



Address by Laurence K. Shields

Chairman of the SMDF



Laurence K. Shields
Chairman

Dear Colleague,

Our first newsletter of 2010 follows the letter which I wrote to many firms in the country earlier this year. This letter sets out the direction of the Fund and what we intend to achieve this year.

Our Aim for this Year is Simple - to commence a process the ultimate purpose of which is to reduce the number of claims being made against solicitors. That is a big aim. In order to commence this process to reduce the alarming increase in the number of claims, we have to identify the underlying causes of claims and put in place a well defined plan for reversing the trend. It means that we as solicitors have to confront issues that we may not want to deal with. We have to take action that we would really rather not take. We have to change the way we approach our practices. We have to install business safeguards that are standard in other professions, but not really understood in ours. We have to think in a different way.

Minimum Operating Standards

Having found ourselves in the midst of an unprecedented PI crisis, our focus in the SMDF is on finding a solution. Therefore, we have launched a risk management standard, the **SMDF LQ Basic**. Over the next few years, we intend to introduce more advanced versions of this standard, so that there is a continuous improvement in standards throughout the profession. But, we want to start with the absolute basic requirements for practicing safely and these are set out in the SMDF LQ Basic.

I believe that we must adopt minimum operating standards for our businesses. For decades, we have operated on the assumption that a qualified solicitor is an independent operator, and is the best judge of how to run his or her legal practice. The belief in the profession has been that each practice has developed its own unique set of operating standards, and each firm's standards are as good as any other. However, the evidence is to the contrary. By ignoring the need for objective operating standards, firms operate with no consistency.

Let me give you a few examples: How many of us:

- limit our liability and set out terms of business in written contracts of retainer?
- Provide caseplans to our clients?
- have a Register of Undertakings and other critical registers which reflect all outstanding undertakings and critical dates?
- have financial controls in place, such as cash flow forecasts and budgets?
- conduct formal file reviews with a form and scoring system?
- use formal supervision procedures such as systems of delegation and work flows?
- actively plan the future development of our businesses?

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It is much easier to run a well organised practice with written policies and procedures than it is to make it up as you go along. It is much less stressful to take measures to reduce claims than to defend them.

The natural question which you will ask is "if I apply for the SMDF LQ Basic and achieve a good score, will my PI contribution be reduced?" The answer is that if you have not got these minimum standards in place at the moment, your firm may not be an entity which can obtain professional indemnity. Firms achieving a high score on the SMDF LQ Basic will distinguish themselves and can demonstrate objectively that they are a reasonable risk.

There was a great fear last year that hundreds of firms would not be able to obtain professional indemnity and there is a sense of relief that the vast majority of firms received a quotation. However, what is not commonly known is that a high number of firms were refused a quotation by a number of professional providers as they were considered "distressed" i.e. high risk. Most of these firms did eventually obtain indemnity but the quotations were extremely high.

I urge you to apply for the SMDF LQ Basic Standard and leave yourselves plenty of time to prepare before renewal this year.

Regards

Laurence K Shields
Chairman



A summary of the questions asked in 2009 on PI Application Forms

Last year, every firm had to sign a detailed PI application form, and answer very searching questions about internal systems and procedures. In fact, most firms answered a number of forms, many of which asked similar questions but with subtle differences. The sum of the questions asked in these forms is set out in the table below.

