

# SRA Indemnity Insurance Rules [2014]

The commentary provided with these Rules does not form part of the Rules, is provided for guidance only, and does not affect the meaning or interpretation of the Rules in any way.

## Part 1: General

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### Rule 1: Authority and commencement

- 1.1 These Rules are made on [•] by the Solicitors Regulation Authority Board under sections 31, 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and paragraph 19 of Schedule 11 to the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.
- 1.2 These Rules come into force on 1 October 2014.
- 1.3 These Rules require *solicitors*, *REs*, *RFLs*, *recognised bodies* and their *managers* and *licensed bodies* (in respect of their *regulated activities*) in *private practice* in England and Wales to take out and maintain professional indemnity insurance with *participating insurers* with effect from 1 October 2014.

#### Commentary:

These Rules apply to:

- solicitors
- REs
- RFLs
- recognised bodies and their managers and
- licensed bodies in respect of their regulated activities (but not to any other activities that may be undertaken by the licensed body concerned)

carrying on private practice in England and Wales as a firm at any time after 1 October 2014. Refer to the interpretation provisions in Rule 3 and the SRA Handbook Glossary 2012 (the Glossary) and to the definitions in the Glossary for guidance on the exact meanings of these terms.

- 1.4 These Rules will apply to any *indemnity period* beginning on or after 1 October 2014.

#### Commentary:

Before 1 September 2000, firms were required to take out insurance with the Solicitors Indemnity Fund. Since 1 September 2000, firms have been required to take out insurance in accordance with the Solicitors' Indemnity Insurance Rules and SRA Indemnity Insurance

Rules. From 1 October 2014, firms must take out insurance in accordance with these Rules with one or more participating insurers. Continuing arrangements dealing with past claims on the Solicitors Indemnity Fund are covered in the Solicitors' Indemnity Rules and the SRA Indemnity Rules.

- 1.5 The SRA Indemnity Insurance Rules 2013 shall not apply in respect of any *indemnity period* beginning on or after 1 October 2014 but they shall remain in force in respect of the *indemnity period* from 1 October 2013 to 30 September 2014 inclusive subject to the provisions of Rules 19.1(a), 19.1(b), 19.1(c) and 19.1(d) below.

#### **Commentary:**

You should refer to previous Solicitors' Indemnity Insurance Rules and SRA Indemnity Insurance Rules in relation to earlier indemnity periods since 1 September 2000. However, you should refer to Rules 19.1(a) to 19.1(d) in relation to time limits in respect of an application for a waiver of the provisions of the Solicitors' Indemnity Insurance Rules 2000 to 2010 and the SRA Indemnity Insurance Rules 2011 to 2013.

#### **Rule 2: Citation**

- 2.1 These Rules may be cited as the SRA Indemnity Insurance Rules 2014.

#### **Rule 3: Definitions and interpretation**

- 3.1 The SRA Handbook Glossary 2012 (the Glossary) shall apply and, unless the context otherwise requires:
- (a) all italicised terms shall be defined in accordance with the Glossary;
  - (b) terms shall be interpreted in accordance with the Glossary;
  - (c) a reference to a Rule is to a Rule forming part of these Rules;
  - (d) these Rules will be governed by and interpreted in accordance with English law.

### **Part 2: Responsibility and monitoring**

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#### **Rule 4: Obligation to effect insurance**

- 4.1 All *firms* carrying on *practice* during an *indemnity period* beginning on or after 1 October 2014 must take out and maintain *qualifying insurance* under these Rules.
- 4.2 A *firm* must, in respect of its obligation to effect and maintain *qualifying insurance*:
- (a) obtain a *policy* of *qualifying insurance* prior to the expiry of the *policy period* that provides cover incepting on and with effect from the expiry of the *policy period*;
  - (b) if the *firm* has been unable to obtain a *policy* of *qualifying insurance* prior to the expiry of the *policy period* in accordance with Rule 4.2(a), obtain a

*policy of qualifying insurance* during or prior to the expiry of the *extended indemnity period* that provides cover incepting on and with effect from the expiry of the *policy period*; and

- (c) if the *firm* has been unable to obtain a *policy of qualifying insurance* prior to the expiry of the *extended indemnity period* in accordance with Rule 4.2(b), cease *practice* promptly, and by no later than the expiration of the *cessation period*, unless the *firm* obtains a *policy of qualifying insurance* during or prior to the expiry of the *cessation period* that provides cover incepting on and with effect from the expiry of the *policy period* and covers all activities in connection with *private legal practice* carried out by the *firm* including, without limitation, any carried out in breach of Rule 5.2.

- 4.3 A *solicitor* or *REL* is not required to take out and maintain *qualifying insurance* under these Rules in respect of work done as an employee or whilst otherwise directly engaged in the *practice* of another *firm* (including without limitation as an *appointed person*), where that *firm* is required by these Rules to take out and maintain *qualifying insurance*.

#### **Commentary:**

Under these Rules, firms have a continuing obligation to ensure that they have professional indemnity insurance in place that satisfies the MTC requirements for qualifying insurance. Refer to the definitions of practice, amongst others, to establish whether a firm falls within the scope of these Rules. Firms should also check that any qualifying insurance that they take out in order to comply with these Rules (as opposed to any 'top-up' cover) is taken out with a participating insurer. A list of participating insurers appears on the website of the SRA at [www.sra.org.uk](http://www.sra.org.uk), and is also available from the SRA. Contact details appear at the end of the introductory commentary.

Firms should note in particular that work carried out by an appointed person for that firm may be covered by the firm's policy, whether that person is engaged as an employee or on a contract for services.

If a firm, on or before the expiry of the policy period, fails to obtain a policy of qualifying insurance from a participating insurer commencing on the day following such expiration, the firm's participating insurer is required to extend cover under the existing policy for a further 30 days. If a firm fails to obtain an alternative policy of qualifying insurance during or prior to the expiration of the 30 day extended indemnity period it must cease practice within a further period of 60 days (known as the cessation period) unless the firm obtains a policy of qualifying insurance on or before the expiry of the cessation period which provides cover that incepts or is backdated to incept with effect on and from the expiry of the policy period. Any such policy of qualifying insurance must cover all activities carried out in connection with private legal practice by the firm, including any carried out during the cessation period in breach of Rule 5.2. During the cessation period, the firm (and its principals, employees, consultants and agents) may only engage in activities in connection with private legal practice on behalf of the firm to discharge its obligations within the scope of the existing instructions the firm held before the cessation period commenced or which are necessary in

connection with the discharge of such obligations. Disciplinary action will be taken against those who accept new instructions and/or engage in other non-permitted legal activities during the cessation period. The firm's participating insurer is required to provide cover during the cessation period which, as a minimum, satisfies the MTC.

The SRA will work with the firm to ensure that it has ceased practice prior to the expiration of the 60 day cessation period. Firms must be aware that the participating insurer under the existing policy will not be required to provide any cover beyond this period except for run-off cover for a period of six years commencing on the expiry of the firm's final policy of qualifying insurance (excluding any extended indemnity period and cessation period (as may be applicable)).

Note that, under the MTC, a policy, once taken out, cannot be cancelled unless:

1. the firm obtains another policy of qualifying insurance; or
2. the firm merges with another firm and a policy of qualifying insurance is in place for the merged firm; or
3. it subsequently transpires that the firm was not in fact required to take out and maintain a policy under these Rules; or
4. the participating insurer which issues the policy becomes the subject of an insolvency event, and the firm has replaced the policy with another policy of qualifying insurance.

4.4 The provisions of this Rule 4 shall be without prejudice to the ability of *firms* to include as insureds on a *policy* persons not required under these Rules to be insured.

## **Rule 5: Responsibility**

5.1 Each *firm* carrying on a *practice* on or after 1 October 2014, and any person who is a *principal* of such a *firm*, must ensure that the *firm* takes out and maintains *qualifying insurance* at all times.

### **Commentary:**

Note that the duty to ensure that qualifying insurance is in place rests not just on the firm as a whole, but also on every principal within that firm.

5.2 Each *firm* that has been unable to obtain a *policy* of *qualifying insurance* prior to the expiration of the *extended indemnity period*, and any *person* who is a *principal* of such a *firm*, must ensure that the *firm*, and each *principal* or *employee* of such *firm*, undertakes no activities in connection with *private legal practice* and accepts no instructions in respect of any such activities during the *cessation period* save to the extent that the activity in connection with *private legal practice* is undertaken to discharge its obligations within the scope of the *firm's existing instructions* or is necessary in connection with the discharge of such obligations.

## Rule 6: Insolvency of participating insurer

- 6.1 If a *firm* is carrying on a *practice* which is being provided with *qualifying insurance* by a *participating insurer* (whether alone or together with other *participating insurers*) and that *participating insurer* is the subject of an *insolvency event* then, subject to any waiver under Rule 19.1, the *firm* and any person who is a *principal* of the *firm* must ensure that the *firm* has in place *qualifying insurance* with another *participating insurer* which must be arranged as soon as may be reasonably practicable and in any event within four weeks of such an *insolvency event*.

### Commentary:

It is important to be aware that the arrangements for professional indemnity insurance put in place by the SRA do not seek to protect firms against the insolvency of a participating insurer. If an insolvency event occurs in respect of an insurer, that insurer will cease to be a participating insurer for the purposes of writing new policies and firms insured by that insurer must effect alternative insurance in accordance with these Rules. This is because, in such circumstances, the insurer may not be in a position to pay claims in full. Any firm which has qualifying insurance with a participating insurer which is the subject of an insolvency event is required therefore to obtain replacement cover as soon as possible, and in any event within four weeks of the insolvency event occurring. Having done so, a firm should cancel the policy with the insolvent insurer and, if entitled to do so, seek a return of the premium relating to the balance of the policy period from the insurer which has become the subject of the insolvency event.

## Rule 7: Monitoring

- 7.1 The *Council* may require from a *firm* or any *principal* in a *firm* carrying on, or reasonably believed by the *Council* to be carrying on, a *practice* such information and evidence as it may reasonably require to satisfy itself that such a *firm* has in place *qualifying insurance*.

## Rule 8: RELs

- 8.1 The special provisions contained in Appendix 3 to these Rules shall apply to a *firm* that has at least one *principal* who is a *REL*.

## Part 3: The ARP

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Rule 9: [Deleted]

Rule 10: [Deleted]

Rule 11: [Deleted]

Rule 12: [Deleted]

### Rule 13: Power to collect contribution from firms

13.1 Every *firm* and/or *principal* shall make contributions in such amounts, at such times and in such circumstances, as may be prescribed from time to time by the *SRA* in respect of the *ARP*, the cost of funding all or any part of the *ARP* or funding or providing any contribution, consideration, payment, undertaking, reimbursement, guarantee, surety or security in respect of the *ARP*, in each case, that the *SRA* agrees or determines is to be contributed or made available on behalf of *firms* and/or *principals* to or in consideration for *participating insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

13.2 Any unpaid contribution under Rule 13.1 may be recovered as a debt due to the *Society*. The *SRA* may recover any unpaid contribution from a *licensed body*, and may require *licensed bodies* to make such further contributions as the *SRA* considers necessary in respect of the *ARP*, the cost of funding all or any part of the *ARP* or funding or providing any contribution, consideration, payment, undertaking, reimbursement, guarantee, surety or security in respect of the *ARP*, in each case, that the *SRA* agrees or determines is to be contributed or made available to or in consideration for *participating insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

## Part 4: [Deleted]

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Rule 14: [Deleted]

Rule 15: [Deleted]

## Part 5: Disciplinary offences and reporting

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### Rule 16: Disciplinary consequences of failure to comply with these Rules

16.1 Without prejudice to any other disciplinary offence which may arise under these Rules, it shall be a disciplinary offence for any *firm* or any person who is at the relevant time a *principal* in a *firm* to

- (a) be in *policy default*, and

- (b) undertake any activities in connection with *private legal practice* in breach of Rule 5.2.

## Rule 17: Use of information

17.1 Any *participating insurer* shall, in relation to any *firm* which applies to it for *qualifying insurance*, bring to the attention of the *Society* (including, in the case of the matters referred to in Rule 17.1(f), the Office for Legal Complaints (including the *Legal Ombudsman*)) at any time and without notice to the *firm* concerned:

- (a) any failure on the part of the *firm* or any person who is a *principal* of that *firm* to pay any sum on or before the date specified in these Rules or to reimburse any amount falling within a *policy* excess which has been paid out by a *participating insurer* to a *claimant*;
- (b) a material inaccuracy in any proposal form submitted by or on behalf of the *firm*;
- (c) the fact that the *firm* has operated or is operating without *qualifying insurance*;
- (d) any matter or circumstances that would entitle the *firm's participating insurer* to avoid or repudiate a *policy* but for the provisions of clause 4.1 of the *MTC* (and/or the corresponding of the *policy*);
- (e) any dishonesty or fraud suspected by a *participating insurer* on the part of any *insured*; and
- (f) any *claim* of inadequate professional services made against the *firm* or any *insured* of that *firm* of which it becomes aware.

### Commentary:

All firms are deemed to have consented to their participating insurer bringing to the attention of the SRA any of the matters referred to Rule 17.1 that may be applicable to the firm. Any such information is subject to the confidentiality provisions of Rule 17.4.

- 17.2 The *Council* may require any *participating insurer* to bring to the attention of the *Society* any of the matters referred to in Rule 17.1 where it reasonably believes there are matters which ought to be brought to the attention of the *Society* in accordance with Rule 17.1.
- 17.3 Each *firm* shall notify the *Society* (or such *person* as the *Society* may notify to the *firm* from time to time) and its *participating insurer* in writing as soon as reasonably practicable and in no event later than five (5) business days after the date on which:
- (a) the *firm* enters the *extended indemnity period* under its *policy*;
  - (b) the *firm* enters the *cessation period* under its *policy*; and

- (c) the *firm* obtains a *policy* of *qualifying insurance* where the *firm* is in the *extended indemnity period* or the *cessation period*, and in such case the notification shall include the name of the *participating insurer* who has issued the *policy* of *qualifying insurance* and the *policy* number.
- 17.4 In respect of any information that may be brought to the attention of the *Society* in accordance with Rules 17.1, 17.2 and 17.3:
- (a) the *Society* shall keep all such information confidential;
  - (b) the *Society* shall not (except where and to the extent required by law or in the proper performance by the *Society* of its regulatory functions) at any time reveal any such information to any person other than a duly authorised employee of the *Society* or any of its subsidiaries; and
  - (c) any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the *Society* or otherwise.
- 17.5 The provisions of Rule 17.4 shall not prevent the *Society* from:
- (a) making use of any information referred to in that Rule for the purpose of bringing disciplinary proceedings against any person; or
  - (b) in relation to information about a *firm's policy* under Rule 18, disclosing that information, where and to the extent that the *Society* in its absolute discretion considers it appropriate, to any person entitled to such information, and to any other department or office of the *Society*, including without limitation to the Office for Legal Complaints (including the *Legal Ombudsman*).
- 17.6 The *Society* may, without limitation and in its absolute discretion, disclose and make available for public inspection the identity of a *firm's participating insurer*. Nothing in these Rules shall act to prohibit the *Society* from making such a disclosure nor give rise to any liability of the *Society*, for breach of any obligations of confidentiality or otherwise.

