

Scomo Umbrella

The problem and why it needs to be solved.

Small firms face an uncertain future as the PII market hardens and the legal services market is liberalised.

These firms have a great deal to offer their local communities, and are the backbone of the provision of access to justice in England and Wales. It is important to try and find a mechanism that allows them to continue to survive and then flourish.

A possible way forward.

After much discussion with the SRA and our insurers, we have identified a way of helping good sole practitioners and small partnerships to retain their independence whilst also getting affordable professional indemnity insurance. As an added advantage, I believe that this could be a way for small legal aid firms being able to come together simply and without disruption in a way that would allow them to compete effectively with the big firms for legal aid contracts.

In creating this scheme, we have borne in mind that the primary concern of insurers is to reduce the risk of claims and the primary concern of the SRA is to protect the public through the maintenance of proper professional standards. There is a good deal of overlap between these concerns, but it is not total.

Our scheme focuses on minimising the risk of insurance claims, but we believe that in doing so we will also be reducing the risk of complaints by clients and breaches of the SRA Code of Conduct.

We have had to devise a scheme that is acceptable to our insurers and also to the SRA.

Meeting the insurers' requirements

The insurance bit has been the easiest, because insurers are not particularly bothered about the way that the ownership of an organisation is structured, but are very interested in how risk is managed in the firm. The more robust the risk management system is in an organisation, the more acceptable the organisation to the insurers, and the lower the premium.

This is one of the reasons that small firms can find it difficult to get insurance at a reasonable rate, because the insurers believe that small firms are less likely to have the expertise and resources to put in place, and use properly, the right risk management systems.

Scomo is only a two partner firm, but because it is a virtual firm we have had to develop very clear risk management systems, and as we have about 60 fee-earners, we have had the expertise, resources and commitment to ensure that our systems are complied with. We therefore have competitively priced insurance.

Our broker and insurers have agreed that if we are thinking of offering another practice the benefit of coming under our insurance, the owners of the practice will provide our insurers with their last accepted proposal form and details of their insurers,

so that our insurer can decide if the firm would be an acceptable to it so long as Scomo will be involved in its risk management. If the insurer thinks that it would be a good risk, it would quote us an additional premium at our discounted rate. If it thinks it is a bad risk, it would quote us a very high additional premium, which would mean that we would not make the offer to the practice. This decision can be made quickly, and if a practice is acceptable to our insurers, we will then do due diligence to satisfy ourselves that the practice is one with which we would wish to be associated. This would involve visiting the practice, checking the systems, office manual, accounts, complaints records etc. We will probably use experts for some of this due diligence work, eg the accounts.

If all is well, the firm will then be given an opportunity to become associated with us, so that it can come under our insurance policy.

Of course, once this happens, we will be highly motivated to manage the risk of a claim, because we will not want our premiums to go up. We therefore have developed a structure which gives us an opportunity to do this while staying easily within the SRA Code of Conduct.

Simon Young showed us how to do this, and if this structure works, it will be his lasting memorial, because we couldn't have worked it out for ourselves.

Meeting the SRA's requirements

Scomo will create a separate and free standing umbrella LLP. An LLP can be set up very easily (filling in a form online) and cheaply (£20 fee). If the LLP is to be the successor practice to an existing practice, there is quite a lengthy process of transferring assets and liabilities, but if it a freestanding LLP this problem does not arise, which is why, in the interests of speed and simplicity, we are starting with a free standing LLP. As this LLP will not be offering legal services, but only management services, it cannot be regulated by the SRA.

The owners of an LLP are called members. Individuals can be members, as can incorporated bodies (such as other LLP's) but ordinary partnerships cannot. Therefore, to link Scomo with the participating practices, a Scomo partner and an owner of each of the participating practices will become a member of the LLP.

Membership of the LLP will be conditional on the member's practice complying with the requirements of the LLP, which must be designed not to fall foul of the need for participating firms to retain their independence. Membership of the LLP by an owner of a participating firm will be a precondition of the practice coming under Scomo's insurance. The participating practices, and Scomo, will remain separately registered with the SRA as individual entities, and the owners of the firm will continue to be fully responsible for compliance with the SRA's Code of Conduct and the general law (e.g. relating to money laundering and data protection). As the firms remain as separate entities, there are no conflict issues through their being associated.

