



Dear Members,

I enclose this newsletter with your professional indemnity Renewal Form for the year 01/12/07 – 30/11/08. The first thing you will notice regarding this particular renewal is the change in renewal dates. The Law Society has recently introduced new Regulations affecting all solicitors' firms. In my opinion, these new Regulations are unnecessarily draconian. The Fund made strong recommendations to the Law Society to ameliorate these changes on behalf of our members. Unfortunately, the representations made by the Fund, and indeed by other PI providers were not accepted. The cost of these new Regulations will be borne by each member of the profession in the form of increased annual contributions.



Chairman  
Maurice R Curran

**Laurence K Shields** has written an article on page 4 of the newsletter, outlining some of these changes which introduce radical changes to the principles of insurance law.

Also on page 4, **Margaret Weber**, our manager, sets out some advice about completing the Renewal Form. We have revised the form again this year so that it is as simple as possible. Margaret points out that 62% of these forms have to be returned to members as they have not been completed fully. I have included a checklist at the end of the Renewal Form to assist you so that it is right the first time.

You will have received the annual report of the Fund for 2006 recently. In my Chairman's Report, I have set out a table with a breakdown of the number of claims handled by the Fund in 2004, 2005 and 2006. As of the 31 December 2006, which is the date of the Report, there were 101 claims in 2006. However, this number has risen to 129 claims over the past 8 months and will continue to rise. There were 273 notifications in 2006. I hope that not too many more of these notifications will turn into claims, due to the pro-active attitude of the Fund in working with our members to resolve these difficulties.

Many of these claims relate to mistakes made in conveyancing – both residential and conveyancing. **Jim Graham** has set out a sample of circumstances which gave rise to some of these claims on page 2. It is not really surprising that there is an increase in notifications, given the extraordinary volume of conveyancing handled by our members over those years. But from the Fund's point of view, the value of those claims has risen substantially as the value of property has risen so dramatically. This means that we must continually increase our reserves to meet these obligations.

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Margaret Weber, SMDF Manager

### Contact Information

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**Anne Neary** has written a Guide to File Review on page 3. I believe that if you implement her advice and conduct regular file reviews, you will improve all aspects of running your office. You will also reduce your risk by identifying difficulties and addressing them in good time. My message to you for 2008 is to watch the following risk areas in particular:

- Ensure that you have proper procedures in place – many claims arise not from lack of knowledge of the law, but through failure to apply proper procedures - particularly
- Review all the files of the firm at regular intervals
- Keep reviewing your diary system
- Use file notes to reflect your advice
- Limit both the use and scope of undertakings
- Have your Money Laundering system constantly under review
- Issue proceedings at the earliest opportunity, even if you are in settlement negotiations with an insurer.

I look forward to continuing our relationship with you. The Fund continues to fight for you, represent you and help you with many aspects of practicing law.

*Maurice R Curran*

Maurice R Curran - Chairman



EVENTS AND NEWS UPDATES

**FORTHCOMING EVENTS**

**HOW TO MAKE A PROFIT ON EVERY FILE**  
3 CPD Practice Management Credits

**1. Waterford**

Wednesday, 12 Sept 2007  
The Granville Hotel,  
from 4pm - 6pm

**2. Galway**

Tuesday, 25 Sept 2007  
Meyrick Hotel, Eyre Square  
from 3pm - 6pm

**Donegal & Mullingar**

Autumn 2007 TBA

**OTHER EVENTS**

DSBA/Anne Neary  
Seminars at the Morrison  
Hotel 2007 (2 - 5 pm):

**Taking the Stress Out of Success**

20 Sept - Prof Anthony  
Clare **New Developments in  
Practice Management** Anne  
Neary; Brendan Dillon,

**Changing Demands in The  
Business World – The Clients  
Perspective**

18 Oct - Martin White  
**Advanced Client Care Strategies**  
Anne Neary

**Changing Demands in The  
Business World – The Solicitor's  
Perspective**

8 Nov - Martin Whyte and  
Laurence K Shields **Mergers,  
Acquisitions, Alliances, Organic  
Growth** Anne Neary

**New Age Business Skills for  
Solicitors**

6 Dec  
Martin Whyte and Anne  
Neary

**Contact**

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**for details**

**A sample of claims which arose in 2006**

I have assembled a sample of the types of circumstances which have given rise to claims involving alleged negligence in conveyancing transactions in 2006. As some of these cases are on-going, I have changed some details to preserve confidentiality. Hopefully, these examples will assist you in your continuing task of improving procedures in your office and encouraging your staff to follow them.