## **Rule 18: Details of participating insurer**

- 18.1 If a *claimant* asserts a *claim* against a *firm* or any person insured under that *firm's policy*, and where such *claim* relates to any matter within the scope of cover of the *MTC* (whether or not such *claim* would or may be upheld), the *firm* and any person who is at the relevant time (or, in the case of a *firm* which has ceased *practice*, any person who was immediately before that *firm* ceased *practice*) a *principal* in that *firm* shall be required, upon being so requested by that *claimant*, by any person insured under that *firm's policy*, or by any other person with a legitimate interest, to provide to that person the following details in relation to that *firm's policy*:
- (a) the name of the *participating insurer(s)* who issued the *policy*; and
  - (b) the *policy* number; and



- (c) the address and contact details of the *participating insurer(s)* for the purpose of making a *claim* under the *policy*;

in each case in respect of the *policy* which it is reasonably believed to be the relevant *policy* to respond to the *claim*, or, if applicable, the fact that the *firm* or person against whom the *claim* is asserted is covered by *supplementary run-off cover*.

#### **Commentary:**

A firm, and each principal in that firm, is required to provide details of that firm's policy of qualifying insurance to any person who asserts a claim against anyone insured under that firm's policy. Under Rule 17, the SRA has the power to disclose information regarding a firm's participating insurer where it considers it appropriate to do so.

## **Part 6: General powers of the Council**

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### **Rule 19: Waiver powers**

- 19.1 The *Council* shall have power on such terms and conditions as it shall think fit to waive any Rule or part of any Rule in a particular case or cases including extending the time, either prospectively or retrospectively, for the doing of any act under any Rule.
- (a) Any application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2001 to 2010 or SRA Indemnity Insurance Rules 2011 to 2014 must be made in writing to the *Society* as soon as reasonably practicable.
- (b) No application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 may be considered unless it was made in writing to the *Society* as soon as reasonably practicable and in any event no later than 28 February 2002.
- (c) Any appeal against any decision made by the *Society* in respect of any application for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2014 must be made in writing to the *Society* within 21 days from the date of the decision.
- (d) An application for a waiver as contemplated by this Rule 19.1 or the making of an appeal against any decision made by the *Society* in respect of such application shall not relieve any person from any obligation under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2014 pending the determination of any such application or appeal.

#### **Commentary:**

It is envisaged that Rules will be waived only in exceptional circumstances. Anyone who wishes to apply for a waiver, or to appeal against an initial decision, must do so in

accordance with the time limits set out in this Rule. Contact details appear at the end of the introductory commentary. The Panel of Adjudicators Sub Committee has adopted a waiver policy, which is available on request. Unless and until any waiver is granted, the person concerned must comply with the requirements of these Rules in full. A waiver may be granted subject to conditions, and may be revoked without notice.

- 19.2 The **Council** shall have power to treat any **firm** as complying with any Rule or Rules for the purposes of the **SA** notwithstanding that the **firm** has failed to comply with a Rule or Rules where such non-compliance is regarded by the **Council** in a particular case or cases as being insignificant.
- 19.3 For the purposes of the **SA** (including without limitation section 10 of that Act), any person who is in breach of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2014 shall be deemed, for so long as he remains in breach, not to be complying with these Rules.

#### **Commentary:**

The effect of this general power is that, for example, a practising certificate may be issued to a person notwithstanding a technical and insignificant breach by that person or a firm of any provision of these Rules.

## **Part 7: Other obligations**

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### **Rule 20: Accountants' reports**

- 20.1 Any accountant's report which a **solicitor**, **REL** or **RFL** who is a **principal** in a **practice** or a **recognised body** or a **licensed body** is required to deliver to the **Society** under section 34 of the **SA** or paragraph 8 of Schedule 14 to the Courts and Legal Services Act 1990 or under section 83(5)(h) of and paragraph 20 of Schedule 11 to the **LSA** containing such information as is prescribed by rule 35 of the Solicitors' Accounts Rules 1998 (as amended from time to time), or any rules (including, without limitation, the **SRA Accounts Rules**) which replace the Solicitors' Accounts Rules 1998 in whole or in part, must contain a statement certifying (if it is the case) for the whole period covered by the report (excluding any part of that period falling before 1 September 2000) that the **firm** has one or more certificates of **qualifying insurance** (or in respect of any period prior to 1 October 2014, that the **firm** has been issued with one or more policies by the **ARP manager**).

#### **Commentary:**

If required to deliver an accountant's report under the SRA Accounts Rules, evidence must be provided to the accountant that a policy of qualifying insurance is in place. Each participating insurer is required under the participating insurer's agreement to provide a certificate of qualifying insurance to each firm within 20 working days of the start of the period covered by the policy. Producing the relevant certificate(s) to the reporting accountant will satisfy the requirement of this Rule.

## Appendix 1

### SRA Minimum Terms and Conditions of Professional Indemnity Insurance

#### 1 Scope of cover

##### 1.1 Civil liability

Subject to the limits in clause 2, the insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with the *insured firm's practice*, provided that a *claim* in respect of such liability:

- (a) is first made against an *insured* during the *period of insurance*; or
- (b) is made against an *insured* during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*.

##### 1.2 Defence costs

The insurance must also indemnify the *insured* against *defence costs* in relation to:

- (a) any *claim* referred to in clause 1.1, 1.4 or 1.6; or
- (b) any *circumstances* first notified to the *insurer* during the *period of insurance*; or
- (c) any investigation or inquiry (save in respect of any disciplinary proceeding under the authority of the *Society* (including, without limitation, the *SRA* and the *Tribunal*)) during or after the *period of insurance* arising from any *claim* referred to in clause 1.1, 1.4 or 1.6 or from *circumstances* first notified to the *insurer* during the *period of insurance*.

##### 1.3 The insured

For the purposes of the cover contemplated by clause 1.1, the *insured* must include:

- (a) the *insured firm*; and
- (b) each service, administration, trustee or nominee *company* owned as at the date of occurrence of relevant *circumstances* by the *insured firm* and/or the *principals* of the *insured firm*; and
- (c) each *principal*, each former *principal* and each *person* who becomes a *principal* during the *period of insurance* of the *insured firm* or a *company* referred to in paragraph (b); and
- (d) each *employee*, each former *employee* and each *person* who becomes during the *period of insurance* an *employee* of the *insured firm* or a *company* referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated *person* referred to in paragraph (c) or (d).

##### 1.4 Prior practice

The insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with a *prior practice*, provided that a *claim* in respect of such liability is first made against an *insured*:

- (a) during the *period of insurance*; or
- (b) during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*.

### 1.5 The insured - prior practice

For the purposes of the cover contemplated by clause 1.4, the *insured* must include:

- (a) each *partnership, recognised body or licensed body* (in respect of its *regulated activities*) which, or *sole practitioner* who, carried on the *prior practice*; and
- (b) each service, administration, trustee or nominee *company* owned as at the date of occurrence of relevant *circumstances* by the *partnership, recognised body or licensed body* (in respect of its *regulated activities*) which, or *sole practitioner* who, carried on the *prior practice* and/or the *principals* of such *partnership, recognised body or licensed body*; and
- (c) each *principal* and former *principal* of each *partnership, recognised body or licensed body* (in respect of its *regulated activities*) referred to in paragraph (a) or *company* referred to in paragraph (b); and
- (d) each *employee* and former *employee* of the *partnership, recognised body, licensed body* (in respect of its *regulated activities*) or *sole practitioner* referred to in paragraph (a) or *company* referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated *sole practitioner* referred to in paragraph (a) or *person* referred to in paragraph (c) or (d).

### 1.6 Successor practice

The insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with a *successor practice* to the *insured firm's practice* (where succession is as a result of one or more separate mergers, acquisitions, absorptions or other transitions), provided that a *claim* in respect of such liability is first made against an *insured*:

- (a) during the *period of insurance*; or
- (b) during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*

unless run-off cover is provided in accordance with clause 5.6.

### 1.7 The insured - successor practice

For the purposes of the cover contemplated by clause 1.6, the *insured* must include:

- (a) each *partnership, recognised body or licensed body* (in respect of its *regulated activities*) which, or *sole practitioner* who, carries on the *successor practice* during the *period of insurance*; and
- (b) each service, administration, trustee or nominee *company* owned as at the date of occurrence of relevant *circumstances* by the *partnership, recognised body or licensed body* (in respect of its *regulated activities*) which, or *sole practitioner* who, carries on the *successor practice* and/or the *principals* of such *partnership, recognised body or licensed body*; and
- (c) each *principal*, each former *principal* and each *person* who becomes during the *period of insurance* a *principal* of any *partnership, recognised body or licensed body* (in respect of its *regulated activities*) referred to in paragraph (a) or *company* referred to in paragraph (b); and
- (d) each *employee*, each former *employee* and each *person* who becomes during the *period of insurance* an *employee* of the *partnership, recognised body, licensed body* (in respect of its *regulated activities*) or *sole practitioner* referred to in paragraph (a) or *company* referred to in paragraph (b); and

- (e) the estate or legal personal representative of any deceased or legally incapacitated *sole practitioner* referred to in paragraph (a) or *person* referred to in paragraph (c) or (d).

### **1.8 Award by regulatory authority**

The insurance must indemnify each *insured* against any amount paid or payable in accordance with the recommendation of the Legal Services Ombudsman, the Office for Legal Complaints (including the *Legal Ombudsman* pursuant to section 137(2)(c) and section 137(4)(b) of the *LSA*) or any other regulatory authority to the same extent as it indemnifies the *insured* against civil liability provided that the *insurer* will have no liability in respect of any determination by the *Legal Ombudsman* pursuant to section 137(2)(b) of the *LSA* to refund any fees paid to the *insured*.

## **2 Limit of insurance cover**

### **2.1 Sum insured for one claim**

Subject to clause 2.2, the *sum insured* for any one *claim* (exclusive of *defence costs*) must be at least:

- (a) £500,000; or
- (b) €1,120,200 (or such other amount as is required on issue, renewal, replacement or extension of the *policy* under the *Insurance Mediation Directive*), if and to the extent that any *claim* relates to the *insured's insurance mediation activities* but not otherwise.

### **2.2 No limit on defence costs**

There must be no monetary limit on the cover for *defence costs*.

### **2.3 Proportionate limit on defence costs**

Notwithstanding clauses 2.1 and 2.2 the insurance may provide that liability for *defence costs* in relation to a *claim* which exceeds the *sum insured* is limited to the proportion that the *sum insured* bears to the total amount paid or payable to dispose of the *claim*.

### **2.4 No other limit**

The insurance must not limit liability to any monetary amount (whether by way of an aggregate limit or otherwise) except as contemplated by clauses 2.1 and 2.3.

### **2.5 One claim**

The insurance may provide that, when considering what may be regarded as one *claim* for the purposes of the limits contemplated by clauses 2.1 and 2.3:

- (a) all *claims* against any one or more *insured* arising from:
  - (i) one act or omission;
  - (ii) one series of related acts or omissions;
  - (iii) the same act or omission in a series of related matters or transactions;
  - (iv) similar acts or omissions in a series of related matters or transactionsand
- (b) all *claims* against one or more *insured* arising from one matter or transaction

will be regarded as one *claim*.

## **2.6 Multiple underwriters**

2.6.1 The insurance may be underwritten by more than one *insurer*, each of which must be a *participating insurer*, provided that the insurance may provide that the *insurer* shall be severally liable only for its respective proportion of liability in accordance with the terms of the insurance.

2.6.2 Where the insurance is underwritten jointly by more than one *insurer*:

(a) the insurance must state which *participating insurer* shall be the lead *insurer*; and

(b) in addition to any proportionate limit on *defence costs* in accordance with clause 2.2, the insurance may provide that each *insurer's* liability for *defence costs* is further limited to the extent or the proportion of that *insurer's* liability (if any) in relation to the relevant *claim*.

## **3 Excesses**

### **3.1 The excess**

The insurance may be subject to an *excess* of such monetary amount and on such terms as the *insurer* and the *insured firm* agree. Subject to clause 3.4, the *excess* may be 'self-insured' or partly or wholly insured without regard to these *MTC*.

### **3.2 No deductibles**

The insurance must provide that the *excess* does not reduce the *sum insured* applicable in accordance with clause 2.1.

### **3.3 Excess not to apply to defence costs**

The *excess* must not apply to *defence costs*.

### **3.4 Funding of the excess**

The insurance must provide that, if an *insured* fails to pay to a *claimant* any amount which is within the *excess* within 30 days of it becoming due for payment, the *claimant* may give notice of the *insured's* default to the *insurer*, whereupon the *insurer* is liable to remedy the default on the *insured's* behalf. The insurance may provide that any amount paid by the *insurer* to remedy such a default erodes the *sum insured*.

### **3.5 One claim**

The insurance may provide for multiple *claims* to be treated as one *claim* for the purposes of an *excess* contemplated by clause 3.1 on such terms as the *insured firm* and the *insurer* agree.

## **4 Special conditions**

### **4.1 No avoidance or repudiation**

The insurance must provide that the *insurer* is not entitled to avoid or repudiate the insurance on any grounds whatsoever including, without limitation, non-disclosure or misrepresentation, whether fraudulent or not.

### **4.2 No adjustment or denial**

The insurance must provide that the *insurer* is not entitled to reduce or deny its liability under the insurance on any grounds whatsoever including, without limitation, any breach of any term or

condition of the insurance, except to the extent that one of the exclusions contemplated by clause 6 applies.

#### **4.3 No cancellation**

The insurance must provide that it cannot be cancelled except (in the case of (a), (b) or (c) below) by the agreement of both the *insured firm* and the *insurer*, and in any event only in circumstances where:

- (a) the *insured firm's practice* is merged into a *successor practice*, provided that there is insurance complying with these *MTC* in relation to that *successor practice*, in which case cancellation shall have effect no earlier than the date of such merger; or
- (b) replacement insurance, complying with the minimum terms and conditions in effect at its commencement, commences, in which case cancellation shall have effect no earlier than the date on which such replacement insurance commences; or
- (c) it subsequently transpires that the *insured firm* is not required under the *SIIR* to effect a *policy of qualifying insurance*, in which case cancellation shall have effect from the later of (a) the start of the relevant *policy period* and (b) the date on which the *insured firm* ceased to be required to effect a *policy of qualifying insurance*, or such later date as the *insured firm* and the *insurer* may agree.

Cancellation must not affect the rights and obligations of the parties accrued under the insurance prior to the date from which cancellation has effect.

