



# **Guide to risk management procedures and professional indemnity insurance**

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## Disclaimer

THESE GUIDANCE NOTES ARE INTENDED AS GENERAL GUIDANCE AND SO NOT CONSTITUTE A DEFINITIVE STATEMENT OR INTERPRETATION OF THE LAW. WHILST CARE HAS BEEN TAKEN TO ENSURE THE ACCURACY OF THE INFORMATION IN THIS GUIDE AS AT THE DATE OF PUBLICATION, THE LAW SOCIETY OF IRELAND WILL NOT ACCEPT ANY LEGAL LIABILITY NOR WARRANT THE ACCURACY OF THE INFORMATION WITHIN.

## Introduction

- 1.1. One of the main factors that insurers take into account when considering the risk profile of a solicitor firm is the implementation and maintenance of risk management strategies and procedures to minimise the risk of an insurance claim against the firm. This issue is so important to insurers that 22 questions are devoted to the topic in the annual common proposal form.
- 1.2. High risk, or 'distressed firms' can find it difficult to obtain affordable cover on the professional indemnity insurance ("PII") market. The PII premium a firm is quoted is general proportionate to the level of risk of claims against the firm in the eyes of the insurer.
- 1.3. Mechanisms to make firms more attractive to insurers include:
  - implementation and maintenance of risk management procedures;
  - early application for renewal of PII cover;
  - provision of professional and in-depth information on risk management procedures, claims and circumstance to insurers;
  - commissioning an independent risk review to focus on problem areas in the firm where claims have arisen;
  - implementing risk management measures in relation to claims;
  - ensuring all claims and circumstances have been properly notified and accepted by the firm's existing insurer within the same indemnity period.
- 1.4. The purpose of these guidelines is to set out risk management policies and procedures that firms should consider implementing in order to reduce the firm's risk profile, and corresponding PII premium.

## General management

- 2.1. **Risk management procedures** - Formal written risk management procedures for the firm should be prepared and reviewed annually by a principal or partner in the firm. Relevant amendments to the procedure should be made following any claim or circumstance in order to reduce the likelihood of reoccurrence.
- 2.2. **Risk management or quality standard** - The firm may consider applying for a risk management or quality standard. If the firm achieves such a standard, information should be provided to the insurer on the number of times the firm was audited and accredited, the standards applied for and achieved, the scores awarded, the dates accreditation was achieved, and when the accreditation expires.

## New clients and new matters

- 3.1. **Pre-instruction risk assessment** -Prior to the acceptance of instructions, new matters should be subjected to a written risk assessment that is signed off by a partner or principal. The assessment should establish the following:
- that the matter is within the firm's capability, capacity and competence;
  - any unusual or high than normal risk factors associated with the matter;
  - that there is adequate time to complete the work and meet any critical dates;
  - any difficult issues relating to the matter or the client that have been identified and recorded, and that these issues can be managed;
  - a review of the potential exposure values, and consideration of whether the firm's liability will and/or should be capped, where appropriate and with the client's agreement;
  - whether the matter will be refused or referred elsewhere where a full duty of care cannot be given, or there are unmanageable conflicts, potential conflicts or other risks.
- 3.2. **Engagement procedures** – The firm should have formal written procedures for engaging new clients. The procedures should include the following:
- issuing and acceptance of the firm's current terms and conditions;
  - definition of the scope of the transaction;
  - where appropriate, limiting liability of the firm under section 44 of the Civil Law (Miscellaneous Provisions) Act 2008;
  - standard file opening processes to capture all relevant data on clients, owners, stakeholders and asset/liability details;
  - money laundering and client identity checks;
  - issuing a formal engagement letter capturing all the terms and conditions of the retainer.
- 3.3. **Conflict of interest procedures** – All new instructions should be reviewed to ensure that actual or potential conflicts of interest, either between the client and the firm, its partners, principals, consultants or employees are systemically identified, recorded, notified (if relevant), and managed appropriately in accordance with procedures and specific training on the subject.
- 3.4. **Engagement letter** – The firm's engagement letter should state the following:
- scope of instructions - the work the firm will be conducting for the client including any specific objectives;
  - limitation on remit - what the firm will not be doing for the client. This may be based on third party funding restrictions, referral source, other advisor involvement, or the client's wishes to limit costs or remit generally;
  - important dates and the implications if these are missed;
  - what the client is expected to do, and by when;
  - an estimate of how long the matter is likely to take;
  - the fee basis and an estimate of how much the matter will cost in total. This should include fees, disbursements, VAT and potential for other costs. If relevant, details of any fee-sharing or referral commissions should be included, as well as how these will be accounted for;
  - current terms and conditions of business, which may be a separate document;
  - where appropriate, notification and information regarding the firm's limitation of liability under section 26A of the Solicitors (Amendment) Act 1994, as inserted by section 44 of the Civil Law (Miscellaneous Provisions) Act 2008, which has been agreed with the client.
- 3.5. **Insurance product and investment engagement letter** – Where the matter relates to insurance products or investments advised on and/or sold, the engagement letter should explicitly include the following:

- financial services information which is fair, clear and not misleading;
- status disclosure;
- basis of advice;
- demands and needs assessment;
- correspondence suitability statement.