**The first case** concerns the purchase of a domestic property. A problem came to light when the clients subsequently wished to sell. Another party claimed ownership of their rear garden! The clients were effectively forced to purchase this strip of land in order to complete the sale. They made a claim against the solicitor who handled the purchase.

Our member told us that his understanding was that the property was composed entirely on one folio. He stated that the clients inspected the folio/plan and approved it before signing contracts.

**However**

- There was no attendance note on our member's file setting out that he showed the map to the clients and they approved it;
- There was no indication on the file that copies of folio map or contracts were sent to the clients prior to attending at our member's office to sign the contracts;
- The clients say that they have no recollection of seeing the map;
- Even if they did see the map in the office, they said that they would not have been capable of discerning that the map did not reflect the size of the actual site.

**This next case** concerns the giving of an undertaking unwisely. The Plaintiffs purchased a site with full planning permission. The cost of the site was €60,000 and prior to completion vendor offered an adjoining site for €50,000. A few weeks later, the vendor changed his mind and returned the deposit for both sites.

The Plaintiffs had started work on the building even though contracts had not been signed. They drew down a loan from Z Bank for €200,000. The solicitor gave an undertaking to the bank that he would certify title for both sites despite the fact that there were no binding contracts in existence. The

solicitor was aware that clients had started work on the property.

Settling this claim involved paying the loan in full and compensating the plaintiffs.



**Jim Graham**  
Claims Consultant

**The third case** involves a solicitor who acted for both vendor and purchaser in sale of a site.

While acting for the purchasers, the solicitor did not raise any pre-contract enquiries regarding the existence of a roadway or other means of access to the site. He did not recommend that the purchasers have the site surveyed, nor did he raise proper Requisitions on Title.

During the transaction, the vendor was not asked to produce evidence of right of way nor did he claim that there was a right of way. The existence of a right of way was challenged by another landowner. The site is effectively landlocked.

This was a particularly expensive claim to settle, because the level of compensation includes the cost of purchasing another site in that area.

**The final case** similarly involved the conveyance of a site where the solicitor acted for both vendor and purchaser. It appeared that the vendor did not have title to part of the land. The solicitor did not follow standard conveyancing practice in a number of matters:

1. The attendances on the file were not sufficiently detailed or sufficient in number to reflect the details and circumstances of the transaction;
2. Although the contract referred to a map, there was no map attached;
3. No account was taken of lands transferred by prior deeds;
4. Separate files were not kept for the sale and purchase;
5. No requisitions on title were raised.

Whereas the Law Society has not absolutely prohibited a solicitor from acting on both sides of a transaction, given the risk of conflict of interest it is very difficult to defend the practice in court.

## The Case for File Reviews

Why review, when to review, how to review and who should review.

Anne Neary, Anne Neary Consultants.

Over the past two years, I have come across a number of very sad situations where a partner in a solicitor's firm had what amounted to a nervous breakdown and became unable to work. It is not uncommon for solicitors to freeze.

What I have found surprising is that this condition can be undetected by other solicitors in the firm for sometime. As long as the clients do not complain, and the work appears to be done, alarm bells do not ring. The grief to all concerned when the solicitor's condition eventually comes to light can last for years. Files have to be overhauled, work has to be re-done, clients have to be told, complaints have to be dealt with and notifications of circumstances which may give rise to claims against the practice have to be made to the insurer.

Often in a partnership, each partner takes full responsibility only for his/her files. Files are not seen as a partnership asset, rather as the responsibility of the individual solicitor. It is as if many partnerships are operating as a collection of sole practitioners rather than as a business.

As things stand in Ireland, solicitors cannot limit their liability. That is why we take out PI cover. Partners work on the basis of collective, unlimited liability. Unlike the UK, where solicitors are permitted to practice in Limited Liability Partnerships, there is no cap on liability in Ireland and if the level of PI cover is insufficient to cover a claim, every partner's personal assets are on the line.

Therefore, if a partner in a firm becomes unable to work, each partner is financially liable for subsequent claims. It stands to reason therefore that each of us needs to be assured that our partners or our assistant solicitors are working to the standard expected of our profession.

There is only one way to ensure that this is being done: regular file reviews of each fee-earners files, conducted by a peer.

Sole practitioners are not exempt from the necessity of conducting file reviews. Assistant solicitors have been known to walk out of a firm with very little notice, leaving a huge mess to be cleared up. Unless files are constantly monitored, you are at the mercy of the standards of someone else, and you may be disappointed when you discover that their standards are very different to yours.

It is not enough to simply pull out a few files from time to time and have a quick look. Each file review should be conducted according to a system and a checklist.