#### **4.4 No set-off**

The insurance must provide that any amount payable by the *insurer* to indemnify an *insured* against civil liability to a *claimant* will be paid only to the *claimant*, or at the *claimant's* direction, and that the *insurer* is not entitled to set-off against any such amount any payment due to it by any *insured* including, without limitation, any payment of premium or to reimburse the *insurer*.

#### **4.5 No 'other insurance' provision**

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than: (i) as contemplated by clause 6.1; or (ii) where the *insured*, having entered the *extended indemnity period* or *cessation period*, obtains a *policy of qualifying insurance* that incepts from and with effect from the expiration of the *policy period*. For the avoidance of doubt and subject to the provisions of the *participating insurer's agreement*, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other insurer which is also liable to indemnify any *insured*.

#### **4.6 No retroactive date**

The insurance must not exclude or limit the liability of the *insurer* in respect of *claims* arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to a specified date.

#### **4.7 Successor practice - 'double insurance'**

The insurance may provide that, if the *insured firm's practice* is succeeded during the *period of insurance* and, as a result, a situation of 'double insurance' exists between two or more insurers of the *successor practice*, contribution between insurers is to be determined in accordance with the relative numbers of *principals* of the owners of the constituent *practices* immediately prior to succession.

#### 4.8 Advancement of defence costs

The insurance must provide that the *insurer* will meet *defence costs* as and when they are incurred, including *defence costs* incurred on behalf of an *insured* who is alleged to have committed or condoned dishonesty or a fraudulent act or omission, provided that the *insurer* is not liable for *defence costs* incurred on behalf of that *insured* after the earlier of:

- (a) that *insured* admitting to the *insurer* the commission or condoning of such dishonesty, act or omission; or
- (b) a court or other judicial body finding that that *insured* was in fact guilty of such dishonesty, act or omission.

#### 4.9 Resolution of disputes

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.6, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer.

#### 4.10 Conduct of a claim pending dispute resolution

The insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the *insurer* will, if so directed by the *Society*, conduct any *claim*, advance *defence costs* and, if appropriate, compromise and pay the *claim*. If the *Society* is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies; and
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the *insured's* favour; and
- (c) it is fair and equitable in all the circumstances for such direction to be given;

it may in its absolute discretion make such a direction.

#### 4.11 Variation for multi-year policies

The terms of the insurance must provide that the *insurer* shall vary the terms of the insurance to give effect to any variation to the *SRA Indemnity Insurance Rules*, the *Glossary* and/or the *MTC*, such variation to be implemented by the *insurer*.

- (a) on the date of any renewal or replacement of the insurance or any extension to the *period of insurance* occurring in that *indemnity period*; or
- (b) on each date falling in 18 month intervals from the commencement of the *policy period* where no variation has occurred by reason of clause 4.11(a) within the immediately preceding 18 month period,

save that no variation shall be required under 4.11(b) where the date on which variation would have been required is a date within the *extended indemnity period* or the *cessation period*.

#### 4.12 Minimum terms and conditions to prevail

The insurance must provide that:

- (a) the insurance is to be construed or rectified so as to comply with the requirements of these *MTC* (including any amendment pursuant to 4.11 above); and



- (b) any provision which is inconsistent with these *MTC* (including any amendment pursuant to 4.11 above) is to be severed or rectified to comply.

## **5 Extended indemnity period and run-off cover**

### **5.1 Extended indemnity period**

The insurance must provide cover for the duration of the *extended indemnity period* where an *insured firm* has not, prior to the expiration of the *policy period*, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.

### **5.2 Cessation period**

The insurance must provide cover for the duration of the *cessation period* where an *insured firm* has not, prior to the expiration of the *extended indemnity period*, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.

### **5.3 Scope of cover during the extended indemnity period and the cessation period**

The cover to be provided in respect of the *extended indemnity period* referred to in clause 5.1 and the *cessation period* referred to in clause 5.2 must indemnify each *insured* in accordance with clauses 1.1 to 1.8 (but may be subject to the limits, exclusions and conditions of the insurance which are in accordance with the *MTC*).

### **5.4 Run-off cover**

The insurance must provide run-off cover:

- (a) in the event of a *cessation* that occurs during or on expiration of the *policy period*;
- (b) in the event of a *cessation* that occurs during the *extended indemnity period* or the *cessation period*; or
- (c) from the expiration of the *cessation period*,

and for the purposes of this clause 5.4, an *insured firm's practice* shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the *insured firm* becomes a *non-SRA firm*.

### **5.5 Scope of run-off cover**

The run-off cover referred to in clause 5.4 must:

- (a) indemnify each insured in accordance with clauses 1.1 to 1.8;
- (b) provide a minimum level of insurance cover in accordance with clause 2.1 and 2.3;
- (c) be subject to the exclusions and conditions of the insurance applicable in accordance with the *MTC*; and
- (d) extend the *period of insurance* for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement, it would have ended, and for the avoidance of doubt, including the *extended indemnity period* and *cessation period*), save that in respect of run-off cover provided under clause 5.4(c), such run-off cover shall not operate to indemnify any *insured* for civil liability arising from acts or omissions of such *insured* occurring after the expiration of the *cessation period*.

## 5.6 Succession

The insurance must provide that, if there is a *successor practice* to the ceased *practice*, the *insured firm* may elect before its *cessation*, whether it wishes the ceased *practice*:

- (a) to be insured under the run-off cover referred to in clause 5.4(a); or
- (b) provided that there is insurance complying with these *MTC* in relation to that *successor practice*, to be insured as a *prior practice* under such insurance.

If the *insured firm* fails to make an election and/or fails to pay any premium due under the terms of the *policy*, before its *cessation*, clause 5.6(b) shall apply.

The insurance must also provide that where an *insured firm* makes an election pursuant to this clause 5.6, the *insurer* shall give notice to the *Society* in writing of the election not later than seven days following the receipt by the *insurer* of the *insured firm's* election and that election has become effective and the *insured firm* shall irrevocably consent to that notification.

## 5.7 Suspended practices

The insurance must provide that, where run-off cover has been activated in accordance with this clause 5, but where the *insured firm's practice* restarts, the *insurer* may (but shall not be obliged to) cancel such run-off cover, on such terms as may be agreed, provided that:

- (a) there is insurance complying with these *MTC* in relation to that *insured firm* in force on the date of cancellation;
- (b) the *participating insurer* providing such insurance confirms in writing to the *insured firm* and the *insurer* (if different) that:
  - (i) it is providing insurance complying with these *MTC* in relation to that *insured firm* for the then current *indemnity period*; and
  - (ii) it is doing so on the basis that the *insured firm's practice* is regarded as being a continuation of the *insured firm's practice* prior to *cessation* and that accordingly it is liable for *claims* against the *insured firm* arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to *cessation*.

## 6 Exclusions

The insurance must not exclude or limit the liability of the *insurer* except to the extent that any *claim* or related *defence costs* arise from the matters set out in this clause 6.

### 6.1 Prior cover

Any *claim* in respect of which the *insured* is entitled to be indemnified by the *SIF* or under a professional indemnity insurance contract for a period earlier than the *period of insurance*, whether by reason of notification of *circumstances* to *SIF* or under the earlier contract or otherwise.

### 6.2 Death or bodily injury

Any liability of any *insured* for causing or contributing to death or bodily injury, except that the insurance must nonetheless cover liability for psychological injury or emotional distress which arises from a breach of duty in the performance of (or failure to perform) legal work.

### 6.3 Property damage

Any liability of any *insured* for causing or contributing to damage to, or destruction or physical loss of, any property (other than property in the care, custody or control of any *insured* in connection with the *insured firm's practice* and not occupied or used in the course of the *insured firm's practice*), except that the insurance must nonetheless cover liability for such damage, destruction or loss which arises from breach of duty in the performance of (or failure to perform) legal work.

### 6.4 Partnership disputes

Any actual or alleged breach of the *insured firm's partnership* or shareholder agreement or arrangements, including any equivalent agreement or arrangement where the *insured firm* is an *LLP* or a company without a share capital.

### 6.5 Employment breaches, discrimination, etc.

Wrongful dismissal, repudiation or breach of an employment contract or arrangement, termination of a training contract, harassment, discrimination or like conduct in relation to any *partnership* or shareholder agreement or arrangement or the equivalent where the *insured firm* is an *LLP* or a company without a share capital, or in relation to any employment or training agreement or arrangement.

### 6.6 Debts and trading liabilities

Any:

- (a) trading or personal debt of any *insured*; or
- (b) legal liability assumed or accepted by an *insured* or an *insured firm* under any contract or agreement for the supply to, or use by, the *insured* or *insured firm* of goods or services in the course of the *insured firm's practice*, save that this exclusion 6.6(b) will not apply to any legal liability arising in the course of an *insured firm's practice* in connection with its or any *insured's* use of or access to the HM Land Registry network (including, without limitation, access under a Network Access Agreement made under the Land Registration (Network Access) Rules and the Land Registration (Electronic Communications) Order 2007) other than an obligation to pay search fees or other charges for searches or services provided by HM Land Registry to the *insured firm*; or
- (c) guarantee, indemnity or undertaking by any particular *insured* in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that *insured*.

### 6.7 Fines, penalties, etc

Any:

- (a) fine or penalty; or
- (b) award of punitive, exemplary or like damages under the law of the United States of America or Canada, other than in respect of defamation; or
- (c) order or agreement to pay the costs of a complainant, regulator, investigator or prosecutor of any professional conduct complaint against, or investigation into the professional conduct of, any *insured*.

### 6.8 Fraud or dishonesty

The insurance may exclude liability of the *insurer* to indemnify any particular *person* to the extent that any civil liability or related *defence costs* arise from dishonesty or a fraudulent act or omission committed or condoned by that *person*, except that:

- (a) the insurance must nonetheless cover each other *insured*; and
- (b) the insurance must provide that no dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an *LLP*, all members of that *LLP*.

## **6.9 Directors' or officers' liability**

The insurance may exclude liability of the *insurer* to indemnify any natural person in their capacity as a director or officer of a body corporate (other than a *recognised body, licensed body* (in respect of its *regulated activities*) or a service, administration, trustee or nominee company referred to in clauses 1.3(b), 1.5(b) or 1.7(b)) except that:

- (a) the insurance must nonetheless cover any liability of that *person* which arises from a breach of duty in the performance of (or failure to perform) legal work; and
- (b) the insurance must nonetheless cover each other *insured* against any vicarious or joint liability.

## **6.10 War and terrorism, and asbestos**

The insurance may exclude, by way of an exclusion or endorsement, liability of the *insurer* to indemnify any *insured* in respect of, or in any way in connection with:

- (a) terrorism, war or other hostilities; and/or
- (b) asbestos, or any actual or alleged asbestos-related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos,

provided that any such exclusion or endorsement does not exclude or limit any liability of the *insurer* to indemnify any *insured* against civil liability or related *defence costs* arising from any actual or alleged breach of duty in the performance of (or failure to perform) legal work or failure to discharge or fulfil any duty incidental to the *insured firm's practice* or to the conduct of *private legal practice*.

## **6.11 International trade sanctions**

The *insurer* shall be deemed not to provide cover and shall not be liable to pay any *claim* or provide any benefit under the insurance to the extent that the provision of such cover, payment of such *claim* or provision of such benefit would expose the *insurer* to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

# **7 General conditions**

## **7.1 As agreed**

The insurance may contain such general conditions as are agreed between the *insurer* and the *insured firm*, but the insurance must provide that the special conditions required by clause 4 prevail to the extent of any inconsistency.

## **7.2 Reimbursement**

The insurance may provide that each *insured* who:

- (a) committed or condoned (whether knowingly or recklessly):
  - (i) non-disclosure or misrepresentation; or

- (ii) any breach of the terms or conditions of the insurance; or
  - (iii) dishonesty or any fraudulent act or omission; or
- (b) undertakes, either itself or by any of its principals, employees, consultants or agents or any person on its behalf, any activity during the *cessation period* in connection with *private legal practice* save to the extent that the activity is undertaken to discharge any of its obligations within the scope of its *existing instructions* or is necessary in connection with the discharge of any such obligation,

will reimburse the *insurer* to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by such non-disclosure, misrepresentation, breach, dishonesty, act or omission, provided that no *insured* shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of the insurance was in order to comply with any applicable rules or codes laid down from time to time by the *Society*, or in the *Society* publication *Your Clients - Your Business*, as amended from time to time.

The insurance must provide that no non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an *LLP*, all members of that *LLP*. The insurance must provide further that any right of reimbursement contemplated by this clause 7.2 against any *person* referred to in clauses 1.3(d), 1.5(d) or 1.7(d) (or against the estate or legal personal representative of any such *person* if they die or become legally incapacitated) is limited to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by that *person* having committed or condoned (whether knowingly or recklessly) the non-disclosure, misrepresentation, breach, dishonesty, act or omission.

### **7.3 Reimbursement of defence costs**

The insurance may provide that each *insured* will reimburse the *insurer* for *defence costs* advanced on that *insured's* behalf which the *insurer* is not ultimately liable to pay.

### **7.4 Reimbursement of the excess**

The insurance may provide for those *persons* who are at any time during the *period of insurance principals* of the *insured firm*, together with, in relation to a *sole practitioner*, any *person* held out as a *partner* of that practitioner, to reimburse the *insurer* for any *excess* paid by the *insurer* on an *insured's* behalf. The *sum insured* must be reinstated to the extent of reimbursement of any amount which eroded it as contemplated by clause 3.4.

### **7.5 Reimbursement of moneys paid pending dispute resolution**

The insurance may provide that each *insured* will reimburse the *insurer* following resolution of any coverage dispute for any amount paid by the *insurer* on that *insured's* behalf which, on the basis of the resolution of the dispute, the *insurer* is not ultimately liable to pay.

### **7.6 Withholding assets or entitlements**

The insurance may require the *insured firm* to account to the *insurer* for any asset or entitlement of any *person* who committed or condoned any dishonesty or fraudulent act or omission, provided that the *insured firm* is legally entitled to withhold that asset or entitlement from that *person*.

### **7.7 Premium**

The premium may be calculated on such basis as the *insurer* determines and the *insured firm* accepts including, without limitation, a basis which recognises *claims* history, categories of work performed by the *insured firm*, numbers of *principals* and *employees*, revenue derived from the *insured firm's practice* and other risk factors determined by the *insurer*.

## 8 Definitions and interpretation

- 8.1 The SRA Handbook Glossary 2012 (the **Glossary**) shall apply and, unless the context otherwise requires:
- (a) all italicised terms shall be defined in accordance with the Glossary;
  - (b) terms shall be interpreted in accordance with the Glossary;
  - (c) references to the *Society* include the *SRA* and any body or *person* which succeeds in whole or in part to the functions of the *Society* or the *SRA* and any delegate of the *Society*, the *SRA* or any such body or *person*; and
  - (d) a reference to a director includes a member of an *LLP*.
- 8.2 These *MTC* shall be, and the insurance shall be expressed to be, governed by and interpreted in accordance with English law.

