

Successor practices for solicitors: Crystal ball required

Law firms large and small may merge or close. Alongside the many business issues to address, there is the issue of professional indemnity insurance, and for law firms in (or with offices in) England & Wales regulated by the Solicitors Regulation Authority (SRA), there is the additional issue of successor practice cover to address.

Provisions in the SRA Minimum Terms and Conditions seek to ensure that solicitors, their staff and, most importantly, their clients (and other claimants) will continue to be protected either by run-off cover, or by the compulsory insurance of another firm which is caught, sometimes unintentionally, by the wide definition of 'successor practice'. Where run-off cover applies, this is broadly for six years, and cover is then provided by Solicitors Indemnity Fund (SIF).

Being a successor practice for insurance purposes may be the right thing to do commercially. However, in some cases, it can go disastrously wrong, and can render a firm uninsurable, forcing it to close. One small firm ended up with a £1m premium and a £1m excess as a result of an ill-advised decision to buy another practice. There can even be risks when taking on a team or individuals.

Note too, that the successor practice provisions are not the only consideration: there are other traps for the unwary which can expose a firm to another firm's liabilities.

Claims can be made many years after the work was done: the report by Willis Towers Watson, *PSYROC – Analysis of options* (addressing post-six year run off cover), showed that, for example, even nine years run-off cover would not cover 53% of claims made on SIF, and a trickle of claims come in after 18 years or more. Conveyancing makes up a large part of this, though trusts, wills and probate are also significant.

There is no one-size-fits-all answer to this: not every situation presents the same choices.

We have seen cases where, despite the rule-makers' best intentions, there was a risk of there being no cover at all after a firm had closed. One example was a case where the successor firm had taken out insurance with an insurer which became insolvent. On the face of it the firm thought the claim was outside the scope of protection from the Financial Services Compensation Scheme, but we were able to make a successful claim after commencing proceedings for judicial review.

Perhaps surprisingly, however, while the risk of insolvent insurers is now lower than it was in the aftermath of the financial crisis when there were many unrated insurers in the market, that is not the only situation in which a firm might not be covered for a claim. Changes in the rules in recent years have left some small gaps in cover which could prove to be disastrous, particularly for claims which can be made many years after the event; this is a particular concern in relation to conveyancing, trust and probate work, but other practice areas are not immune from risk.

It is not always possible to predict with certainty which option will provide the best protections, hence the reference to a crystal ball in the title, but with appropriate advice it should be possible to make an informed decision.

For those seeking to close a practice, having a larger firm as successor practice (if one can be found) may provide some security and its insurers may agree to provide excess layer cover beyond the compulsory limit of cover (£3m



per claim for incorporated practices and alternative business structures – ABSs, £2m for others); otherwise, excess layer cover may be an additional (and probably annual) cost. However, even large firms fail from time to time, so there is never a total guarantee of excess layer cover.

So it is important to determine what the options are, the extent to which it is possible to influence the outcome and what the potential risks are. We have advised several hundred firms on this over the years and it is usually possible to achieve the preferred outcome.

18 September 2023

For legal advice on successor practice and other insurance coverage issues contact Frank Maher or Francis Dingwall on info@legalrisk.co.uk or 0345 330 6791.

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