



INSURERS ESCAPE DEFENCE COSTS

By Jayne Willetts | Solicitor Advocate and Partner, Townshends LLP Birmingham

In July the Solicitors' Regulation Authority ("SRA") agreed that professional indemnity ("PI") insurers will no longer have to pay the defence costs of solicitors facing disciplinary proceedings. The change will take effect on 1 October 2010. I had previously pointed out that such cover was available in "Exploring Professional Indemnity Cover" (June 2008)

The background to this change is that insurers have suffered considerably as a result of the vast amount of mortgage lender claims as well as the frauds perpetrated on the property market during the last few years. The other problem is the increasing cost of the Assigned Risks Pool. The attention of insurers has turned therefore to restricting the Minimum Terms and Conditions which apply to all qualifying insurers.

Insurers have negotiated with the SRA and agreed the removal of the requirement to cover defence costs. It is true that insurers have always been reluctant to advertise this requirement and have confined their indemnity to disciplinary proceedings linked to civil claims made against the solicitor or his firm but nonetheless it has been a useful safety net.

Even to those of us involved in professional regulation work this change came as a surprise. The Law Society has opposed the removal of this obligation and have criticised the SRA for failing to consult sufficiently with the profession, prior to the new rules being agreed.

But what does this mean for those solicitors who are the subject of investigation by the SRA, or a referral to the Solicitors' Disciplinary Tribunal ("SDT")?

An investigation by the SRA and subsequent referral to the SDT can result in a solicitor losing his reputation and livelihood. Often practitioners are already in financial difficulties by the time they are endeavouring to deal with an investigation or referral. The cost of privately funding representation may be beyond their financial means. The Solicitors Assistance Scheme helps by providing limited voluntary advice.

However, without financial assistance, solicitors are at a disadvantage when compared to other professionals such as doctors with the Medical Defence Union or veterinary surgeons with the Veterinary Defence Society. Is it fair that members of

the largest profession in the country should not have representation before their own regulatory body?

Many solicitors will be isolated and acting for themselves in an arena where they do not have appropriate skills and expertise. Without the ability to instruct expert practitioners to represent them before the Solicitors Disciplinary Tribunal they may find that they have been unjustly prevented from practising.

Some insurers already have an "add on" product for existing PI policies to cover defence costs. Such products need to be made available at a reasonable cost. As with all products the more that are sold the cheaper the price for all of us. Alternatively a defence union may be the way forward. Either way the Law Society needs to consider what can be done to protect the interests of the profession. With alternative business structures in place from October 2011 there will be more not less solicitors unwittingly drawn into regulatory investigations. It is unthinkable that members of the profession should not be able to secure advice and representation when faced with such difficulties. ■

Jayne Willetts
Professional Regulation Team
Townshends LLP