**APPENDIX 2 [Deleted]**

## Appendix 3

### Special provisions for RELs

1 If:

- (a) one or more of the *principals* of an *insured firm* are *RELs* who claim that professional indemnity insurance, or a professional indemnity fund, under their home professional rules provides the *insured firm's practice* with professional indemnity cover in all respects equivalent in its conditions and extent to that which would be provided under the *MTC (Full Home State Cover)*; and
- (b) the *Council* is so satisfied, (including, without limitation, by reason of any provider of the Full Home State Cover entering into such agreement as the *Council* may require from time to time but provided that the *Council* shall not be so satisfied if more than 25% of the *principals* are *solicitors*),

the *insured firm* and its *principals* shall for so long as such cover continues (and, where the *Council* has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Full Home State Cover that are party to it) be exempted from the obligation to take out and maintain *qualifying insurance*.

2 If on an application by one or more *RELs* who are *principals* in an *insured firm*, the *Council* is satisfied that the *insured firm's practice* has professional indemnity cover under home professional rules but that the equivalence is only partial (**Partial Home State Cover**) (including, without limitation, by reason of the provider of the Partial Home State Cover entering into such agreement as the *Council* may require from time to time), the *insured firm* and its *principals* shall for so long as such cover continues (and, where the *Council* has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Partial Home State Cover that are party to it) be exempted from the obligation to take out and maintain *qualifying insurance*, on condition that they take out and maintain a *difference in conditions policy*, which shall provide cover including the *MTC* as modified by the following changes (but not otherwise):

- (a) Clause 4.5 shall be deleted and replaced with the following:

#### 4.5 No 'other insurance' provision

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than as contemplated by clauses 6.2 or 6.12. For the avoidance of doubt, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other *insurer* which is also liable to indemnify any *insured*.

- (b) Clause 4.9 shall be deleted and replaced with the following:

#### 4.9 Resolution of disputes

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.6, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer, and in conjunction with the provider of the Partial Home State Cover.



- (c) Clause 4.10 shall be deleted and replaced with the following:

**4.10 Conduct of a claim pending dispute resolution**

The insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the *insurer* will, if so directed by the *Society*, conduct any *claim*, advance *defence costs* and, if appropriate, compromise and pay the *claim* (whether alone or in conjunction with the provider of the Partial Home State Cover). If the *Society* is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies; and
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the *insured's* favour; and
- (c) it is fair and equitable in all the circumstances for such direction to be given;

it may in its absolute discretion make such a direction.

- (d) Clause 4.12 shall be added:

**4.12 Period of insurance**

The *period of insurance* must not expire prior to the date with effect on which the Partial Home State Cover expires or is avoided.

- (e) The following clause shall be added:

**6.11 Partial Home State Cover**

The insurance may exclude any liability of the *insurer* to the extent that any such liability is covered under the terms of the Partial Home State Cover irrespective of whether recovery is actually made in respect of such liability.

and in these Rules the following definition shall be added:

**Partial Home State Cover** has the meaning given in Appendix 3 to the SRA Indemnity Insurance Rules 2014.

- 3 In the event of an *insured firm* which has the benefit of an exemption under paragraph 1 or paragraph 2 of this Appendix ceasing for whatever reason to enjoy that exemption but continuing to carry on a *practice* it shall be treated for all the purposes of these Rules as though it had commenced the *practice* on the date when such exemption ceased.
- 4 Rule 6 (Insolvency Event) shall apply to an *insured firm* which has the benefit of an exemption under paragraph 1 or paragraph 2 of this Appendix in like manner as though the insurance company or entity or fund providing professional indemnity cover under its home professional rules, on the basis of which exemption or partial exemption was granted, was a *participating insurer*.
- 5 In the case of an *insured firm* which has the benefit of an exemption under paragraph 2 of this Appendix all the provisions of these Rules shall apply to the additional professional indemnity insurance required under that paragraph to be taken out with a *participating insurer*.

**APPENDIX 4 [Deleted]**

# SRA Indemnity Insurance Rules [201~~3~~4]

The commentary provided with these Rules does not form part of the Rules, is provided for guidance only, and does not affect the meaning or interpretation of the Rules in any way.

## Part 1: General

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### Rule 1: Authority and commencement

- 1.1 These Rules are made on ~~13 June 2013~~ [ ] by the Solicitors Regulation Authority Board under sections 31, 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and paragraph 19 of Schedule 11 to the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.
- 1.2 These Rules come into force on 1 October 201~~3~~4.
- 1.3 These Rules require *solicitors*, *REs*, *RFLs*, *recognised bodies* and their *managers* and *licensed bodies* (in respect of their *regulated activities*) in *private practice* in England and Wales to take out and maintain professional indemnity insurance with *participating insurers* with effect from 1 October 201~~3~~4.

#### Commentary:

These Rules apply to:

- solicitors
- REs
- RFLs
- recognised bodies and their managers and
- licensed bodies in respect of their regulated activities (but not to any other activities that may be undertaken by the licensed body concerned)

carrying on private practice in England and Wales as a firm at any time after 1 October 201~~3~~4. Refer to the interpretation provisions in Rule 3 and the SRA Handbook Glossary 2012 (the Glossary) and to the definitions in the Glossary for guidance on the exact meanings of these terms.

- 1.4 These Rules will apply to any *indemnity period* beginning on or after 1 October 201~~3~~4.

#### Commentary:

Before 1 September 2000, firms were required to take out insurance with the Solicitors Indemnity Fund. Since 1 September 2000, firms have been required to take out insurance in accordance with the Solicitors' Indemnity Insurance Rules and SRA Indemnity Insurance

Rules. From 1 October 201~~3~~4, firms must take out insurance in accordance with these Rules with one or more participating insurers. Continuing arrangements dealing with past claims on the Solicitors Indemnity Fund are covered in the Solicitors' Indemnity Rules and the SRA Indemnity Rules.

1.5 The SRA Indemnity Insurance Rules 201~~2~~3 shall not apply in respect of any *indemnity period* beginning on or after 1 October 201~~3~~4 but they shall remain in force in respect of the *indemnity period* from 1 October 201~~2~~3 to 30 September 201~~3~~4 inclusive subject to the provisions of Rules 19.1(a), 19.1(b), 19.1(c) and 19.1(d) below.

#### Commentary:

You should refer to previous Solicitors' Indemnity Insurance Rules and SRA Indemnity Insurance Rules in relation to earlier indemnity periods since 1 September 2000. However, you should refer to Rules 19.1(a) to 19.1(d) in relation to time limits in respect of an application for a waiver of the provisions of the Solicitors' Indemnity Insurance Rules 2000 to 2010 and the SRA Indemnity Insurance Rules 2011 ~~and 2012~~ to 2013.

#### Rule 2: Citation

2.1 These Rules may be cited as the SRA Indemnity Insurance Rules 201~~3~~4.

#### Rule 3: Definitions and interpretation

3.1 The SRA Handbook Glossary 2012 (the Glossary) shall apply and, unless the context otherwise requires:

- (a) all italicised terms shall be defined in accordance with the Glossary;
- (b) terms shall be interpreted in accordance with the Glossary;
- (c) a reference to a Rule is to a Rule forming part of these Rules;
- (d) these Rules will be governed by and interpreted in accordance with English law.

## Part 2: Responsibility and monitoring

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#### Rule 4: Obligation to effect insurance

4.1 All *firms* carrying on ~~a~~-*practice* during ~~any~~an *indemnity period* beginning on or after 1 October 201~~3~~4 must take out and maintain *qualifying insurance* under these Rules.

4.2 A *firm* must, in respect of its obligation to effect and maintain *qualifying insurance*:

- (a) obtain a *policy* of *qualifying insurance* prior to the expiry of the *policy period* that provides cover incepting on and with effect from the expiry of the *policy period*;

- (b) if the *firm* has been unable to obtain a *policy of qualifying insurance* prior to the expiry of the *policy period* in accordance with Rule 4.2(a), obtain a *policy of qualifying insurance* during or prior to the expiry of the *extended indemnity period* that provides cover incepting on and with effect from the expiry of the *policy period*; and
- (c) if the *firm* has been unable to obtain a *policy of qualifying insurance* prior to the expiry of the *extended indemnity period* in accordance with Rule 4.2(b), cease *practice* promptly, and by no later than the expiration of the *cessation period*, unless the *firm* obtains a *policy of qualifying insurance* during or prior to the expiry of the *cessation period* that provides cover incepting on and with effect from the expiry of the *policy period* and covers all activities in connection with *private legal practice* carried out by the *firm* including, without limitation, any carried out in breach of Rule 5.2.

4.3 A *solicitor* or *REL* is not required to take out and maintain *qualifying insurance* under these Rules in respect of work done as an employee or whilst otherwise directly engaged in the *practice* of another *firm* (including without limitation as an *appointed person*), where that *firm* is required by these Rules to take out and maintain *qualifying insurance*.

#### Commentary:

Under these Rules, firms have a continuing obligation to ensure that they have [professional indemnity insurance in place that satisfies the MTC requirements for](#) [qualifying insurance](#) ~~in place at all times with effect from 1 October 2013~~. Refer to the definitions of practice, amongst others, to establish whether a firm falls within the scope of these Rules. Firms should also check that any [qualifying](#) insurance that they take out in order to comply with these Rules (as opposed to any 'top-up' cover) is taken out with a participating insurer. A list of participating insurers appears on the website of the SRA at [www.sra.org.uk](http://www.sra.org.uk), and is also available from the SRA. Contact details appear at the end of the introductory commentary.

Firms should note in particular that work carried out by an appointed person for that firm may be covered by the firm's policy, whether that person is engaged as an employee or on a contract for services.

If a firm, on or before the expiry of the policy period, fails to obtain a policy of qualifying insurance from a participating insurer commencing on the day following such expiration, the firm's participating insurer is required to extend cover under the existing policy for a further 30 days. If a firm fails to obtain an alternative policy of qualifying insurance during or prior to the expiration of the 30 day extended indemnity period it must cease practice within a further period of 60 days (known as the cessation period) unless the firm obtains a policy of qualifying insurance on or before the expiry of the cessation period which provides cover that incepts or is backdated to incept with effect on and from the expiry of the policy period. Any such policy of qualifying insurance must cover all activities carried out in connection with private legal practice by the firm, including any carried out during the cessation period in breach of Rule 5.2. During the cessation period, the firm (and its principals, employees, consultants and agents) may only engage in activities in connection with private legal

practice on behalf of the firm to discharge its obligations within the scope of the existing instructions the firm held before the cessation period commenced or which are necessary in connection with the discharge of such obligations. Disciplinary action will be taken against those who accept new instructions and/or engage in other non-permitted legal activities during the cessation period. The firm's participating insurer is required to provide cover during the cessation period which, as a minimum, satisfies the MTC.

The SRA will work with the firm to ensure that it has ceased practice prior to the expiration of the 60 day cessation period. Firms must be aware that the participating insurer under the existing policy will not be required to provide any cover beyond this period except for run-off cover for a period of six years commencing on the expiry of the firm's final policy of qualifying insurance (excluding any extended indemnity period and cessation period (as may be applicable)).

Note that, under the MTC, a policy, once taken out, cannot be cancelled unless:

1. [the firm obtains another policy of qualifying insurance; or](#)
- ~~1.2.~~ [the firm merges with another firm and a policy of qualifying insurance is in place for the merged firm; or](#)
- ~~2.3.~~ [it subsequently transpires that the firm was not in fact required to take out and maintain a policy under these Rules; or](#)
- ~~3.4.~~ [the participating insurer which issues the policy becomes the subject of an insolvency event, and the firm has replaced the policy with another policy of qualifying insurance.](#)

~~Most recognised bodies and licensed bodies (in respect of their regulated activities) are required to obtain cover complying with the MTC and with a sum insured of £3 million, rather than £2 million for other firms. The definition of "relevant recognised body" and "relevant licensed body" in these Rules indicates which recognised bodies and licensed bodies this requirement applies to.~~

- ~~4.5.4.4~~ The provisions of this Rule 4 shall be without prejudice to the ability of *firms* to include as insureds on a *policy* persons not required under these Rules to be insured.

## Rule 5: Responsibility

- 5.1 Each *firm* carrying on a *practice* on or after 1 October 201~~3~~<sup>4</sup>, and any person who is a *principal* of such a *firm*, must ensure that the *firm* ~~has in place~~ [takes out](#) and maintains *qualifying insurance* at all times.

### Commentary:

Note that the duty to ensure that qualifying insurance is in place rests not just on the firm as a whole, but also on every principal within that firm.

- 5.2 Each *firm* that has been unable to obtain a *policy* of *qualifying insurance* prior to the expiration of the *extended indemnity period*, and any *person* who is a *principal* of such a *firm*, must ensure that the *firm*, and each *principal* or *employee* of such *firm*, undertakes no activities in connection with *private legal*

*practice* and accepts no instructions in respect of any such activities during the *cessation period* save to the extent that the activity in connection with *private legal practice* is undertaken to discharge its obligations within the scope of the *firm's existing instructions* or is necessary in connection with the discharge of such obligations.

#### **Rule 6:           Insolvency of participating insurer**

6.1     If a *firm* is carrying on a *practice* which is being provided with *qualifying insurance* by a *participating insurer* (whether alone or together with other *participating insurers*) and that *participating insurer* is the subject of an *insolvency event* then, subject to any waiver under Rule 19.1, the *firm* and any person who is a *principal* of the *firm* must ensure that the *firm* has in place *qualifying insurance* with another *participating insurer* which must be arranged as soon as may be reasonably practicable and in any event within four weeks of such an *insolvency event*.

#### **Commentary:**

It is important to be aware that the arrangements for professional indemnity insurance put in place by the SRA do not seek to protect firms against the insolvency of a participating insurer. If an insolvency event occurs in respect of an insurer, that insurer will cease to be a participating insurer for the purposes of writing new policies and firms insured by that insurer must effect alternative insurance in accordance with these Rules. This is because, in such circumstances, the insurer may not be in a position to pay claims in full. Any firm which has qualifying insurance with a participating insurer which is the subject of an insolvency event is required therefore to obtain replacement cover as soon as possible, and in any event within four weeks of the insolvency event occurring. Having done so, a firm should cancel the policy with the insolvent insurer and, if entitled to do so, seek a return of the premium relating to the balance of the policy period from the insurer which has become the subject of the insolvency event.

#### **Rule 7:           Monitoring**

7.1     The *Council* may require from a *firm* or any *principal* in a *firm* carrying on, or reasonably believed by the *Council* to be carrying on, a *practice* such information and evidence as it may reasonably require to satisfy itself that such a *firm* has in place *qualifying insurance*.

