

Summary of provisions around indemnity insurance requirements and limitation periods

Part A – Limitation Periods

1. The most common type of claims a solicitor will face is for professional negligence, i.e. the breach of the duty in tort to exercise reasonable skill and care, or breach of contract, i.e. the breach of the retainer between client and solicitor. The primary limitation period for a claimant who has suffered a financial loss to bring a claim within is six years, from the occurrence of damage in professional negligence, or from the date of breach in contract. Accordingly, where a firm closes, most claims against a solicitor will fall within the standard run-off cover for six years.
2. However, there are certain circumstances which can impact when the limitation period starts running.
 - i. Knowledge - In some cases a claimant will not know they have suffered damage until sometime after the fact. In these cases the claimant has three years to make the claim from the earliest date on which the claimant had both the knowledge required for bringing a claim for damages in respect of the relevant damage and a right to bring such a claim. An example of this will be in cases of a negligently drafted will, which are often not discovered until the date that the testator died. Therefore, the period within which a beneficiary may bring a claim will usually run from the date of the deceased's death.
 - ii. Damage - In the case of professional negligence, the limitation period of six years does not start running until the damage has been sustained. The question of when damage occurred is a question of fact and can be a complicated issue, but in many cases will not be concurrent with the act or omission which caused the damage.
3. There is also a final 'long-stop' date of 15 years, with certain exceptions that might overcome limitation e.g. "deliberate concealment, dishonesty, claims involving Mental Health Act patients, claims involving minors and certain aspects of wills, trust and probate matters where the commencement of time for determining limitation may be different" (SIFL).

Part B – SRA Minimum Terms and Conditions - Coverage

4. For those who are required to maintain insurance in accordance with the Indemnity Insurance Rules Minimum Terms and Conditions, said insurance will provide (broadly) the following coverage:
 - indemnification against civil liability (in most cases professional negligence) to the extent that it arises from private legal practice in connection with the insured firm's practice. This indemnification will be on the following basis:
 - minimum level of compulsory cover of £2,000,000 or £3,000,000 (depending on business structure) each and every claim*
 - when arranging an insurance policy, firms and insurers may agree any level of excess on a claim settled under the policy. The insurer is liable for the value of the excess to the client if the firm does not pay
 - the policy covers all the legal and professional services offered by the insured firm, even where the firm may have not declared it provides a specific type of legal work on a proposal form

- the insurer must provide cover on a strict liability basis for claims which include losses of money arising out of any breach of the SRA Accounts Rules
- insurers must provide unlimited cover for any legal costs and expenses incurred while defending a claim.
- in addition, when a firm closes, insurers must provide the firm with an unlimited six-year run-off policy, even when the premium is not paid.

*claim is defined broadly as follows:

“means a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For these purposes, an obligation on an insured firm and/or any insured to remedy a breach of the SRA Accounts Rules, or any rules which replace them in whole or in part, shall be treated as a claim, and the obligation to remedy such breach shall be treated as a civil liability for the purposes of clause 1 of the MTC, whether or not any person makes a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages as a result of such breach, except where any such obligation may arise as a result of the insolvency of a bank (as defined in section 87 of the SA) or a building society which holds client money in a client account of the insured firm or the failure of such bank or building society generally to repay monies on demand”

Part C – Compensation Fund – Overview

5. The Compensation Fund is a discretionary fund that we maintain to compensate consumers who lose money due to the dishonesty or failure to account of solicitors (including RELs and RFLs) or firms causing hardship. The Compensation Fund applies to all firms we authorise and regulate.
6. Our rules set out the circumstances where we will replace money lost by people because of the dishonesty or incompetence of an individual or law firm that we regulate.
7. The rules provide that only certain applicants are eligible for a grant, essentially private individuals and businesses, charities or trusts with turnover or assets of less than £2m.
8. The scope of possible payments from the Fund is wide, and eligible claims are not limited to losses incurred by only the client of a firm. It can also be used for other purposes, such as:
 - paying grants for litigation costs people have incurred in trying to recover losses from other sources for example the firm itself
 - providing access to financial redress where a firm fails to have a valid policy of indemnity insurance in place (which otherwise would have paid the claim).
11. There is no automatic right to a payment. In exercising our discretion, we consider a range of factors, including whether the:
 - loss can be made good by some other means
 - activities, omissions or behaviour of the applicant has contributed to the loss being claimed from the Fund

- loss results from the combined activities of more than one party (for example a solicitor conspires with a surveyor to conduct mortgage fraud).