CLOSURES, MERGERS & ACQUISITIONS – CHANGING TIMES

With uncertain economic conditions ahead, energy costs and problems over obtaining affordable indemnity insurance many small firms and, in particular, sole practitioners are considering closing or selling their practices or merging with another firm. This is not something that can be done lightly – or quickly. Jayne Willetts Solicitor Advocate and Bronwen Still Solicitor Consultant both of Jayne Willetts & Co Solicitors Limited, look at some of the main regulatory considerations which should be part of the planning process.

Closing down

The SRA will expect an orderly wind down. Its main concern is that clients are not in any way prejudiced and that client confidentiality must be paramount throughout the process and following closure. You will need to complete an SRA Firm Closure Notification Form and this will help as a prompt as to the many issues you need to deal with. The SRA has also issued guidance on this subject here.

The Law Society Practice Note updated on 3 August 2022 is also helpful here.

Key matters for consideration are these:

• Notifying clients. This should be done as soon as a decision to close has been made. The needs of each client will need to be carefully considered such as the best time to transfer an active file, especially if litigation is ongoing.

• Client files. These need dealing with in accordance with client consent. Closed files will need to be stored securely for as long as necessary.

• Client deeds, wills and other documents. Where these are in storage, the clients concerned should be contacted so that future arrangements can be agreed. Where this is not possible, secure storage must be arranged.

• Undertakings. Any which are likely to be outstanding at closure need to be identified and plans made for how they will be dealt with.

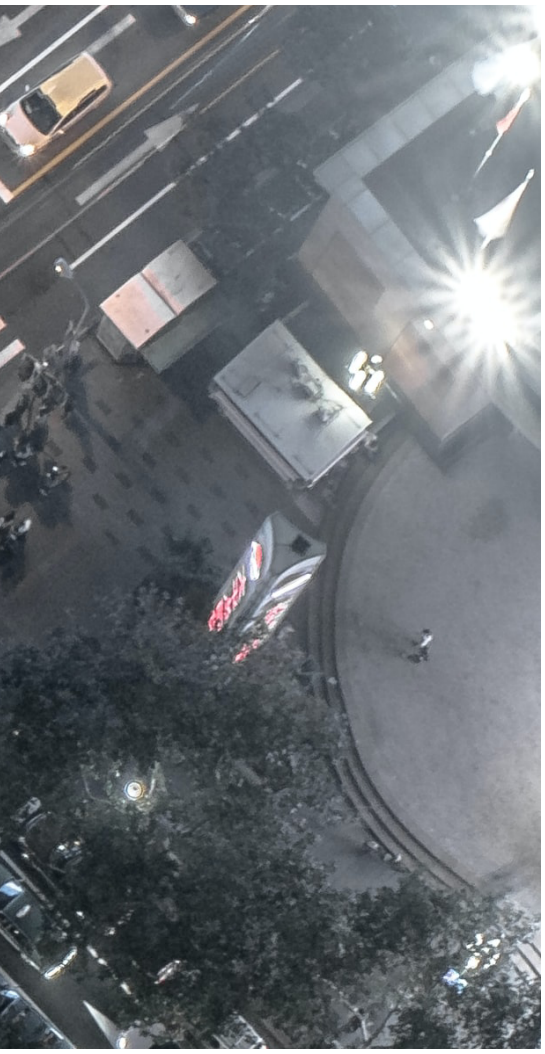
• Client account;

o Balances held for clients you have lost contact with need identifying. You will need to start taking appropriate steps to deal with them in accordance with rule 5.1 (c) of the SRA Accounts Rules.

o Where you are holding money for ongoing matters, you need to be clear about how you will account to the clients. Will the money be paid to them or, with their consent, to another firm?

o How will you deal with client money that is received after closure?

• Indemnity insurance. You need to



approach your broker as soon as you decide to close to get a quote for run off cover. This is one of the most difficult issues for most closing firms and is covered in more detail below.

Closure and the aftermath

The SRA Closure Notification Form can only be filed with the SRA within 7 days of closure actually happening. This is presumably so that the SRA can get an accurate a picture as possible of all the closure arrangements immediately prior to cessation. A date when authorisation is to cease will then be agreed with the SRA.

After authorisation has ceased it is important that no further client work is carried out and that the entity is not held out as practising. This means that you must not, for example, respond to enquiries from a court or the Land Registry about a client's affairs other than to say that you are no longer acting. Any further use of the firm's notepaper in tying up ends must make clear that the firm is no longer practising.

There is, however, nothing to stop you dealing with administrative matters, such as submitting bills of costs and accounting to clients for money held or arranging for the disposal or storage of client files and documents.

Indemnity Insurance

Your insurer must provide run off cover for 6 years after the expiry of your policy. In the event of a claim arising after closure, it is worth bearing in mind that you will remain liable for any excess under the terms of your policy. Run off cover is the bug bear for many closing firms where adequate provision has not been made to pay for it. There are also situations in which closure may be abrupt due to due, for example, serious illness and insufficient money being available. It is, however, always worth negotiating with your insurer over the sum requested. It is clear in a number of cases that insurers take the view that it is better to have some money than none. Nothing, however, is guaranteed and it is up to you to try to make a realistic offer as part of the bargaining process.

Those who cannot pay some or all of the money required for their run off cover may have concerns about the SRA's approach to the situation. Is the SRA likely to consider this a disciplinary situation? For obvious reasons the SRA will never rule this out although the available evidence suggests little action has been taken in recent years against defaulters. Anecdotally, the SRA's approach seems to be that there is little point in pursuing those who have no money and have made attempts to pay what they can. However, if an individual wilfully refused to pay that might interest the SRA.

Once your policy has expired, it may be possible to arrange short term additional cover for, say, one month, tie up loose ends or to conclude a merger deal. If you are unable to get new cover and remain practising, your insurer is obliged to provide 90 days additional cover. This comprises an "extended policy period" of 30 days during which you can continue practising normally whilst looking for a new policy, followed by a "cessation period" of 60 days when you must not take on new clients and must wind down the practice.

If you enter these periods, you must immediately inform both your insurer and the SRA. Reference should be made to rule 2.2 and 2.3 of the SRA Indemnity Insurance Rules.

Merging or selling to a successor practice

This is the ideal solution for those who want to close their practice as it provides a safe haven for clients who, if they consent, can have their matters and money seamlessly passed to another authorised firm. Again, client confidentiality is paramount and files and money cannot be transferred without client consent. It also means that, with the consent of the acquiring firm's insurer, the need to pay run off cover is avoided as the liabilities are assumed by that insurer. There is a lengthy definition of "successor practice" in the SRA Glossary and anyone who is in doubt about whether they to be a successor practice should read it carefully. This can be a surprisingly contentious issue.

Firms involved in a merger or acquisition must complete a notice of turnover apportionment form. This identifies the successor firm and the ceding firm and must be filed with 28 days of the succession taking place. The form must record a figure which has been agreed between the firms as to the turnover of the closing firm at the date of succession. This enables the SRA to apportion the periodical fee payable to it for that year. There is SRA guidance on this - SRA | Notify us about turnover apportionment - submit a notice of turnover apportionment | Solicitors Regulation Authority

Final thoughts on timing

Plans for significant changes in a firm's structure must start well in advance in order to avoid a last-minute panic. Clients, insurers, other law firms, courts and other professional organisations will not have the same incentive as you to progress matters in a timely manner so the earlier you begin the better.

Also remember that once the change has taken place, there is a myriad of administrative tasks to complete which continue for many months even years. It is a lengthy and time-consuming project and the commitment should not be underestimated.