#### **Rule 8:           RELS**

8.1     The special provisions contained in Appendix 3 to these Rules shall apply to a *firm* that has at least one *principal* who is a *REL*.

## Part 3: The ARP

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Rule 9: [Deleted]

Rule 10: [Deleted]

Rule 11: [Deleted]

Rule 12: [Deleted]

### Rule 13: Power to collect contribution from firms

13.1 Every *firm* and/or *principal* shall make contributions in such amounts, at such times and in such circumstances, as may be prescribed from time to time by the *SRA* in respect of the *ARP*, the cost of funding all or any part of the *ARP* or funding or providing any contribution, consideration, payment, undertaking, reimbursement, guarantee, surety or security in respect of the *ARP*, in each case, that the *SRA* agrees or determines is to be contributed or made available on behalf of *firms* and/or *principals* to or in consideration for *participating insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

13.2 Any unpaid contribution under Rule 13.1 may be recovered as a debt due to the *Society*. The *SRA* may recover any unpaid contribution from a *licensed body*, and may require *licensed bodies* to make such further contributions as the *SRA* considers necessary in respect of the *ARP*, the cost of funding all or any part of the *ARP* or funding or providing any contribution, consideration, payment, undertaking, reimbursement, guarantee, surety or security in respect of the *ARP*, in each case, that the *SRA* agrees or determines is to be contributed or made available to or in consideration for *participating insurers* agreeing to underwrite the liabilities of the *ARP* in respect of the *indemnity period* commencing on 1 October 2012.

## Part 4: [Deleted]

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Rule 14: [Deleted]

Rule 15: [Deleted]

## Part 5: Disciplinary offences and reporting

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### Rule 16: Disciplinary consequences of failure to comply with these Rules

16.1 Without prejudice to any other disciplinary offence which may arise under these Rules, it shall be a disciplinary offence for any *firm* or any person who is at the relevant time a *principal* in a *firm* to

- (a) be in *policy default*, and



- (b) undertake any activities in connection with *private legal practice* in breach of Rule 5.2.

## Rule 17: Use of information

17.1 Any *participating insurer* shall, in relation to any *firm* which applies to it for *qualifying insurance*, bring to the attention of the *Society* (including, in the case of the matters referred to in Rule 17.1(f), the Office for Legal Complaints (including the *Legal Ombudsman*)) at any time and without notice to the *firm* concerned:

- (a) any failure on the part of the *firm* or any person who is a *principal* of that *firm* to pay any sum on or before the date specified in these Rules or to reimburse any amount falling within a *policy* excess which has been paid out by a *participating insurer* to a *claimant*;
- (b) a material inaccuracy in any proposal form submitted by or on behalf of the *firm*;
- (c) the fact that the *firm* has ~~become~~operated or is ~~believed to have become a~~ run-off firm operating without *qualifying insurance*;
- (d) any matter or circumstances that would entitle the *firm's participating insurer* to avoid or repudiate a *policy* but for the provisions of clause 4.1 of the *MTC* (and/or the corresponding of the *policy*);
- (e) any dishonesty or fraud suspected by a *participating insurer* on the part of any *insured*; and
- (f) any *claim* of inadequate professional services made against the *firm* or any *insured* of that *firm* of which it becomes aware.

### Commentary:

All firms are deemed to have consented to their participating insurer bringing to the attention of the SRA any of the matters referred to Rule 17.1 that may be applicable to the firm. Any such information is subject to the confidentiality provisions of Rule 17.4.

- 17.2 The *Council* may require any *participating insurer* to bring to the attention of the *Society* any of the matters referred to in Rule 17.1 where it reasonably believes there are matters which ought to be brought to the attention of the *Society* in accordance with Rule 17.1.
- 17.3 Each *firm* shall notify the *Society* (or such *person* as the *Society* may notify to the *firm* from time to time) and its *participating insurer* in writing as soon as reasonably practicable and in no event later than five (5) business days after the date on which:
  - (a) the *firm* enters the *extended indemnity period* under its *policy*;
  - (b) the *firm* enters the *cessation period* under its *policy*; and

- (c) the *firm* obtains a *policy* of *qualifying insurance* where the *firm* is in the *extended indemnity period* or the *cessation period*, and in such case the notification shall include the name of the *participating insurer* who has issued the *policy* of *qualifying insurance* and the *policy* number.
- 17.4 In respect of any information that may be brought to the attention of the *Society* in accordance with Rules 17.1, 17.2 and 17.3:
- (a) the *Society* shall keep all such information confidential;
  - (b) the *Society* shall not (except where and to the extent required by law or in the proper performance by the *Society* of its regulatory functions) at any time reveal any such information to any person other than a duly authorised employee of the *Society* or any of its subsidiaries; and
  - (c) any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the *Society* or otherwise.
- 17.5 The provisions of Rule 17.4 shall not prevent the *Society* from:
- (a) making use of any information referred to in that Rule for the purpose of bringing disciplinary proceedings against any person; or
  - (b) in relation to information about a *firm's policy* under Rule 18, disclosing that information, where and to the extent that the *Society* in its absolute discretion considers it appropriate, to any person entitled to such information, and to any other department or office of the *Society*, including without limitation to the Office for Legal Complaints (including the *Legal Ombudsman*).
- 17.6 The *Society* may, without limitation and in its absolute discretion, disclose and make available for public inspection the identity of a *firm's participating insurer*. Nothing in these Rules shall act to prohibit the *Society* from making such a disclosure nor give rise to any liability of the *Society*, for breach of any obligations of confidentiality or otherwise.

## **Rule 18: Details of participating insurer**

- 18.1 If a *claimant* asserts a *claim* against a *firm* or any person insured under that *firm's policy*, and where such *claim* relates to any matter within the scope of cover of the *MTC* (whether or not such *claim* would or may be upheld), the *firm* and any person who is at the relevant time (or, in the case of a *firm* which has ceased *practice*, any person who was immediately before that *firm* ceased *practice*) a *principal* in that *firm* shall be required, upon being so requested by that *claimant*, by any person insured under that *firm's policy*, or by any other person with a legitimate interest, to provide to that person the following details in relation to that *firm's policy*:
- (a) the name of the *participating insurer(s)* who issued the *policy*; and
  - (b) the *policy* number; and

- (c) the address and contact details of the *participating insurer(s)* for the purpose of making a *claim* under the *policy*;

in each case in respect of the *policy* which it is reasonably believed to be the relevant *policy* to respond to the *claim*, or, if applicable, the fact that the *firm* or person against whom the *claim* is asserted is covered by *supplementary run-off cover*.

#### Commentary:

A firm, and each principal in that firm, is required to provide details of that firm's policy of qualifying insurance to any person who asserts a claim against anyone insured under that firm's policy. Under Rule 17, the SRA has the power to disclose information regarding a firm's participating insurer where it considers it appropriate to do so.

## Part 6: General powers of the Council

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### Rule 19: Waiver powers

- 19.1 The *Council* shall have power on such terms and conditions as it shall think fit to waive any Rule or part of any Rule in a particular case or cases including extending the time, either prospectively or retrospectively, for the doing of any act under any Rule.
- (a) Any application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2001 to 2010 or SRA Indemnity Insurance Rules 2011 to 201~~3~~<sup>4</sup> must be made in writing to the *Society* as soon as reasonably practicable.
- (b) No application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 may be considered unless it was made in writing to the *Society* as soon as reasonably practicable and in any event no later than 28 February 2002.
- (c) Any appeal against any decision made by the *Society* in respect of any application for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 201~~3~~<sup>4</sup> must be made in writing to the *Society* within 21 days from the date of the decision.
- (d) An application for a waiver as contemplated by this Rule 19.1 or the making of an appeal against any decision made by the *Society* in respect of such application shall not relieve any person from any obligation under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 201~~3~~<sup>4</sup> pending the determination of any such application or appeal.

#### Commentary:

It is envisaged that Rules will be waived only in exceptional circumstances. Anyone who wishes to apply for a waiver, or to appeal against an initial decision, must do so in

accordance with the time limits set out in this Rule. Contact details appear at the end of the introductory commentary. The Panel of Adjudicators Sub Committee has adopted a waiver policy, which is available on request. Unless and until any waiver is granted, the person concerned must comply with the requirements of these Rules in full. A waiver may be granted subject to conditions, and may be revoked without notice.

19.2 The **Council** shall have power to treat any **firm** as complying with any Rule or Rules for the purposes of the **SA** notwithstanding that the **firm** has failed to comply with a Rule or Rules where such non-compliance is regarded by the **Council** in a particular case or cases as being insignificant.

19.3 For the purposes of the **SA** (including without limitation section 10 of that Act), any person who is in breach of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013~~4~~ shall be deemed, for so long as he remains in breach, not to be complying with these Rules.

#### Commentary:

The effect of this general power is that, for example, a practising certificate may be issued to a person notwithstanding a technical and insignificant breach by that person or a firm of any provision of these Rules.

## Part 7: Other obligations

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### Rule 20: Accountants' reports

20.1 Any accountant's report which a **solicitor**, **REL** or **RFL** who is a **principal** in a **practice** or a **recognised body** or a **licensed body** is required to deliver to the **Society** under section 34 of the **SA** or paragraph 8 of Schedule 14 to the Courts and Legal Services Act 1990 or under section 83(5)(h) of and paragraph 20 of Schedule 11 to the **LSA** containing such information as is prescribed by rule 35 of the Solicitors' Accounts Rules 1998 (as amended from time to time), or any rules (including, without limitation, the **SRA Accounts Rules**) which replace the Solicitors' Accounts Rules 1998 in whole or in part, must contain a statement certifying (if it is the case) for the whole period covered by the report (excluding any part of that period falling before 1 September 2000) that the **firm** has one or more certificates of **qualifying insurance** (or in respect of any period prior to 1 October 2013~~4~~, that the **firm** has been issued with one or more policies by the **ARP manager**).

#### Commentary:

~~Firms are~~ required to ~~provide~~ deliver an accountant's report under the SRA Accounts Rules, evidence must be provided to ~~their accountants~~ the accountant that a policy of qualifying insurance is in place. Each participating insurer is required under the participating insurer's agreement to provide a certificate of qualifying insurance to each firm within 20 working days of the start of the period covered by the policy. Producing the relevant certificate(s) to the reporting accountant will satisfy the requirement of this Rule.

## Appendix 1

### SRA Minimum Terms and Conditions of Professional Indemnity Insurance

#### 1 Scope of cover

##### 1.1 Civil liability

[Subject to the limits in clause 2](#), the insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with the *insured firm's practice*, provided that a *claim* in respect of such liability:

- (a) is first made against an *insured* during the *period of insurance*; or
- (b) is made against an *insured* during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*.

##### 1.2 Defence costs

The insurance must also indemnify the *insured* against *defence costs* in relation to:

- (a) any *claim* referred to in clause 1.1, 1.4 or 1.6; or
- (b) any *circumstances* first notified to the *insurer* during the *period of insurance*; or
- (c) any investigation or inquiry (save in respect of any disciplinary proceeding under the authority of the *Society* (including, without limitation, the *SRA* and the *Tribunal*)) during or after the *period of insurance* arising from any *claim* referred to in clause 1.1, 1.4 or 1.6 or from *circumstances* first notified to the *insurer* during the *period of insurance*.

##### 1.3 The insured

For the purposes of the cover contemplated by clause 1.1, the *insured* must include:

- (a) the *insured firm*; and
- (b) each service, administration, trustee or nominee *company* owned as at the date of occurrence of relevant *circumstances* by the *insured firm* and/or the *principals* of the *insured firm*; and
- (c) each *principal*, each former *principal* and each *person* who becomes a *principal* during the *period of insurance* of the *insured firm* or a *company* referred to in paragraph (b); and
- (d) each *employee*, each former *employee* and each *person* who becomes during the *period of insurance* an *employee* of the *insured firm* or a *company* referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated *person* referred to in paragraph (c) or (d).

##### 1.4 Prior practice

The insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with a *prior practice*, provided that a *claim* in respect of such liability is first made against an *insured*:

- (a) during the *period of insurance*; or
- (b) during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*.

### 1.5 The insured - prior practice

For the purposes of the cover contemplated by clause 1.4, the *insured* must include:

- (a) each *partnership, recognised body or licensed body* (in respect of its *regulated activities*) which, or *sole practitioner* who, carried on the *prior practice*; and
- (b) each service, administration, trustee or nominee *company* owned as at the date of occurrence of relevant *circumstances* by the *partnership, recognised body or licensed body* (in respect of its *regulated activities*) which, or *sole practitioner* who, carried on the *prior practice* and/or the *principals* of such *partnership, recognised body or licensed body*; and
- (c) each *principal* and former *principal* of each *partnership, recognised body or licensed body* (in respect of its *regulated activities*) referred to in paragraph (a) or *company* referred to in paragraph (b); and
- (d) each *employee* and former *employee* of the *partnership, recognised body, licensed body* (in respect of its *regulated activities*) or *sole practitioner* referred to in paragraph (a) or *company* referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated *sole practitioner* referred to in paragraph (a) or *person* referred to in paragraph (c) or (d).

### 1.6 Successor practice

The insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with a *successor practice* to the *insured firm's practice* (where succession is as a result of one or more separate mergers, acquisitions, absorptions or other transitions), provided that a *claim* in respect of such liability is first made against an *insured*:

- (a) during the *period of insurance*; or
- (b) during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*

unless run-off cover is provided in accordance with clause 5.6.

### 1.7 The insured - successor practice

For the purposes of the cover contemplated by clause 1.6, the *insured* must include:

- (a) each *partnership, recognised body or licensed body* (in respect of its *regulated activities*) which, or *sole practitioner* who, carries on the *successor practice* during the *period of insurance*; and
- (b) each service, administration, trustee or nominee *company* owned as at the date of occurrence of relevant *circumstances* by the *partnership, recognised body or licensed body* (in respect of its *regulated activities*) which, or *sole practitioner* who, carries on the *successor practice* and/or the *principals* of such *partnership, recognised body or licensed body*; and
- (c) each *principal, each former principal* and each *person* who becomes during the *period of insurance* a *principal* of any *partnership, recognised body or licensed body* (in respect of its *regulated activities*) referred to in paragraph (a) or *company* referred to in paragraph (b); and
- (d) each *employee, each former employee* and each *person* who becomes during the *period of insurance* an *employee* of the *partnership, recognised body, licensed body* (in respect of its *regulated activities*) or *sole practitioner* referred to in paragraph (a) or *company* referred to in paragraph (b); and

- (e) the estate or legal personal representative of any deceased or legally incapacitated *sole practitioner* referred to in paragraph (a) or *person* referred to in paragraph (c) or (d).

