

SOLICITORS' INDEMNITY INSURANCE RULES SUCCESSOR PRACTICE DEFINITION

The City of Westminster and Holborn Law Society

The City of Westminster and Holborn Law Society ("CWHLs") enjoys perhaps the most diverse membership amongst local Law Societies, encompassing as it does, a membership ranging from larger firms, including those which have been called in recent years "the silver circle" down to small high street practices and individual in-house solicitors, including those working for public bodies and government. Our membership includes those who practise at all levels of the profession, including those who regularly represent solicitors in SRA investigations and members of the Solicitors Disciplinary Tribunal, and those who have practised extensively in the field of solicitors' negligence and professional indemnity insurance.

Membership is voluntary and CWHLs is run by a committee comprising 33 solicitors representing a very wide range of specialisms. Its work is carried out by 11 specialist sub-committees, one of which, the Professional Matters Sub-Committee, concentrates on matters such as regulation of solicitors, matters affecting their practice, including matters relating to professional indemnity etc.

RESPONSE

Question 1

Do you believe that the definition of successor practice is causing significant problems for firms that wish to cease practice?

Yes.

In the past under the Solicitors Indemnity Fund (SIF) regime, practitioners wishing to retire could often sell their practices at a price reflecting the value of work-in-hand and the goodwill attributed to it. Now the fear that claims arising during the six years prior to the sale can result in additional liability for the purchaser will often increase the PII premium payable by him.

This is particularly true of practices which have been intervened in by the SRA, when claims were more likely. Prior to 2000 (the demise of the SIF), it was often possible to sell such practices, the sale price payable to the intervened solicitor being subject to a charge in favour of the Law Society (the then regulator) to cover its costs of intervention including those of the intervening agent. This reduced the costs of intervention payable by the profession. Furthermore, clients benefitted from an orderly transfer of files without the hiatus caused by the freezing of accounts endemic in an intervention.

Lastly, the insurer benefitted from the fact that the purchaser would help in investigating and, where appropriate, defending any claim.

With the loss of the ability to sell or dispose of the practice, the problems of sole practitioners dying or being disabled by illness would be exacerbated, as neighbouring practitioners would be discouraged from taking over their practices, resulting in an increase in those practices requiring intervention.

There is also a concern where firms or their partners are facing insolvency. Whilst a firm may have a viable client base, it may not be economically viable and may need to close.

There remains a stigma attached to insolvency whether formal or pending and it may provide some relief to clients and creditors alike if the practice could be sold rather than closed or, in extreme cases intervened.

Question 2

Are you in favour of introducing flexibility into the definition of “successor practice”? Please give reasons in support of your answer.

Yes.

The ability for the purchaser (or acquirer) to avoid any liability for claims brought against the “closed” practice by the vendor exercising his, her or their option to elect to trigger a run-off under its policy of Qualifying insurance would enable him/her/them to quantify the cost of such election, which, in certain circumstances, could be covered by the purchase price payable. To summarise, the change should make it easier to dispose a number of practices, thereby enabling a controlled transfer of client matters and moneys, avoiding, or at least reducing, the trauma for those clients and the need for interventions where no dishonesty is alleged.

Question 3

Are you in favour of the proposed amendment to the definition of successor practice?

Yes.

The definition, as amended by the introduction of the proposed term and condition 1.7 shown in the Annex, would allow a variation in the existing definition imposing an inevitable obligation on anyone acquiring a practice, with its attendant liabilities.

Question 4

Do you foresee that the proposed change will have any adverse equality and diversity impacts?

No.

To the contrary, those practitioners from ethnic minorities tend to face more difficulties in finding employment and opportunities for partnership. The proposed changes will allow them to acquire firms more easily and to give them greater reassurance when setting up a new firm taking over an existing practice, if the previous owner exercises his/her option to elect for run-off.