## Supervision and training

- 4.1. It should be noted that risk management procedures regarding supervision and training are not required for sole practitioners, but should be considered by sole principals and partnerships.
- 4.2. **Supervision system** – The firm's should operate a supervision system, which should include the following:
- a defined supervision structure with clear reporting lines;
  - the structure should provide one or more named supervisors (the principal, nominated partners, or other experienced advisors) for all personnel, and for each field of law;
  - supervisors should be qualified to supervise their assigned area of work based on their technical competence, experience and ability;
  - new work should be allocated and subject to early review by a partner, principal or supervisor;
  - regular scheduled reviews to review workloads, check for progress and inactivity, prioritise work, and to deal with problem cases;
  - agreed systems for reviewing incoming and outgoing correspondence, including post, DX, faxes and emails;
  - procedures for systematic indexing, filing, updating, using and sharing of precedents and professional information;
  - provision of training on identifying mortgage fraud to all partners, principals, consultants and employees who undertake conveyancing work;
  - direct supervision of all PPR conveyancing transactions undertaken by the firm by a partner or principal.
- 4.3. **Partner/Principal meetings** – Frequent partner/principal meetings should be scheduled to deal with planning, monitoring and reviewing of training and supervision activities.
- 4.4. **CPD requirements** – Care should be taken to ensure that all solicitors in the firm have fully complied with their annual CPD requirements.
- 4.5. **Practising certificates** – Care should be taken to ensure that all solicitors in the firm have a valid practising certificate in place before providing legal services of any kind under the name of the firm.

## File management

- 5.1. **File audits** – Frequent file audits should be carried out, including the files of partners or principals. This will assist with the early identification of problem cases.

- 5.2. **File review form** – A formal file review form should be created and used when auditing the firm's files. This ensures that the same file audit standard will be applied throughout the firm.
- 5.3. **File progress monitoring** – The firm should carry out frequent file progress monitoring on all current files. This will assist with identify high risk problem cases or cases where there has been undue delay. Supervisors should be required to independently check on file progress as appropriate.
- 5.4. **Client file management policies** – The firm should have formal written client file management policies in place. These policies should include the following:
- key information should be shown in a prominent position on the file. Examples of key information include critical dates, undertakings, risks and controls, plans and strategies;
  - each file should have a summary list/plan identifying key stages, and showing which stages are complete, and which stages remain outstanding;
  - files should be kept in an orderly fashion in line with an agreed format;
  - files should be stored securely;
  - sensitive materials should be identified and recorded on the file, together with any associated undertakings or conditions;
  - file correspondence should be kept in date order and the file should be kept up to date;
  - files and file contents should be identified consistently, be readily accessible, and secure, whether in paper files and cabinets, or electronic storage systems and shared drives;
  - client property should be identified, recorded on the file, stored securely, and returned to the client under secure conditions;
  - client confidentiality should be observed when managing client work, discussing client matters, taking files out of the office, or providing information to third party service providers;
  - files should be archived securely for agreed periods, and only destroyed with the approval of a partner or principal.
- 5.5. **Attendance notes and instructions** – The firm should ensure that legible attendance notes confirming verbal instructions and/or written client instructions are held on the file with instructions confirmed in writing.
- 5.6. **Attendance notes** – Attendance notes should be legible and should include the following:
- requirements and objectives;
  - agreed billing and charge out arrangements in a format and level of detail sufficient to comply with the firm's obligations under section 68 of the Solicitors (Amendment) Act 1994;
  - issues raised and advice given;
  - options and associated risks;
  - actions the firm will take;
  - timescales to complete the actions;
  - any actions the client should take.
- 5.7. **Key dates and absenteeism** – The firm should operate a system for recording, monitoring and reviewing key dates. This system should include a procedure for absenteeism.

## Conclusion of matters

6.1. **Conclusion review and checklist** – A review, using a checklist of defined criteria, should be carried out when each case is concluded to ensure that the following have been considered and dealt with:

- all undertakings have been discharged;
- the client has been sent a letter advising them that the matter has concluded, explaining the outcome and implications or other factors of note, and (if appropriate) any need and timings for further review or action that the client should take;
- a copy of any final document(s) produced, signed and/or sealed have been retained on file;
- a final statement of account and fee note has been sent to the client;
- any original documentation, sensitive material, property or other assets have been securely returned and evidenced as such;
- any client dissatisfaction or other outstanding problems have been resolved or, if not, have been reported as relevant;
- any intentions for case publicity involving client details have been agreed with the client;
- all other concluding steps specific to work-type, such as registering or filing, and anything specific to the client's own service agreement have been completed.

## Undertakings

7.1. Undertakings are one of the main areas from which claims arise. As such, the insurers are particularly concerned that firms they insure have stringent risk management procedures in place with regard to undertakings.

7.2. **Control of undertakings procedures** – The firm should establish and maintain formal procedures for the control of undertakings. These procedures should include the following

- maintenance of a central register of all undertakings given, discharged and not discharged;
- all staff should be provided with training and information to ensure that they understand what an undertaking is, and the importance of same;
- the authority required for giving undertakings;
- how undertakings should be worded;
- where undertakings should be recorded (for example – in a prominent position on the case file and in a central register);
- timescales for confirming oral undertakings in writing;
- a systemic means of monitoring undertakings be a partner or principal to ensure all obligations are fulfilled in a timely manner;
- a systemic means of ensuring that the Law Society's guidelines on undertakings have been followed.

7.3. **Resting in contract procedures** – The firm should establish and maintain formal procedures relating to matters resting in contract. These procedures should include the following:

- a list of all transactions that were or are resting in contract, including the name of the solicitor dealing with the case (and their supervisor if appropriate), and whether an undertaking has been furnished to a financial institution in relation to same;
- where the resting-in-contract transactions has been completed, written confirmation from the relevant lending institution that the firm has been released from the undertaking.

## Financial

- 8.1. **Financial procedures** – The firm should have formal written procedures in place with regard to financial procedures, including the following:
- details of designated cheque signatories;
  - the monetary limit for sole signatory cheques, or the electronic equivalent;
  - monthly scheduled reconciliation of all bank accounts (client and office);
  - systems to ensure compliance with the firms obligations under the solicitors accounts regulations.