## 1.8 Award by regulatory authority

The insurance must indemnify each *insured* against any amount paid or payable in accordance with the recommendation of the Legal Services Ombudsman, the Office for Legal Complaints (including the *Legal Ombudsman* pursuant to section 137(2)(c) and section 137(4)(b) of the *LSA*) or any other regulatory authority to the same extent as it indemnifies the *insured* against civil liability provided that the *insurer* will have no liability in respect of any determination by the *Legal Ombudsman* pursuant to section 137(2)(b) of the *LSA* to refund any fees paid to the *insured*.

## 2 Limit of insurance cover

### 2.1 ~~Any~~ Sum insured for one claim

Subject to clause 2.2, the *sum insured* for any one *claim* (exclusive of *defence costs*) must be, ~~where the *insured firm* at least:~~

(a) £500,000; or

~~(a)(b) €1,120,200 (or such other amount as is a *relevant recognised body* or a *relevant licensed body* (in respect of the policy under the *Insurance Mediation Directive*), if and to the extent that any *claim* relates to the *insured's insurance mediation activities*), at least £3 million, and in all other cases, at least £2 million. — but not otherwise.~~

### 2.2 No limit on defence costs

There must be no monetary limit on the cover for *defence costs*.

### 2.3 Proportionate limit on defence costs

Notwithstanding clauses 2.1 and 2.2, the insurance may provide that liability for *defence costs* in relation to a *claim* which exceeds the *sum insured* is limited to the proportion that the *sum insured* bears to the total amount paid or payable to dispose of the *claim*.

### 2.4 No other limit

The insurance must not limit liability to any monetary amount (whether by way of an aggregate limit or otherwise) except as contemplated by clauses 2.1 and 2.3.

### 2.5 One claim

The insurance may provide that, when considering what may be regarded as one *claim* for the purposes of the limits contemplated by clauses 2.1 and 2.3:

- (a) all *claims* against any one or more *insured* arising from:
- (i) one act or omission;
  - (ii) one series of related acts or omissions;
  - (iii) the same act or omission in a series of related matters or transactions;
  - (iv) similar acts or omissions in a series of related matters or transactions

and

(b) all *claims* against one or more *insured* arising from one matter or transaction will be regarded as one *claim*.

## 2.6 Multiple underwriters

2.6.1 The insurance may be underwritten by more than one *insurer*, each of which must be a *participating insurer*, provided that the insurance may provide that the *insurer* shall be severally liable only for its respective proportion of liability in accordance with the terms of the insurance.

2.6.2 Where the insurance is underwritten jointly by more than one *insurer*:

(a) the insurance must state which *participating insurer* shall be the lead *insurer*, and

(b) in addition to any proportionate limit on *defence costs* in accordance with clause 2.32, the insurance may provide that each *insurer's* liability for *defence costs* is further limited to the extent or the proportion of that *insurer's* liability (if any) in relation to the relevant *claim*.

~~[Note: under clause 2.6 of the participating insurer's agreement, a policy may be issued on an excess of loss basis only in the layers set out in that clause.]~~

## 3 Excesses

### 3.1 The excess

The insurance may be subject to an excess of such monetary amount and on such terms as the *insurer* and the *insured firm* agree. Subject to clause 3.4, the excess may be 'self-insured' or partly or wholly insured without regard to these *MTC*.

### 3.2 No deductibles

The insurance must provide that the excess does not reduce the ~~limit of liability contemplated by~~ sum insured applicable in accordance with clause 2.1.

### 3.3 Excess not to apply to defence costs

The excess must not apply to *defence costs*.

### 3.4 Funding of the excess

The insurance must provide that, if an *insured* fails to pay to a *claimant* any amount which is within the excess within 30 days of it becoming due for payment, the *claimant* may give notice of the *insured's* default to the *insurer*, whereupon the *insurer* is liable to remedy the default on the *insured's* behalf. The insurance may provide that any amount paid by the *insurer* to remedy such a default erodes the *sum insured*.

### 3.5 One claim

The insurance may provide for multiple *claims* to be treated as one *claim* for the purposes of an excess contemplated by clause 3.1 on such terms as the *insured firm* and the *insurer* agree.

### ~~3.6 Excess layers~~

~~In the case of insurance written on an excess of loss basis, there shall be no excess except in relation to the primary layer.~~



## **4 Special conditions**

### **4.1 No avoidance or repudiation**

The insurance must provide that the *insurer* is not entitled to avoid or repudiate the insurance on any grounds whatsoever including, without limitation, non-disclosure or misrepresentation, whether fraudulent or not.

### **4.2 No adjustment or denial**

The insurance must provide that the *insurer* is not entitled to reduce or deny its liability under the insurance on any grounds whatsoever including, without limitation, any breach of any term or condition of the insurance, except to the extent that one of the exclusions contemplated by clause 6 applies.

### **4.3 No cancellation**

The insurance must provide that it cannot be cancelled except (in the case of (a), (b) or (c) below) by the agreement of both the *insured firm* and the *insurer*, and in any event only in circumstances where:

- (a) the *insured firm's practice* is merged into a *successor practice*, provided that there is insurance complying with these *MTC* in relation to that *successor practice*, in which case cancellation shall have effect no earlier than the date of such merger; or
- (b) replacement insurance, complying with the minimum terms and conditions in effect at its commencement, commences, in which case cancellation shall have effect no earlier than the date on which such replacement insurance commences; or
- (c) it subsequently transpires that the *insured firm* is not required under the *SIIR* to effect a *policy of qualifying insurance*, in which case cancellation shall have effect from the later of (a) the start of the relevant *policy period* and (b) the date on which the *insured firm* ceased to be required to effect a *policy of qualifying insurance*, or such later date as the *insured firm* and the *insurer* may agree.

Cancellation must not affect the rights and obligations of the parties accrued under the insurance prior to the date from which cancellation has effect.

### **4.4 No set-off**

The insurance must provide that any amount payable by the *insurer* to indemnify an *insured* against civil liability to a *claimant* will be paid only to the *claimant*, or at the *claimant's* direction, and that the *insurer* is not entitled to set-off against any such amount any payment due to it by any *insured* including, without limitation, any payment of premium or to reimburse the *insurer*.

### **4.5 No 'other insurance' provision**

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than: (i) as contemplated by clause 6.1; or (ii) where the *insured*, having entered the *extended indemnity period* or *cessation period*, obtains a *policy of qualifying insurance* that incepts from and with effect from the expiration of the *policy period*. For the avoidance of doubt and subject to the provisions of the *participating insurer's agreement*, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other insurer which is also liable to indemnify any *insured*.

### **4.6 No retroactive date**

The insurance must not exclude or limit the liability of the *insurer* in respect of *claims* arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to a specified date.

#### 4.7 Successor practice - 'double insurance'

The insurance may provide that, if the *insured firm's practice* is succeeded during the *period of insurance* and, as a result, a situation of 'double insurance' exists between two or more insurers of the *successor practice*, contribution between insurers is to be determined in accordance with the relative numbers of *principals* of the owners of the constituent *practices* immediately prior to succession.

#### 4.8 Advancement of defence costs

The insurance must provide that the *insurer* will meet *defence costs* as and when they are incurred, including *defence costs* incurred on behalf of an *insured* who is alleged to have committed or condoned dishonesty or a fraudulent act or omission, provided that the *insurer* is not liable for *defence costs* incurred on behalf of that *insured* after the earlier of:

- (a) that *insured* admitting to the *insurer* the commission or condoning of such dishonesty, act or omission; or
- (b) a court or other judicial body finding that that *insured* was in fact guilty of such dishonesty, act or omission.

#### 4.9 Resolution of disputes

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.6, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer.

#### 4.10 Conduct of a claim pending dispute resolution

The insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the *insurer* will, if so directed by the *Society*, conduct any *claim*, advance *defence costs* and, if appropriate, compromise and pay the *claim*. If the *Society* is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies; and
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the *insured's* favour; and
- (c) it is fair and equitable in all the circumstances for such direction to be given;

it may in its absolute discretion make such a direction.

#### 4.11 Variation for multi-year policies

The terms of the insurance must provide that the *insurer* shall vary the terms of the insurance to give effect to any variation to the *SRA Indemnity Insurance Rules*, the *Glossary* and/or the *MTC*, such variation to be implemented by the *insurer*.

(a) on the date of any renewal or replacement of the insurance or any extension to the *period of insurance* occurring in that *indemnity period*; or

(b) on each date falling in 18 month intervals from the commencement of the *policy period* where no variation has occurred by reason of clause 4.11(a) within the immediately preceding 18 month period,

save that no variation shall be required under 4.11(b) where the date on which variation would have been required is a date within the *extended indemnity period* or the *cessation period*.

#### ~~4.11~~ 4.12 Minimum terms and conditions to prevail

The insurance must provide that:

- (a) the insurance is to be construed or rectified so as to comply with the requirements of these *MTC*; (including any amendment pursuant to 4.11 above); and
- (b) any provision which is inconsistent with these *MTC* (including any amendment pursuant to 4.11 above) is to be severed or rectified to comply.

### 5 Extended indemnity period and run-off cover

#### 5.1 Extended indemnity period

The insurance must provide cover for the duration of the *extended indemnity period* where an *insured firm* has not, prior to the expiration of the *policy period*, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.

#### 5.2 Cessation period

The insurance must provide cover for the duration of the *cessation period* where an *insured firm* has not, prior to the expiration of the *extended indemnity period*, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.

#### 5.3 Scope of cover during the extended indemnity period and the cessation period

The cover to be provided in respect of the *extended indemnity period* referred to in clause 5.1 and the *cessation period* referred to in clause 5.2 must indemnify each *insured* in accordance with clauses 1.1 to 1.8 (but may be subject to the limits, exclusions and conditions of the insurance which are in accordance with the *MTC*).

#### 5.4 Run-off cover

The insurance must provide run-off cover:

- (a) ~~subject to clause 5.4(b)~~, in the event of a *cessation*. ~~For these that occurs during or on expiration of the *policy period*.~~
- (b) in the event of a *cessation* that occurs during the *extended indemnity period* or the *cessation period*; or
- (c) from the expiration of the *cessation period*.

and for the purposes of this clause 5.4, an *insured firm's practice* shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the *insured firm* becomes a *non-SRA firm*; ~~and~~.

- ~~(a) with effect from the commencement of the *extended indemnity period* in the event that the *insured firm* has not, on or before the expiration of the *cessation period* referred to in clause 5.2, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.~~

#### 5.5 Scope of run-off cover

The run-off cover referred to in clause 5.4 must:

- (a) indemnify each insured in accordance with clauses 1.1 to 1.8 ~~(but may~~;

(b) provide a minimum level of insurance cover in accordance with clause 2.1 and 2.3;

(c) be subject to the ~~limits,~~ exclusions and conditions of the insurance ~~which are~~ applicable in accordance with the MTC ~~on the basis that;~~ and

(d) extend the ~~period of insurance extends~~ for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement, it would have ended, and for the avoidance of doubt, including the ~~extended indemnity period and cessation period~~), save that in respect of run-off cover provided under clause 5.4(c), such run-off cover shall not operate to indemnify any insured for civil liability arising from acts or omissions of such insured occurring after the expiration of the cessation period.

## 5.6 Succession

The insurance must provide that, if there is a *successor practice* to the ceased *practice*, the *insured firm* may elect before its *cessation*, whether it wishes the ceased *practice*:

- (a) to be insured under the run-off cover referred to in clause 5.4(a); or
- (b) provided that there is insurance complying with these *MTC* in relation to that *successor practice*, to be insured as a *prior practice* under such insurance.

If the *insured firm* fails to make an election and/or fails to pay any premium due under the terms of the *policy*, before its *cessation*, clause 5.6(b) ~~above~~ shall apply.

The insurance must also provide that where an *insured firm* makes an election pursuant to this clause 5.6, the *insurer* shall give notice to the *Society* in writing of the election not later than seven days following the receipt by the *insurer* of the *insured firm's* election and that election has become effective and the *insured firm* shall irrevocably consent to that notification.

## 5.7 Suspended practices

The insurance must provide that, where run-off cover has been activated in accordance with this clause 5, but where the *insured firm's practice* restarts, the *insurer* may (but shall not be obliged to) cancel such run-off cover, on such terms as may be agreed, provided that:

- (a) there is insurance complying with these *MTC* in relation to that *insured firm* in force on the date of cancellation;
- (b) the *participating insurer* providing such insurance confirms in writing to the *insured firm* and the *insurer* (if different) that:
  - (i) it is providing insurance complying with these *MTC* in relation to that *insured firm* for the then current *indemnity period*; and
  - (ii) it is doing so on the basis that the *insured firm's practice* is regarded as being a continuation of the *insured firm's practice* prior to *cessation* and that accordingly it is liable for *claims* against the *insured firm* arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to *cessation*.

## 6 Exclusions

The insurance must not exclude or limit the liability of the *insurer* except to the extent that any *claim* or related *defence costs* arise from the matters set out in this clause 6.

**6.1 Prior cover**

Any *claim* in respect of which the *insured* is entitled to be indemnified by the *SIF* or under a professional indemnity insurance contract for a period earlier than the *period of insurance*, whether by reason of notification of *circumstances* to *SIF* or under the earlier contract or otherwise.

**6.2 Death or bodily injury**

Any liability of any *insured* for causing or contributing to death or bodily injury, except that the insurance must nonetheless cover liability for psychological injury or emotional distress which arises from a breach of duty in the performance of (or failure to perform) legal work.

**6.3 Property damage**

Any liability of any *insured* for causing or contributing to damage to, or destruction or physical loss of, any property (other than property in the care, custody or control of any *insured* in connection with the *insured firm's practice* and not occupied or used in the course of the *insured firm's practice*), except that the insurance must nonetheless cover liability for such damage, destruction or loss which arises from breach of duty in the performance of (or failure to perform) legal work.

**6.4 Partnership disputes**

Any actual or alleged breach of the *insured firm's partnership* or shareholder agreement or arrangements, including any equivalent agreement or arrangement where the *insured firm* is an *LLP* or a company without a share capital.

**6.5 Employment breaches, discrimination, etc.**

Wrongful dismissal, repudiation or breach of an employment contract or arrangement, termination of a training contract, harassment, discrimination or like conduct in relation to any *partnership* or shareholder agreement or arrangement or the equivalent where the *insured firm* is an *LLP* or a company without a share capital, or in relation to any employment or training agreement or arrangement.

**6.6 Debts and trading liabilities**

Any:

- (a) trading or personal debt of any *insured*; or
- (b) legal liability assumed or accepted by an *insured* or an *insured firm* under any contract or agreement for the supply to, or use by, the *insured* or *insured firm* of goods or services in the course of the *insured firm's practice*, save that this exclusion 6.6(b) will not apply to any legal liability arising in the course of an *insured firm's practice* in connection with its or any *insured's* use of or access to the HM Land Registry network (including, without limitation, access under a Network Access Agreement made under the Land Registration (Network Access) Rules and the Land Registration (Electronic Communications) Order 2007) other than an obligation to pay search fees or other charges for searches or services provided by HM Land Registry to the *insured firm*; or
- (c) guarantee, indemnity or undertaking by any particular *insured* in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that *insured*.