**Firstly**, list out the aims of conducting file reviews: you will want to know whether

- Section 68 letters have been sent out
- The file reflects the client's instructions – in particular check written attendances to ensure that the file reflects the entire transaction
- Client care standards are being maintained
- The relevant forms have been completed, such as file opening forms, instructions sheets, copies of cheques etc.
- The likely fees are in line with the original estimate
- Deadlines are adhered to.

**Secondly**, decide when file reviews will take place.

**Thirdly**, decide who will conduct which file reviews.

**Lastly**, have a meeting after the file review with your staff and implement any recommendations.

If you are aware of circumstances which may give rise to a claim, your first step is to call Margaret in the Fund. Regular file reviews will improve both your systems and your awareness of risk. A comprehensive file is the best defence to defeating a claim for negligence – give the SMDF the tools to defend you and it will provide the expertise.

There is a comprehensive File Review Form in Chapter 9 The Solicitor's Toolkit and risk management advice in Chapter 9. All the practice management forms are available in the Toolkit and contained on CD Rom.

Anne Neary is a solicitor and a management consultant to the legal profession. She can be contacted at [anne@anneneary.ie](mailto:anne@anneneary.ie) or by phone at 01 - 491 1866



Anne Neary  
BCL LL M (Yale)

NEWS ITEMS

## New Professional Indemnity Insurance Regulations

Laurence K Shields Board Member

In August 2007 The Law Society made new regulations governing Professional Indemnity Insurance. These Regulations come into effect on 1st November 2007. These new Regulations effectively replace and supersede all the prior regulations. The new Regulations have introduced major changes which will increase the cost of obtaining indemnity cover. There are transitional provisions for the period to 30th November 2008. The Fund had several meetings with the Task Force established by the Law Society to review the existing regulations and made extensive submissions and comments. Regrettably many of our submissions fell on deaf ears in the pursuit of absolute client protection and to leave the Law Society with no exposure. The Law Society took the view that the market should bear all the risk which effectively means the Solicitors Profession and you the member will pay dearly.

In brief, the changes are as follows:

1. The minimum Terms and Conditions of Professional Indemnity Coverage have been extensively altered. In essence, insurers are not entitled on any grounds whatsoever, including fraud, to reduce or deny its liability under coverage. This is a fundamental change to the doctrine of uberrima fides which goes back to 1805. This doctrine imposes an obligation on an applicant for insurance to disclose all facts material to the risk. If a fact turns out to be untrue and there was intent to deceive or mislead, the policy is void. In fact, the policy can also be voided where there is an innocent misrepresentation of a material fact. These Regulations overturn this principle of law and require insurers to cover risk even where there had been intentional or

fraudulent misstatement. This is such a staggering change to the extent of cover that it is hard to quantify the effects at this stage. One thing is sure, the cost of this cover will be borne by each solicitor in the profession.



Laurence K. Shields

2. Coverage must also indemnify each insured or member for any awards made under the provisions of the Solicitors' Acts 1954 to 2002 or any other obligation that may be imposed on solicitors to compensate or make restitution to clients by statute from time to time.
3. There is to be a new Indemnity Period commencing on 1st December each year. Your renewal date in 2008 and following years will be 1st December. This regrettably means that the Indemnity Period no longer mirrors the Practising Certificate year.
4. There are extensive new provisions governing the Assigned Risks Pool and its operation.
5. Firms must maintain run-off cover for six years from cessation of practice or end of an Indemnity Period where an insured has not obtained succeeding insurance and the existing insurer must provide this and the insured must pay.

The clear objective of these Regulations is to protect the client fully. However, the changes are such that they will increase the cost of insurance substantially going forward.

## Margaret Weber, SMDF Manager - Completing Your Renewal Forms

Of the 1,400 forms that are processed in our office each renewal, quite a large number, approximately 62%, are returned every year because of errors, incorrect responses and the omission of vital information.

A further proportion have to be returned a second time and a lesser amount returned a third time.

Some of the common issues that arise are as follows:-

- 1 or more question(s) not responded to
- the form is not signed and / or dated
- where quotation for Top Up Cover required, the limit required is not indicated.

- changes in solicitor information not provided.

I would suggest to all practices, that a senior member of staff, or a member of staff who is fully conversant with the requirements, completes the Proposal Form.

Over the years we have revised the Proposal Form to make it more user friendly. We have given the form another overhaul this year. We have included a checklist at the end of the form to help you complete the form correctly. Please phone me if you are having a problem. This is your Fund and we are here to help you.



Margaret Weber  
Manager

Contact us: 01 - 676 3118, visit our website [www.smdf.ie](http://www.smdf.ie) or contact Margaret Weber [margaret.moran@smdf.ie](mailto:margaret.moran@smdf.ie)



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