

**LAW SOCIETY OF IRELAND
PROFESSIONAL INDEMNITY INSURANCE COMMITTEE**

RULES OF PROCEDURE

SUMMARY

The Professional Indemnity Insurance Committee ("the PII Committee") of the Law Society of Ireland carries out various functions of the Society as outlined in Section 26 of the Solicitors (Amendment) Act 1994 and under the Solicitors Professional Indemnity Insurance Regulations, as provided for in Regulation 21 of the Solicitors Professional Indemnity Insurance Regulations 2019.

The PII Committee is empowered to take specific decisions under the 2019 Regulations and the Council of the Society has directed that the PII Committee prepare procedures for the Council to adopt in respect of those decisions to ensure that the PII Committee is operating fairly and in accordance with the law and natural and constitutional justice.

The PII Committee has identified three core powers in respect of which procedures are required. These powers are as follows:-

1. The power of the PII Committee to declare a firm to be a Phoenix Firm per Regulation 4(o)
2. The power to waive one or more of the ARP eligibility criteria in respect of any firm per Regulation 12(b)
3. The power to take certain steps against principals of a firm in the event of non-compliance with the PII Regulations per Regulations 20(c) and 20(d)

The PII Committee hereby adopts these rules as rules of procedure to be applied in respect of the above powers.

These rules shall be made available on the Society's website and to any solicitor or firm who is the subject matter of any proposed action under one or more of the Regulations referred to above.

These rules shall be interpreted in accordance with the Solicitors Acts 1954 to 2015 and the Solicitors Professional Indemnity Insurance Regulations 2019.

These rules of procedure are made without prejudice to the powers, rights and obligations of the Society and of the PII Committee.

Any reference in this document to any gender includes a reference to every gender.

Any reference to an enactment or statutory instrument includes a reference to any amending or substituting legislation.

The PII Committee shall have the discretion to waive any provision in these rules and/or extend the time for doing any act under these rules.

REGULATION 4(O) – PHOENIX FIRM

Where the PII Committee proposes to consider whether to exercise its powers under Regulation 4(o) of the Solicitors Professional Indemnity Insurance Regulations 2019, the following procedures shall apply:-

1. Preliminary

- 1.1. The PII Committee shall appoint a sub-committee ("the sub-committee") to exercise the powers of the PII Committee under Regulation 4(o) of the Solicitors Professional Indemnity Insurance Regulations 2019, subject to the procedures outlined below.
- 1.2. The sub-committee shall comprise three members of the PII Committee and shall be appointed on an *ad hoc* basis.
- 1.3. The sub-committee shall be assisted by the Secretary to the PII Committee.
- 1.4. All correspondence in respect of an application under Regulation 4(o) shall be directed to the Secretary of the PII Committee.

2. Report of the Society's Executive

- 2.1. The Society's executive shall prepare a report in respect of the firm the subject of the proposed application.
- 2.2. The Society's executive shall prepare the report as soon as is feasible in respect of the matter.
- 2.3. The report shall be provided to the firm in question for its observations and comments.
- 2.4. The Society's executive may stipulate a period of time for the firm, the subject of the application, to make submissions in respect of the report and any other matter that the firm considers relevant for consideration by the sub-committee.
- 2.5. The report and any submission provided by the firm shall be considered by the sub-committee.

3. Proceedings before the Sub-Committee

- 3.1. The sub-committee shall review the report and any written submissions provided by the firm in question.
- 3.2. The sub-committee may, either on the request of the firm or of its own motion, invite one or more of the principals of the firm to attend before the sub-committee to make submissions in respect of the matter.
- 3.3. The principal(s) of the firm may be legally represented before the sub-committee.
- 3.4. The sub-committee may request further information or documentation from the firm the subject matter of the application or from the Society's executive. Any documentation provided by the Society's executive shall be provided to the firm for comment prior to any decision being taken.
- 3.5. The sub-committee may be assisted by a legal adviser.
- 3.6. The sub-committee shall conduct proceedings in private.
- 3.7. Following review of the documentation before the sub-committee and following consideration of any submissions made by the Firm in respect of the matter, the sub-committee shall proceed to decide whether to exercise the powers vested in Regulation 4(o).
- 3.8. The sub-committee shall have the power to adjourn the matter for further consideration, for further submissions or for further information or documentation to be provided to the sub-committee.