**6.7 Fines, penalties, etc**

Any:

- (a) fine or penalty; or

- (b) award of punitive, exemplary or like damages under the law of the United States of America or Canada, other than in respect of defamation; or
- (c) order or agreement to pay the costs of a complainant, regulator, investigator or prosecutor of any professional conduct complaint against, or investigation into the professional conduct of, any *insured*.

#### **6.8 Fraud or dishonesty**

The insurance may exclude liability of the *insurer* to indemnify any particular *person* to the extent that any civil liability or related *defence costs* arise from dishonesty or a fraudulent act or omission committed or condoned by that *person*, except that:

- (a) the insurance must nonetheless cover each other *insured*; and
- (b) the insurance must provide that no dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an *LLP*, all members of that *LLP*.

#### **6.9 Directors' or officers' liability**

The insurance may exclude liability of the *insurer* to indemnify any natural person in their capacity as a director or officer of a body corporate (other than a *recognised body, licensed body* (in respect of its *regulated activities*) or a service, administration, trustee or nominee company referred to in clauses 1.3(b), 1.5(b) or 1.7(b)) except that:

- (a) the insurance must nonetheless cover any liability of that *person* which arises from a breach of duty in the performance of (or failure to perform) legal work; and
- (b) the insurance must nonetheless cover each other *insured* against any vicarious or joint liability.

#### **6.10 War and terrorism, and asbestos**

The insurance may exclude, by way of an exclusion or endorsement, liability of the *insurer* to indemnify any *insured* in respect of, or in any way in connection with:

- (a) terrorism, war or other hostilities; and/or
- (b) asbestos, or any actual or alleged asbestos-related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos,

provided that any such exclusion or endorsement does not exclude or limit any liability of the *insurer* to indemnify any *insured* against civil liability or related *defence costs* arising from any actual or alleged breach of duty in the performance of (or failure to perform) legal work or failure to discharge or fulfil any duty incidental to the *insured firm's practice* or to the conduct of *private legal practice*.

#### **6.11 International trade sanctions**

The *insurer* shall be deemed not to provide cover and shall not be liable to pay any *claim* or provide any benefit under the insurance to the extent that the provision of such cover, payment of such *claim* or provision of such benefit would expose the *insurer* to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

## 7 General conditions

### 7.1 As agreed

The insurance may contain such general conditions as are agreed between the *insurer* and the *insured firm*, but the insurance must provide that the special conditions required by clause 4 prevail to the extent of any inconsistency.

### 7.2 Reimbursement

The insurance may provide that each *insured* who:

- (a) committed or condoned (whether knowingly or recklessly):
  - (i) non-disclosure or misrepresentation; or
  - (ii) any breach of the terms or conditions of the insurance; or
  - (iii) dishonesty or any fraudulent act or omission; or
- (b) undertakes, either itself or by any of its principals, employees, consultants or agents or any person on its behalf, any activity during the *cessation period* in connection with *private legal practice* save to the extent that the activity is undertaken to discharge any of its obligations within the scope of its *existing instructions* or is necessary in connection with the discharge of any such obligation,

will reimburse the *insurer* to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by such non-disclosure, misrepresentation, breach, dishonesty, act or omission, provided that no *insured* shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of the insurance was in order to comply with any applicable rules or codes laid down from time to time by the *Society*, or in the *Society* publication *Your Clients - Your Business*, as amended from time to time.

The insurance must provide that no non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an *LLP*, all members of that *LLP*. The insurance must provide further that any right of reimbursement contemplated by this clause 7.2 against any *person* referred to in clauses 1.3(d), 1.5(d) or 1.7(d) (or against the estate or legal personal representative of any such *person* if they die or become legally incapacitated) is limited to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by that *person* having committed or condoned (whether knowingly or recklessly) the non-disclosure, misrepresentation, breach, dishonesty, act or omission.

### 7.3 Reimbursement of defence costs

The insurance may provide that each *insured* will reimburse the *insurer* for *defence costs* advanced on that *insured's* behalf which the *insurer* is not ultimately liable to pay.

### 7.4 Reimbursement of the excess

The insurance may provide for those *persons* who are at any time during the *period of insurance principals* of the *insured firm*, together with, in relation to a *sole practitioner*, any *person* held out as a *partner* of that practitioner, to reimburse the *insurer* for any *excess* paid by the *insurer* on an *insured's* behalf. The *sum insured* must be reinstated to the extent of reimbursement of any amount which eroded it as contemplated by clause 3.4.

**7.5 Reimbursement of moneys paid pending dispute resolution**

The insurance may provide that each *insured* will reimburse the *insurer* following resolution of any coverage dispute for any amount paid by the *insurer* on that *insured's* behalf which, on the basis of the resolution of the dispute, the *insurer* is not ultimately liable to pay.

**7.6 Withholding assets or entitlements**

The insurance may require the *insured firm* to account to the *insurer* for any asset or entitlement of any *person* who committed or condoned any dishonesty or fraudulent act or omission, provided that the *insured firm* is legally entitled to withhold that asset or entitlement from that *person*.

**7.7 Premium**

The premium may be calculated on such basis as the *insurer* determines and the *insured firm* accepts including, without limitation, a basis which recognises *claims* history, categories of work performed by the *insured firm*, numbers of *principals* and *employees*, revenue derived from the *insured firm's practice* and other risk factors determined by the *insurer*.

**8 Definitions and interpretation**

8.1 The SRA Handbook Glossary 2012 (the **Glossary**) shall apply and, unless the context otherwise requires:

- (a) all italicised terms shall be defined in accordance with the Glossary;
- (b) terms shall be interpreted in accordance with the Glossary;
- (c) references to the *Society* include the *SRA* and any body or *person* which succeeds in whole or in part to the functions of the *Society* or the *SRA* and any delegate of the *Society*, the *SRA* or any such body or *person*; and
- (d) a reference to a director includes a member of an *LLP*.

8.2 These *MTC* shall be, and the insurance shall be expressed to be, governed by and interpreted in accordance with English law.



**APPENDIX 2 [Deleted]**

## Appendix 3

### Special provisions for RELs

1 If:

- (a) one or more of the *principals* of an *insured firm* are *RELs* who claim that professional indemnity insurance, or a professional indemnity fund, under their home professional rules provides the *insured firm's practice* with professional indemnity cover in all respects equivalent in its conditions and extent to that which would be provided under the *MTC (Full Home State Cover)*; and
- (b) the *Council* is so satisfied, (including, without limitation, by reason of any provider of the Full Home State Cover entering into such agreement as the *Council* may require from time to time but provided that the *Council* shall not be so satisfied if more than 25% of the *principals* are *solicitors*),

the *insured firm* and its *principals* shall for so long as such cover continues (and, where the *Council* has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Full Home State Cover that are party to it) be exempted from the obligation to take out and maintain *qualifying insurance*.

2 If on an application by one or more *RELs* who are *principals* in an *insured firm*, the *Council* is satisfied that the *insured firm's practice* has professional indemnity cover under home professional rules but that the equivalence is only partial (**Partial Home State Cover**) (including, without limitation, by reason of the provider of the Partial Home State Cover entering into such agreement as the *Council* may require from time to time), the *insured firm* and its *principals* shall for so long as such cover continues (and, where the *Council* has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Partial Home State Cover that are party to it) be exempted from the obligation to take out and maintain *qualifying insurance*, on condition that they take out and maintain a *difference in conditions policy*, which shall provide cover including the *MTC* as modified by the following changes (but not otherwise):

- (a) Clause 4.5 shall be deleted and replaced with the following:

#### 4.5 No 'other insurance' provision

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than as contemplated by clauses 6.2 or 6.12. For the avoidance of doubt, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other *insurer* which is also liable to indemnify any *insured*.

- (b) Clause 4.9 shall be deleted and replaced with the following:

#### 4.9 Resolution of disputes

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.6, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer, and in conjunction with the provider of the Partial Home State Cover.

- (c) Clause 4.10 shall be deleted and replaced with the following:

**4.10 Conduct of a claim pending dispute resolution**

The insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the *insurer* will, if so directed by the *Society*, conduct any *claim*, advance *defence costs* and, if appropriate, compromise and pay the *claim* (whether alone or in conjunction with the provider of the Partial Home State Cover). If the *Society* is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies; and
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the *insured's* favour; and
- (c) it is fair and equitable in all the circumstances for such direction to be given;

it may in its absolute discretion make such a direction.

- (d) Clause 4.12 shall be added:

**4.12 Period of insurance**

The *period of insurance* must not expire prior to the date with effect on which the Partial Home State Cover expires or is avoided.

- (e) The following clause shall be added:

**6.11 Partial Home State Cover**

The insurance may exclude any liability of the *insurer* to the extent that any such liability is covered under the terms of the Partial Home State Cover irrespective of whether recovery is actually made in respect of such liability.

and in these Rules the following definition shall be added:

**Partial Home State Cover** has the meaning given in Appendix 3 to the SRA Indemnity Insurance Rules 2013~~4~~.

- 3 In the event of an *insured firm* which has the benefit of an exemption under paragraph 1 or paragraph 2 of this Appendix ceasing for whatever reason to enjoy that exemption but continuing to carry on a *practice* it shall be treated for all the purposes of these Rules as though it had commenced the *practice* on the date when such exemption ceased.
- 4 Rule 6 (Insolvency Event) shall apply to an *insured firm* which has the benefit of an exemption under paragraph 1 or paragraph 2 of this Appendix in like manner as though the insurance company or entity or fund providing professional indemnity cover under its home professional rules, on the basis of which exemption or partial exemption was granted, was a *participating insurer*.
- 5 In the case of an *insured firm* which has the benefit of an exemption under paragraph 2 of this Appendix all the provisions of these Rules shall apply to the additional professional indemnity insurance required under that paragraph to be taken out with a *participating insurer*.

**APPENDIX 4 [Deleted]**



## Draft SRA Amendments to Regulatory Arrangements (Miscellaneous No.1) Rules [2014]

### Preamble

Rules dated [date of approval by LSB] made by the Solicitors Regulation Authority Board under sections 31, 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and section 83 of, and paragraph 19 of Schedule 11 to, the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

### Rule 1

The SRA Code of Conduct 2011 shall be amended as follows:

- (a) in outcome O(7.12), after “*connected practices*” replace “.” with “;”;
- (b) after outcome O(7.12), insert a new outcome O(7.13) as follows:
 

“**O(7.13)** you assess and purchase the level of professional indemnity insurance cover that is appropriate for your current and past practice, taking into account potential levels of claim by your clients and others and any alternative arrangements you or your client may make.”.

### Rule 2

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) in the definition of “**authorised insurer**” replace “IV” with “4A”;
- (b) replace the definition of “**cessation**” with:

“**cessation**

means where the *insured firm’s practice* ceases during the *period of insurance* or after the *period of insurance* in circumstances where the *insured firm* has not obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.”;

- (c) after the definition of “**insurance mediation activity**” insert:

“**Insurance Mediation Directive**



means the European Parliament and Council Directive of 9 December 2002 on insurance mediation (2002/92/EC), as amended from time to time.”;

- (d) replace the definition of “**qualifying insurance**” with:

**“qualifying insurance**

means a *policy* that provides professional indemnity insurance cover in accordance with the *MTC* but only to the extent required by the *MTC*.”;

- (e) delete the definitions of “**relevant licensed body**”, “**relevant recognised body**” and “**run-off firm**”;

- (f) in the definition of “SIIR”, replace “2012” with “2013”;

- (g) in the definition of “**SRA Indemnity Insurance Rules**” replace “2013” with “2014”;

- (h) replace the definition of “**sum insured**” with:

**“sum insured**

means the *insurer’s* limit of liability under a *policy* in respect of any one *claim* (exclusive of *defence costs*).”; and

- (i) in the definition of “**transaction**”, delete “in the *SRA Financial Services (Scope) Rules*”

### Rule 3

These amendment rules shall come into force on 1 October 2014.

## Summary Report

### Changes to minimum compulsory professional indemnity cover

#### 1. Introduction

- 1.1. On 7 May 2014 we issued a consultation paper seeking views on a range of proposals to change the level of compulsory indemnity insurance cover. These were designed to ensure that regulation is proportionate and targeted, and to reduce costs for legal services providers and consumers.
- 1.2. The consultation closed on 18 June 2014 and this report summarises the key points emerging from the responses, and the SRA's position as a consequence.
- 1.3. A summary by number of the answers to the questions posed is at **Appendix 1**. A breakdown of the composition of respondents and a list of those respondents who consent to their details being publicised is at **Appendix 2**.

#### 2. Overview and next steps

- 2.1. The proposals are to:
  - (i) Reduce the level of mandatory cover to £500,000;
  - (ii) Introduce an aggregate limit on claims;
  - (iii) Restrict the compulsory cover to individuals, micro-enterprises, trusts and charities to £2m;
  - (iv) Reduce run-off cover to a minimum of three years;
  - (v) Require firms to assess the appropriate level of cover beyond the minimum.
- 2.2. There are 142 responses to this consultation. This is one of the highest response rates in recent years and has prompted great debate from a wide spectrum of stakeholders. Many of the respondents provide detailed responses to the consultation document, with a clear indication of disagreement for the proposed changes. Others do see the proposals as positive. However, a key theme of dissent is criticism of the timing, the perceived haste and the lack of an impact assessment. Other common themes are the potential for disproportionate negative impacts on small firms and on lender panels, the risk of reduction to cover without lowering premiums, and the potential loss of clarity and client protection.
- 2.3. The Law Society is strongly opposed to the proposals in principle. It does accept that there are elements that will benefit from reform. However it feels that a rushed timetable for decision and implementation will lead to chaos in the market and significant damage to consumer protection. It states that the



proposals require reconsideration and support by proper evidence and full impact assessments.