<p>Practice Contact Details</p> <ul style="list-style-type: none"> Name of Firm Branch Offices <p>Details of Prior and Succeeding Practices <i>The reason why professional indemnity providers look for this information is because they want to assess the risk presented by these prior and succeeding practices</i></p> <p>Organisational Structure</p> <ul style="list-style-type: none"> Legal Staff Support Staff Organisational Chart <p><i>Professional Indemnifiers look for this information to assess supervision, delegation and accountability procedures.</i></p> <p>Personnel Details</p> <p>Work Types</p> <ul style="list-style-type: none"> General Areas of Practice Conveyancing Litigation Financial Services <p><i>This information is looked for to assess risk posed by individual work types – ie conveyance purchases and commercial conveyances present a higher risk than e.g. criminal law</i></p>	<p>Gross Fees <i>Low turnover may be indicative of higher risk</i></p> <p>Regulatory Compliance <i>Professional Indemnity Providers are increasingly looking at regulatory records when assessing a firm. If you are having regulatory issues it may indicate poor procedures and increased risk</i></p> <p>Claims and Circumstances</p> <ul style="list-style-type: none"> PI History Claims History Notifications <p><i>Explaining your claims history is a critical part of your PI application and generally firms are not doing a good job of this. You need to market your firm to providers and explain any past difficulties otherwise you risk being assessed as a higher risk which normally results in higher contribution costs.</i></p> <p><i>The vast majority of claims are foreseeable. Over 90% of claims arise through poor administration, inadequate supervision and poor procedures. Very few claims arise through negligent advice. Claims arise when legal services have not been systemized and where there is poor risk awareness, not just on the part of principals and partners but a lack of understanding of risk on the part of staff. The following questions reflect these concerns.</i></p>	<p>Risk and Practice Management Procedures</p> <ul style="list-style-type: none"> General Accreditation New Client Procedures File Opening Procedures File Closing Procedures Office Policies and Office Manual Limitation of Liability Procedures File Maintenance Procedures Conflict of Interest Policy and Procedures Financial Controls Critical Registers <ul style="list-style-type: none"> Register of Undertakings Register of Critical Dates File Review Policy and Procedures Staff and Supervision Procedures Complaints Procedures Disaster Recovery/Business Continuity Plan <p><i>Providers therefore require evidence that adequate systems and procedures are being implemented effectively. If a firm cannot demonstrate this to a provider's satisfaction it will become increasingly difficult to obtain indemnity at any price. The above procedures are the essential procedures. As we are setting out these risk requirements, remember these are minimum requirements.</i></p>
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Rationale behind a Basic Risk Management Standard

As a profession we need a basic risk management standard which will leverage the risk management efforts of every firm to bring stability into the PI market. That is why we are taking the step of launching the SMDF LQ Basic.

Most law firms have some procedures and systems, but they are primarily verbal and not written. The trouble about verbal procedures is that everyone in a firm has his/her own interpretation of what those procedures are. Verbal procedures are a not much of a safeguard against claims, because individual fee earners in a firm do not always follow them. There is no tracking system, no continual improvement programme, no accountability and no control. A risk management standard also ensures that firms are assessed against consistent, objective and measurable criteria. This means that each firm can obtain a risk health check that is fair, independent and uniform.

There is no doubt that for firms with few internal systems, there is a lot of work involved in getting up to speed. But remember that you are playing catch-up – those systems should have been in place for years, and this is what professional indemnifiers expect. Firms who have no systems in place face the realistic prospect of either not obtaining professional indemnity, or obtaining renewal terms which they simply cannot afford.

The SMDF LQ Basic Solution

Have a look at the basic elements of the SMDF LQ Basic (right). These elements mirror the requirements of professional indemnity providers set out in the table above. Once you have the recommended systems in place, you will be compliant with minimum risk management standards and you will find the job of renewing far easier. The SMDF LQ Basic is designed to be a solution to these requirements.

What does registering for the SMDF LQ Basic entail?

The first step is to apply for the SMDF LQ Basic – email or phone Margaret.weber@smdf.ie phone 01-6763118 for an application form.

<p>Standard One - Critical Registers</p> <ul style="list-style-type: none"> Register of Undertakings Critical Dates Register Wills Register Deeds Register File Review Register 	<p>Standard Three - File Reviews and Supervision</p> <ul style="list-style-type: none"> File Review Methodology File Review Form File Review Register Office Procedures and Office Manual Staff and Supervision Procedures
<p>Standard Two - Limiting Liability</p> <ul style="list-style-type: none"> Letter of Terms and Conditions Section 44 Civil Law (Misc. Provisions) Act 2008 Definition of Scope of Contracts of Retainer Conflict of Interest Controls Core Business Policy Methodology for Refusing Work 	<p>Standard Four – Risk Management</p> <ul style="list-style-type: none"> Risk Manager Policy Client Care and Complaints Policies and Procedures Money Laundering Compliance File Opening and Closing Procedures File Maintenance Procedures Client Account Policy Disaster Recovery Plan Claims History Review

