory run-off cover period

Due to the reduction of the mandatory period of run-off cover, the choices facing a sole principal are now more complex. Ceasing practice on or before 30 November 2009 without a succeeding practice will result in mandatory run-off cover for six years being provided on the terms already provided for in the current policy.

Continuing practice after 30 November 2009 will require normal cover to be renewed on 1 December 2009 and thereafter, at least until 30 November 2010**,** ceasing practice without a succeeding practice will result in mandatory run-off cover for two years being provided on the terms provided for in the new policy. The best course of action in any individual case will depend on weighing the specific factors applicable to that case, and no general advice can be given. Any sole principal facing these decisions should seek the advice of an insurance broker specialising in solicitors' PII; there is a list of brokers on www.lawsociety.ie.

General advice relating to PII renewal

The attention of all solicitors' firms is drawn to the following practical considerations:

- Cover must be renewed with effect from 1 December each year. This date is not negotiable. New practices should obtain cover from the date of commencement of practice, to expire on the next occurring 30 November. All existing cover expires on 30 November 2009.

- Confirmation of cover in the designated form must be provided to the Law Society within ten working days after the due date for renewal each year. All firms must confirm cover by 15 December 2009. Normally, the broker provides confirmation of cover, but the obligation is on each firm to ensure that this is done.
- Any firm that is unable to obtain cover in the market should, before expiry of its cover on 30 November 2009, notify the Law Society.
- Any firm for which confirmation of cover is not received within the ten-working-day period will be classified as a 'defaulting firm'. If claims should arise while a firm is a defaulting firm, the claimant will then have recourse against the firm and its principals for recovery of the amount of the claim.
- The Law Society may seek a High Court order compelling any defaulting firm, which does not regularise its position promptly, to cease practice. Obviously, it is in the interests of all firms to avoid becoming a defaulting firm.
- Firms providing legal services relating to the laws of any other jurisdiction should note that the minimum terms and conditions do not cover legal services relating to the laws of other jurisdictions. Such firms should therefore arrange to put additional cover in place if they consider it appropriate.
- Solicitors providing legal services solely outside the jurisdiction will not be required by the Law Society to have professional indemnity insurance cover in place.
- Where a firm ceases practice and there is no succeeding practice, run-off cover from the end of the then current indemnity period must be provided by the last insurer. The current period of mandatory run-off cover is six years. The mandatory period for run-off cover triggered by cessation of practice on or after 1 December 2009 will be two years. (Run-off cover is coverage that includes the minimum terms and conditions for a firm that has ceased to carry on practice, where there is no succeeding practice.) Sole principals are strongly recommended to consider and plan for the cost of run-off cover, should it be triggered.
- An exemption for in-house solicitors providing legal services only to their employer applies.

What firms should do with regard to the renewal of PII cover:

- Firms should endeavour to renew their cover as early as possible for the coming indemnity period in order to ensure that the Law Society is provided with confirmation of cover by 15 December 2009.
- If a firm is deemed to be a defaulting firm, such a firm should use its best endeavours to regularise its position promptly and should seek to ensure that its cover, when renewed, is effective from the date of expiry of its previous cover with a view to mitigating the adverse consequences of defaulting firm status.
- Firms, and in particular all sole principals intending to cease practice, should pay particular attention to the information relating to premium terms for run-off cover contained in quotations or renewal notices. All quotations and renewal notices are required to contain the following notice:
  "Notice to proposers for insurance: you should be aware that by accepting a quotation and taking out a policy, this insurer becomes obliged, should your practice cease during this policy year without a successor practice, to provide run-off cover for a two-year period at the premium rates calculated in accordance with the provisions of this policy. Consequently, you should ensure that the run-off premium terms are satisfactory to you before entering into a policy."

You may wish to note:

1) Firms, rather than individual solicitors, are covered.
2) Firms can agree any level of self-insured excess with their insurer. In the event of a claim, where the firm does not pay the amount of the excess to the client, it is paid by the insurer and then recovered from the firm.
3) There is a uniform renewal date of 1 December.
4) The defence costs of the solicitors for the insurer for dealing with a claim are not limited.
5) Run-off cover must be provided automatically by the last insurer, with the run-off cover premium terms for each year being set out in quotations and renewal notices for the normal cover.
6) Insurers cannot repudiate claims by non-financial institutions on any grounds, including fraudulent misrepresentation or non-disclosure. They must cover such claims but may pursue the firm subsequently.
7) Statutory compensation or restitution to clients, such as may be ordered by the Solicitors Disciplinary Tribunal, is covered.

For further information

Please refer to www.lawsociety.ie for the designated form for confirmation of cover and the full text of the PII regulations.
Any queries relating to the PII regulations should be addressed to the Law Society PII Helpline for Solicitors at **01 879 8790** or **piihelpline@lawsociety.ie**.

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