3.9. The sub-committee shall give its decision in writing and shall give reasons for its decision.

4. Right of Appeal to the PII Committee

4.1. The firm in question has the right to appeal against the decision of the sub-committee to the PII Committee.

4.2. The firm in question has 14 days (or such other time period as may be specified by the PII Committee) from the date of receipt of the decision in order to lodge an appeal against the decision.

4.3. Appeals shall be made in writing addressed to the Secretary of the PII Committee.

5. Procedure for Appeals

5.1. Appeals shall be heard by the PII Committee.

5.2. The Appeal shall be an appeal *de novo*.

5.3. Any member of the PII Committee who sat on the sub-committee in respect of the application shall not sit on the PII Committee in respect of any appeal.

5.4. The PII Committee may consider any documentation that was before the PII Committee.

5.5. The PII Committee may request further information and documentation from the Society's executive and from the firm in question. Any documentation provided by the Society's executive shall be provided to the firm for comment prior to any decision being taken by the PII Committee in respect of the appeal.

5.6. The PII Committee may, either on the request of the firm or of its own motion, invite one or more of the principals of the firm to attend before the PII Committee to make submissions in respect of the matter.

5.7. The PII Committee may be assisted by a legal adviser.

5.8. The appeal shall be conducted in private.

5.9. Following review of the documentation before the PII Committee and following consideration of any submissions made by the Firm in respect of the matter, the PII Committee shall proceed to decide whether to exercise the powers vested in Regulation 4(o).

5.10. The PII Committee shall give its decision in writing and shall give reasons for its decision.

5.11. The decision of the PII Committee shall be final.

REGULATION 12(b) – ARP ELIGIBILITY CRITERIA WAIVER

Where the PII Committee proposes to consider whether to exercise its powers under Regulation 12(b) of the Solicitors Professional Indemnity Insurance Regulations 2019, the following procedures shall apply:-

1. Preliminary

- 1.1. The PII Committee shall appoint a sub-committee ("the sub-committee") to exercise the powers of the PII Committee under Regulation 12(b) of the Solicitors Professional Indemnity Insurance Regulations 2019 in respect of applications under Regulation 12(b).
- 1.2. The sub-committee shall comprise three members of the PII Committee and shall be appointed on an *ad hoc* basis.
- 1.3. The sub-committee may be assisted by the Secretary to the Committee.

2. Application under Regulation 12(b)

- 2.1. An application by a firm under Regulation 12(b) shall be made in writing to the Secretary to the Committee.
- 2.2. The application must contain all information relevant to the decision to be made by the sub-committee and may contain additional supporting documentation and submissions on behalf of the firm.
- 2.3. The Society's executive may provide any documentation relevant to the application to the sub-committee.
- 2.4. Any documentation to be provided to the sub-committee by the Society's executive shall first be provided to the firm in question for its observations and comments.
- 2.5. The Society's executive may stipulate a period of time for the applicant firm to make submissions in respect of any such documentation and any other matter that the firm considers relevant for consideration by the sub-committee.

3. Proceedings before the Sub-Committee

- 3.1. The application, any documentation provided by the applicant firm and any documentation provided by the Society's executive shall be considered by the sub-committee.
- 3.2. The sub-committee may, either on the request of the firm or of its own motion, invite the principals of the firm to attend before the sub-committee to make submissions in respect of the matter.
- 3.3. The principal(s) of the firm may be legally represented before the sub-committee.
- 3.4. The sub-committee may request further information or documentation from the firm the subject matter of the application or from the Society's executive.
- 3.5. The sub-committee may be assisted by a legal adviser.
- 3.6. The sub-committee shall conduct its proceedings in private.
- 3.7. Following review of the documentation before the sub-committee and following consideration of any submissions made by the principals of the firm in respect of the matter, the sub-committee shall proceed to decide whether to exercise the powers vested in Regulation 12(b).
- 3.8. The sub-committee shall have the power to adjourn the matter for further consideration, for further submissions or for further information or documentation to be provided to the sub-committee.

3.9. The sub-committee shall give its decision in writing and shall give reasons for its decision.

4. Right of Appeal to the PII Committee

4.1. The firm in question has the right to appeal against the decision of the sub-committee to the PII Committee.

4.2. The firm in question has 14 days (or such other time period as may be specified by the PII Committee) from the date of receipt of the decision in order to lodge an appeal against the decision.