Start your Risk Management Preparation with 4 Essential Procedures

1. Draft a letter of terms and conditions

Professional indemnifiers want to see risk minimised and a written contract of retainer is effective way to achieve this. A contract of retainer allows you to set out the terms and conditions for doing business and the most significant term you can insert is one which allows you to limit your liability. Solicitors are now permitted to limit their liability under s.44 of the Civil Law (Miscellaneous Provisions) Act 2008. It is one of the most fundamental legislative developments for solicitors of recent times and it seems to have gone under the radar for most of the profession.

Your letter of terms and conditions should set out the scope of the contract between you and your client. You should set out precisely what you will be doing for the client and what you expect from your client. Setting out the scope of the contract for your client will give you an opportunity to:

- make the legal service you are providing appear very tangible to your client
- set out in precise terms what your obligations are and what your client's obligations are
- limit your liability under Section 44
- set your clients expectations at realistic levels

We recommend you draft your letter of terms and conditions in simple English. Consider integrating your terms and conditions with your client care letter, which should contain your external client care policy (see Client Care Standard). Focus on eliminating legal terms and all unnecessary words. You should end up with a shorter letter which will be much more client friendly.

2. Set up a Register of Undertakings

An undertaking is a powerful tool in the provision of legal services but because it is so powerful it has to be carefully contained and controlled. We have seen instances where firms have issued undertakings without thinking and were subjected to large claims as a result. Equally a number of solicitors are facing claims because they accepted undertakings from solicitors who then failed to honour them.

The first step in controlling undertakings is to write a policy regarding how your firm gives, accepts and manages undertakings. This is a critical part of risk management. You must clarify who in the firm is permitted to give and accept undertakings, (ie only partners or principals). Equally if you accept undertakings from solicitors firms, you must have a policy setting out what undertakings you will accept and when and how those undertakings are followed up.

The second step in managing your undertakings is to establish, maintain and manage a register of undertakings. Undertakings expose your firm to risk and your register of undertakings is a tool which enables you to measure the extent of your exposure and helps you manage it. You may need a range of registers to cover every type of undertaking your firms gives. In the 2009/2010 renewal, a number of firms were asked by professional indemnifiers to produce their register of undertakings as a pre-condition of cover. The partners were requested to certify that the register recorded all outstanding undertakings. The firms were asked to explain any undue delays between the closing of a matter and its registration. Some of the firms did not have such a register and had to assemble one under extreme pressure.

The register should record the stage of the transaction, i.e. whether it is pre-registration, in registration or post registration. The management of undertakings pre and post registration are under your

control and any undue delays recorded in your register at these junctures indicate a lack of management control and additional exposure to risk.

Every undischarged undertaking of your firm must appear on the register. If your firm never had a register of undertakings and is in the process of setting one up now, it is not sufficient merely to begin recording all new undertakings as they arise. We recommend that you carry out a firm wide file review and record all undischarged undertakings of the firm.

A partner should manage the register as a matter of priority. It should be reviewed and actioned weekly. The discharge of all undertakings pre and post registration should be urgently attended to.

3. Implement File Reviews

File reviews are the single most effective method for supervising your assistant staff and ensuring partners are supervising each other. We do not recommend that partners review their own files, nor do we recommend that fee earners review their own files. Remember that if you are a principal or equity partner, you have unlimited liability on every file in the business and you must retain control over how the files of the practice are run.

It is not sufficient to carry out a quick progress review of files. You should carry out random file audits, where you check a sample of physical files against a file review form. Files should be scored and a copy of the file review form retained in a File Review register.

The objective of random file reviews is:

- to ensure consistency throughout the firm
- to eliminate the concept that the file is the property of the relevant fee earner
- to ensure that file maintenance procedures are being complied with
- to raise standards

4. Manage Critical Dates

There is no defence to permitting a case to become statute barred. Once this happens it becomes very difficult to present your firm as a reasonable risk at the next renewal. The first step to manage your critical dates is to write out your policy which should set out:

- your procedure for entering critical dates on the register
- what critical dates are recorded
- who has management responsibility for the register
- how often management reviews of the register are carried out
- what procedures you have to monitor critical dates when a fee earner is absent
- details of your procedure for cross checking the register against the physical file to ensure the accuracy of dates recorded in the register

Critical dates get overlooked if no system is in place to monitor these dates when a fee earner is absent. It is equally important to have a system which ensures that this work is properly reassigned to another fee earner. It is not sufficient to delegate this task to a member of your support staff.