The requirements of the LLP will be that it is allowed to monitor the management and financial systems of participating firms, ensuring robust risk management and identifying efficiencies and cost savings which the firms can adopt. The members, through their firms, will fund the employment of people with the necessary accountancy, practice management and SRA compliance skills and experience. Each firm, will have agreed, regular, access to, and contact with, these LLP employees.

Monitoring the systems can include monitoring, for instance, complaints. The client confidentiality aspect of this can be dealt with by the participating firm advising its clients of the LLP's involvement in the original client care letter, and obtaining their written consent to allow the LLP to have sight of confidential information in defined and limited circumstances.

The participating firm would keep its own name, address, office account, client account, website etc. It would have to make reference on its note paper and on its website that it was working in association with the LLP.

Members would be able to leave the LLP on giving reasonable notice, without needing to give a reason. However, if their practices were unable to get their own independent insurance, they could not leave until the end of the insurance year, and would have to continue to comply with the requirements of the LLP.

The LLP would only be able to eject a member during the insurance year if fraud or dishonesty was identified, and in those circumstances, the ejected firm, if it could not get its own insurance, would have to give undertakings that it would compensate Scomo for any costs incurred or losses suffered rising after the firm was ejected.

Benefits

Of course there will be a cost for all of this, but there will also be savings not only of money, but also time, and wear and tear on the nerves. Participating firms will have the confidence of knowing that they are up to date with all the changes in the legal services market, and through their voluntary association with other firms, will probably benefit from shared knowledge and the possibility of referrals.

As for competing with the big legal aid firms, if the MoJ wants to deal with fewer organisations, these LLP's would be a way of providing fewer organisations for the MoJ to deal with, whilst avoiding the chaos and disruption that will be bound to occur if small firms have to merge, give up or be taken over. It might be possible to increase even further the size of bodies with whom the MoJ could contract. If, in a particular area, there was a family law umbrella LLP, and a civil law one and a criminal law one, the members could set up a meta-LLP, with the three specialist umbrella LLP's as its members, and this could be a body with whom the MoJ could contract.

Anything which maximises stability in the legal aid provider base has to be a good thing for clients and purchasers as well as providers.

The bigger picture

At Scomo we believe in incremental change, not big bangs. Therefore we will be starting small with our umbrella, and cannot possibly join with more than a few firms this year. However there is nothing to stop other firms setting up their own umbrellas.

I know who the good firms are round my way, and the ones who I would not want to be associated with, and I am sure the same is true for most of us. If the good small firms in an area were to get together in this way, they would have all the benefits of togetherness without having to run the risks of a shotgun wedding. If they later decided on closer links, this would be because it felt right for them, rather than being forced on them by circumstance.

I am told that if there are at least 5 members of the umbrella LLP, this will automatically result in lower premiums as the LLP will not fall into the "4 owners or fewer" category, and so will be seen as lower risk. I guess this would depend on the insurers believing in the bona fides of the members of the LLP, and accepting that it was not just a sham to get cheaper insurance.

Conclusion

Ideally, I would like to be able to say to you that the Scomo umbrella has already opened, but I cannot do so, as the negotiations have been somewhat protracted. However our detailed discussions with the SRA, our insurers, and most importantly with Simon, give me confidence that this system can work and is possible under the current SRA rules.

Time is short for many firms as the problems we anticipate with PII are very close. I am very happy for you to circulate this to anyone who you think might be interested. If people are interested, I suspect the place for them to start is with their broker. Our broker is Patrick Bullen-Smith from Hera Indemnity (www.heraindemnity.co.uk) in case anyone wants to talk to him.

I have tried to include everything that people need to understand the concept, and have more or less exhausted my own knowledge of the subject, but if anything isn't clear, do get back to me and I will try and answer your questions.

Lucy Scott-Moncrieff
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