4.3. Appeals shall be made in writing addressed to the Secretary of the PII Committee.

5. Procedure for Appeals

5.1. Appeals shall be heard by the PII Committee.

5.2. The Appeal shall be an appeal *de novo*.

5.3. Any member of the PII Committee who sat on the sub-committee in respect of the application is not eligible to sit on the PII Committee in respect of any appeal.

5.4. The PII Committee may consider any documentation that was before the sub-committee.

5.5. The firm may provide additional documentation for consideration by the PII Committee.

5.6. The PII Committee may request further information and documentation from the Society's executive and from the firm in question. Any documentation provided by the Society's executive shall be provided to the firm for comment prior to the documentation being considered by the PII Committee.

5.7. The PII Committee may, either on the request of the firm or of its own motion, invite one or more of the principals of the firm to attend before the PII Committee to make submissions in respect of the matter.

5.8. The PII Committee may be assisted by a legal adviser.

5.9. Following review of the documentation before the PII Committee and following consideration of any submissions made by the Firm in respect of the matter, the PII Committee shall proceed to decide whether to exercise the powers vested in Regulation 12(b).

5.10. The PII Committee shall give its decision in writing and shall give reasons for its decision.

5.11. The decision of the PII Committee shall be final.

REGULATION 20 OF THE SOLICITORS PROFESSIONAL INDEMNITY INSURANCE REGULATIONS 2019

Where the PII Committee proposes to consider whether to exercise its powers under Regulation 20(c) and Regulation 20(d) of the Solicitors Professional Indemnity Insurance Regulations 2019, the following procedures shall apply:-

1. Preliminary

- 1.1. Prior to considering taking any step in accordance with the provisions of Regulation 20(c), the PII Committee shall write to the affected principal to inform the principal of the proposed approach of the PII Committee.
- 1.2. Such notification shall be made in writing and shall specify the reasons as to why such an application is being considered.
- 1.3. The affected principal(s) shall be afforded the opportunity to respond in writing to the notification.
- 1.4. The affected principal shall be entitled to provide any relevant documentation or submissions in response to the notification.

2. Documentation Before PII Committee

- 2.1. If it is necessary to place the matter for consideration before the PII Committee, all documentation relevant to the matter shall be placed before the PII Committee for its consideration.
- 2.2. The affected principal shall be entitled to provide any relevant documentation or submissions to the PII Committee in response to the notification.
- 2.3. The Society's executive may provide any documentation relevant to the proposed application to the PII Committee.
- 2.4. Any documentation to be provided to the PII Committee by the Society's executive shall first be provided to the principal in question for its observations and comments.
- 2.5. The Society's executive may stipulate a period of time in which the relevant principal may make submissions in respect of any such documentation and any other matter that the firm considers relevant for consideration by the PII Committee.
- 2.6. The PII Committee shall have the power to request further documentation or information in respect of the matter to be considered by the PII Committee.

3. PII Committee Meeting

- 3.1. The notification(s), any correspondence between the Society's executive and the principal, any documentation provided by the principal and any documentation provided by the Society's executive shall be considered by the PII Committee.
- 3.2. The matter may be considered at the next scheduled PII Committee meeting or such other PII Committee meeting (including a special meeting) as the PII Committee considers appropriate.
- 3.3. The PII Committee may, in its absolute discretion, invite affected principal(s) of the firm to attend before the PII Committee to make submissions in respect of the matter.
- 3.4. If the Committee exercises its discretion under Rule 3.3. above to invite the affected principal(s) of the firm to attend before the PII Committee, the affected principal may be legally represented before the PII Committee.

- 3.5. The PII Committee may be assisted by a legal adviser.
- 3.6. Following review of the documentation before the PII Committee and following consideration of any submissions made by the principals of the firm in respect of the matter, the PII Committee shall proceed to decide whether to exercise the powers vested in Regulation 20(c).
- 3.7. The PII Committee may take the following decisions:-
 - 3.7.1. Take no further action;
 - 3.7.2. Take one or more of the steps listed in Regulation 20(c);
 - 3.7.3. Take one or more of the steps listed in Regulation 20(c) with a stay on any such step for a specific period of time;
 - 3.7.4. Adjourn the matter for further submissions, for further documentation to be provided or for further consideration by the PII Committee;
 - 3.7.5. Such further or other action that the PII Committee consider appropriate.
- 3.8. The PII Committee shall give its decision in writing and shall give reasons for its decision.
- 3.9. The decision of the PII Committee shall be final and no appeal lies in respect of that decision.