The second step is to put in place a register (or similar) of critical dates.

Claims also arise where the register is inaccurate. You should devise a system to ensure that the dates entered into the register are cross checked against the physical file. This can be done during file reviews.

Events

Countrywide Seminars and Workshops

We have had a great response from Bar Associations across the country to the launching of the SMDF LQ Basic. We are organising seminars across the country in partnership with Bar Associations. The speakers will generally be a representative from the SMDF and Anne Neary. Generally, we have kept the event to two hours, for which delegates will receive 2 Practice Management CPD credits.

We have set out the details below of the seminar and the locations, dates and times of the events. If you have any queries regarding these events, please contact Claire Wallace at 01-4911866. Registrations are being organised by the Bar Associations.

Setting a Risk Management Standard for the Legal Profession - The SMDF LQ Basic (Practice Management CPD credits will be awarded by the Bar Association)

Introduction to the SMDF LQ Basic

- How the SMDF LQ Basic Standard came about
- How the SMDF LQ Basic will help reduce claims and bring down PI costs
- Filling out PI Application Forms in 2010 and how the SMDF LQ Basic will help
- The SMDF LQ Basic self assessment questionnaire

The Four Standards of the SMDF LQ Basic

- Standard One – Critical Registers
- Standard Two – Limiting Liability
- Standard Three – File Reviews and Supervision
- Standard Four – Risk Management

Workshop: How to draft Risk Management Policies and Procedures

- Introduction – why do you need policies and procedures
- What is the difference between a policy and a procedure
- Getting to grips with drafting a policy
- How to draft a procedure to minimise risk

Upcoming Countrywide Seminar Events

Kerry Law Society

Wednesday 2nd June 4.30-6.30pm
Ballygarry House Hotel,
Tralee,
Co. Kerry

Waterford Law Society

Thursday 3rd June 3.30-5.30pm
The Ramada Hotel, Cork Road,
Co. Waterford

Meath Bar Association

Tuesday 8th June 5-7pm
The Newgrange Hotel,
Navan, Co. Meath

Clare Bar Association

Thursday 10th June 2-5pm
The Old Ground Hotel,
Ennis, Co. Clare

Tipperary Bar Association

Friday 11th June 2-4pm
Horse and Jockey Hotel,
Thurles, Co. Tipperary

Co. Louth Solicitors Bar Association

Monday 14th June 4-6pm
The Courthouse,
Dundalk, Co. Louth

West Cork Bar Association

Tuesday 29th June
Clonakilty, Co. Cork
Full day workshop from 10-3pm
5 CPD Practice Management Credits

Kildare Bar Association

Wednesday 30th June 6.30-8.30pm
Killashee House Hotel,
Naas, Co. Kildare

Limerick Bar Association

Thursday 1st July 4-6pm
The Savoy Hotel, Limerick

Southern Law Association

Friday 2nd July 1-3 pm The Law School,
Washington Street, Cork

Galway Bar Association

Monday 5th July 2-4pm
The Courthouse, Galway

Co. Wexford Solicitors Association

Friday 9th July 2-5pm
The Riverside Park Hotel, The Promenade,
Enniscorthy, Co. Wexford

Midland Bar Association

Monday 12th July 2-5pm The Park Hotel,
Mullingar, Co. Westmeath

Other Information

If you would like

- a self assessment questionnaire
 - to register for the SMDF LQ Basic
 - to organise a seminar in your area
- please contact Claire Wallace by calling 01 4911866



SET UP
BY SOLICITORS
FOR SOLICITORS

Contact details for the SMDF

Phone: 01 - 676 3118, visit our website www.smdf.ie
or contact Margaret Weber margaret.weber@smdf.ie

Margaret
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Manager