- 2.4. Those that supported proposals came from a number of sectors. Some were individual practitioners. The Law Centres Federation felt that they were an important part of a move to more proportionate regulation for 'low risk' providers and ensuring that any protection is focussed on the most vulnerable clients. QBE, the insurance provider with the largest market share for solicitor's Professional indemnity Insurance (PII), supported the proposals as a step towards a better balance between consumer interests, the commercial interests of providers and the need for a vibrant insurers market.
- 2.5. We have listened carefully to the consultation responses. We remain concerned that the level of insurance premiums drives costs for firms in ways that may make it more difficult to compete. This is particularly the case for small firms – the Law Society's 2013-4 survey stated that 'the cost of premiums remains by far the most important factor in decisions about which insurer to use for nearly all firms. A higher proportion of sole practitioners gave cost as the most important factor in their decision'. The survey also confirmed that, although the differential had fallen, sole practitioners paid a higher percentage of their income in premiums than other firms.
- 2.6. High costs of regulation also restrict access for clients. There is a body of research that shows that clients struggle to access legal services –including small businesses, clients that are not eligible for legal aid and cannot afford a lawyer on their own account. A fair regulatory system needs to balance protection of those clients that can access services with extension of that access. If a regulatory system that is designed so that no client ever loses out will operate at an unjustifiable and unsustainable cost.
- 2.7. The timing of the consultation was motivated by our desire to assist practitioners and insurers in negotiating less rigid terms and lower premiums for the 2014 renewal process, which for most firms will be in October. Although a common theme of those against the proposals has been that they will not reduce premiums, the advice we have obtained is that the reduction of the minimum limit per claim should reduce premiums by between 5 -15%. Some have suggested there will cost increases as a result of the proposals and some have suggested higher savings might be realised.
- 2.8. In our consultation we stated that a final impact assessment would be prepared as part of the decision making process and invited applicants to submit data as part of their responses. We have also gathered data during the consultation period, and are confident from our assessment of the likely impacts that it is right to proceed with the following proposals for October 2014:
  - The reduction of the level of compulsory cover to £500,000.
  - A revised outcome in the Code to assess and purchase an appropriate level of insurance cover.



- 2.9. Although we remain confident that there are merits in the other proposals put forward, and there has been some measure of support for them, we have listened to concerns about the need to further assess impacts on the market and do not intend to introduce them for October 2014. A delay will provide:
- Further time to gather data, consider impacts and engage with stakeholders to help ensure that the introduction of these measures occurs in a way that allows the market to react appropriately.
  - An opportunity to consider the proposals in the round with a number of other ideas for changes to the MTC to benefit providers and consumers that have been put forward in response to this consultation.
  - The ability to combine further changes to the MTC with a wider review of the Compensation Fund arrangements.

### Next Steps

- 2.10. We will seek the approval of the LSB to the rule changes to introduce the reduction in the compulsory indemnity cover to per claim to £500,000 and the revised SRA Code of Conduct Outcome from **1 October 2014**.
- 2.11. In **July 2014** we will launch a wide ranging call for evidence in relation to the PII Market.
- 2.12. By the **end of 2014**, we will issue a consultation paper inviting further views in relation to the delayed proposals and other proposals for changes to the MTC. These other proposals might include consideration of provision of run off cover when the premium is not paid; provision of cover for fraud by partners; cover when negligent or wilful misrepresentation on proposal forms; and how defence costs are covered. This will be accompanied by a consultation paper on the future of the Compensation Fund.
- 2.13. We will announce the results of this consultation in **April 2015**, with implementation of changes on **1 October 2015**.

## 3. The Responses

### Question 1: Do you agree with reducing the compulsory cover to £500,000?

- 3.1. 34 respondents agree and 92 disagree. The remainder are unsure, unclear or unequivocal at this stage.
- 3.2. This question generates much of the discussion and the largest division between support and opposition.
- 3.3. The Law Society does not agree with the proposal. It is concerned that it will distort, and potentially detrimentally effect, consumer protection and the legal



services market. The proposal fails to take into account house price inflation; risks increased premiums for less cover, and unpaid defence costs. It will impact particularly on smaller firms: lender panels will move towards using licensed conveyancers instead of solicitors; loss of charity and trust work; and a threat to work requiring undertakings. This erosion will reduce choice for consumers and contribute adversely to the viability of small firms' presence on the High Street, a significant number of which are BAME firms, in turn risking the diversity of the profession. Additionally, unrated insurers with an unsustainable business model may enter the market MTC cover at an unsustainably low premium.

- 3.4. Supporters of this proposal believe the current level of compulsory cover is disproportionate for small and new firms and restricts competition. Part time or very small firms do not need such a high level of cover and for many small practices £500,000 will be adequate. One firm commented that when they moved from sole practice to limited company, their insurer raised their premium, 'not because we were higher risk but simply because the rules required us to have 3m cover instead of 2m'. Some advocate reducing the level further, allowing consumers who want to benefit from a high level of insurance to pay extra for it, or for PII to be offered on an "a la carte basis", or for it to be wholly optional. One respondent agreed with the proposal but suggested a higher limit where firms hold client money.
- 3.5. Others did not object to the proposal, but indicated that they did not feel that it would make savings. For example, one of the participating insurers stated "There will be a selection of firms whereby a limit of £500,000 is adequate - criminal law firms, low-end employment firms, matrimonial law firms, etc, etc - however the limit will be driven by what the lenders require, if the firm wishes to carry out conveyancing". Other suggestions include requiring firms to state their insurance limit on paperwork or permitting clients to "contract out".
- 3.6. Whilst there is much support for the proposal, the majority of the comments are from those who oppose the idea. These include the general points made about timing and impact referred to above, but also include:
  - The proposed limit is too low and will leave firms and clients exposed to uninsured claims resulting in inadequate protection and reputational risks. Average property prices in London are already close to £500,000. Scepticism that this proposal will reduce premiums. The average claim falls within £500,000 and so is already priced within that level. There is the risk of reduced cover at the same, or even, an increased premium cost. Additional cover may be expensive and hard to obtain, especially for smaller firms. The only types of firm that are likely to be able to purchase such a low limit with confidence are firms engaged solely in criminal and immigration work. Such firms already pay very low premiums in any event. The Sole Practitioners Group, for example, felt that the advantages of any small reduction in premium would be outweighed by the problems of not having sufficient cover.



- It will create disparity, confusion and risk for firms as well as for clients.
- Confusion as to involvement of the Compensation Fund to meet any "shortfall" where claims are outside the cover and how clients are otherwise to be protected.
- Alarm about the impact on undertakings and the conveyancing process.
- Lenders will restrict further their conveyancing panels with particular impact on many market town small firms. This will distort the conveyancing market towards a predominant use of other conveyancers such as Licensed Conveyancers whose master policy will better suit lenders' requirements. This is anti-competitive.
- Insurers will benefit from this proposal, the profession and clients will not.

3.7. The Legal Ombudsman opposed the £500,000 limit, but stated that 'we believe there should be a minimum level of compulsory cover, but consider that the amount of cover should vary depending on the size, nature and value of the work undertaken by a particular firm.' The Legal Services Board Consumer Panel felt that there was not enough evidence of consumer benefit to support the move.

### **SRA response**

3.8. The SRA's position on this issue is that the current minimum level of cover of £2 million any one claim (£3 million for LLPs and limited companies) exceeds the needs of many small firms and their clients. The proposed minimum level of cover of £500,000 for all firms will provide a more appropriate minimum for the smallest firms. However, this proposal is coupled with the proposed introduction of a new outcome in the Handbook that will require firms to assess and purchase the level of cover that is appropriate for the firm and its clients.

3.9. The two proposals together will provide proportionate and targeted protection to firms and their client and will mean that firms will not be required to pay for cover that they and their clients do not need. There are a variety of factors impacting on the price of professional indemnity insurance so it is difficult to isolate the impact on price of one particular factor. Based on the proposed reduction in the minimum sum insured, Marsh UK have advised the SRA that they anticipate premium savings will range from 5% to 15% although they are more likely to be at the lower end of the range. QBE who have the largest share in the market stated in their response that in their estimation the reduction to a limit of £500,000 'would likely result in premium reductions of no more than circa 15% at best.' Others respondents suggested premiums would not fall.

3.10. Nevertheless we do not consider that as an initial step in reforming the market such a price reduction is insignificant, especially for a small firm. Overall prices will be driven partly by competition, and if one insurer offers reductions others will follow or lose market share. We accept that we will need to go further in

reforming the market to further increase competitiveness. However decreasing regulatory burden whilst increasing access to justice for consumers is not a question of taking one step – it will take a series of incremental reforms across a range of areas and this policy change needs to be seen in that context.

- 3.11. We received a lot of general comments on the large number of claims that may exceed £500,000. However one large insurer told us that they have had significantly under 200 claims over that amount in all categories over the last 15 years.
- 3.12. Many of the comments focussed on conveyancing in particular. Reference has been made to average house prices particularly in London, and that the growth of prices has meant either that all firms doing conveyancing will need to purchase cover significantly in excess of £500,000 or that large numbers of clients will lose out if they do not. The average house price in England and Wales is £169,500 and in London it is £417,500<sup>1</sup>. An analysis of claims data from the Solicitors Indemnity Fund (SIF) over a five year period prior to 2000 indicates that only 0.22% of conveyancing transactions result in a claim. The average value of settled claims expressed as a percentage of average house prices over the five years was 41.4% (-although this percentage was falling as house prices increased). Allowing for the increase in house prices and applying the SIF pattern of conveyancing claims by value we estimate that over 99.99% of conveyancing negligence claims would fall with the £500,000 limit.
- 3.13. Regarding conveyancing panels, a number of large lenders have stated to us that they remain committed to maintaining a large panel of firms regardless of these proposals. We believe that the decision not to proceed this year with the other proposals, including those to restrict the scope of the MTC to individual clients and small enterprises will provide more scope for these issues to be considered.
- 3.14. The responses of a number of practitioners that do not agree with the proposal focus on the fact they consider that they will need higher cover for their firm. However it is important to remember that the limit is a minimum, not a maximum and it is right that firms will continue to purchase a level that meets their own and consumer's needs. We have considered the issue of the cost to firms of 'additional' cover over the £500,000 and the likelihood of this being on different terms from the MTC. Our discussions have indicated that there is no reason to believe that a firm seeking renewal with its existing insurer and that wishes to continue to purchase cover up to the previous maximum will lose out as a result of this change. It is anticipated that insurers competing for a firm's business will offer cover based on the existing MTC, assuming it satisfies the insurers underwriting criteria.

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<sup>1</sup> <http://www.landregistry.gov.uk/public/information/public-data/hpi-background>

- 3.15. Reaction from the market will vary – for example one large insurer indicated in their response that they will be unlikely to offer coverage under £1m. However this will be the first time that insurers will be able to compete on coverage terms given the new limit, and we will need to monitor the market and ensure the next stage of reforms takes into account any developments
- 3.16. We discuss the impact of the proposal on small firms and consumers in more detail in our impact statement. We believe that the measure may benefit small firms by providing them with greater flexibility of cover. Further, given the level of minimum insurance cover that will remain, and the duty on firms to arrange cover that is appropriate- we do not consider that the change will adversely impact on vulnerable consumers.,
- 3.17. Concern has been expressed at the potential impact on the Compensation Fund. If a professional indemnity claim is not met by a firm's professional indemnity cover then it will not fall to the compensation fund to deal with under the uninsured claim provisions. Grants under rule 5 of the SRA Compensation Fund Rules are made only in circumstances where a firm does not have in place any policy of qualifying insurance. However there is the potential for the Fund to be exposed to a higher pay-out if a firm with a minimum cover of £500,000 dishonestly appropriates client money leading to a claim above that amount. However, the MTC do not provide cover to principals involved in the fraud or dishonesty. Therefore sole practitioner claims involving fraud and dishonesty on the part of the sole practitioner are already picked up by the Compensation Fund so the proposal will not affect that position. Second, failure to account claims on the Compensation Fund are subject to the hardship test so not all claims that are part paid by professional indemnity insurance will be eligible to be topped up by the Compensation Fund. Finally, the Compensation Fund is discretionary.
- 3.18. We also carefully considered the Consumer Panel response as one of the few consumer voices to be heard. Mindful of their openness to the challenge of balancing access and consumer protection we have sought to build a stronger evidence base to inform and support a final decision. We also take into account the way that the Consumer Panel has itself balanced access and consumer protection in calling for a greater recognition of fee charging McKenzie friends as a legitimate feature of an evolving legal services market. In its report,<sup>2</sup> the Consumer Panel falls far short of calling for any compulsory PII insurance for fee charging McKenzie friends and states “Since affordability is the main reason why litigants choose to use a McKenzie friend, regulation could reduce access to justice.” It is exactly this balance that we are seeking to strike in these proposals.

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[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/2014%2004%2017%20MKF\\_Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2014%2004%2017%20MKF_Final.pdf)



3.19. One other factor we considered was recent LSB decisions where it exercises oversight in regard to the regulatory arrangements of other Approved Regulators. In particular we consider the decision of the LSB on the ICAEW application to become an approved regulator and Licensing Authority for probate activities to be relevant.<sup>3</sup> In this decision the ICAEW PII levels of a minimum of £500000, with ICAEW suggesting in its guidance that firms obtain more where appropriate, were approved by the LSB.

**Question 2: Do you agree with introducing a cap on insurers' liability?**

3.20. A majority of respondents disagreed with this proposal, although there was a significant minority in favour.. The remainder are unsure or have not replied.

3.21. The Law Society does not support this proposal. It is troubled by the absence of an identified appropriate monetary cap level, and the impact of the "claims made" basis of PII. Also it is concerned how consumers will be able to judge the sufficiency of a firm's insurance. While this may cap an insurer's exposure, it is not clear how often this will make a difference in practice or whether that difference can be passed on in lower premiums. There is anxiety for smaller firms as astute consumers will take their future business to larger firms where there might be more confidence of sufficiency of cover and greater level of protection.

3.22. Other responses shift between believing a cap may encourage more insurers into the market, to it being a risky move leading to confusion and lack of cover in some cases. Some feel it will allow insurers greater flexibility to structure the appropriate cover for each firm and so may result in reduced premiums. Others are concerned the proposal will add indirectly to the cost of insurance overall for firms and so clients. There is much confusion as to the operation of any cap and how the true cover will be known. It is stated that no form of aggregation language has been outlined in the proposal, and there is much concern about the legal implications of tinkering with such a complex issue in haste. Some respondents commented that much more legal, actuarial and general process support work is necessary to support such a proposal. Many are concerned too that this will lead to increased pressure on the smaller end of the market as financial institutions will not accept a move to aggregate limit.

3.23. Those that supported the cap generally felt that the current system of unlimited sideways exposure was an important factor in restricting entrants to the current PII market.

**SRA response**

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<sup>3</sup>

[http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/20131211\\_decision\\_notice\\_ICAEW.pdf](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/20131211_decision_notice_ICAEW.pdf)



- 3.24. The SRA's position is that currently insurers have unlimited sideways exposure to claims which may act as a barrier to new entrants. The introduction of a cap can make the market more attractive to new entrants and depending where the cap is set could put downward pressure on premiums in the longer term. However, there are implications for consumers of legal services as a cap introduces uncertainty as to whether there will be any cover available should a claim be made. The degree of uncertainty will depend on where the cap is set.
- 3.25. Whilst we are still of the view that a cap has a role to play we accept that further work needs to be done to fully assess the impact of caps at varying levels. For this reason we propose that the introduction be deferred to allow further consideration of the proposal as part of the wider review of the minimum terms and conditions of compulsory professional indemnity insurance.

**Question 3: Do you think any such cap should be £1,500,000, £5,000,000 or another figure?**

- 3.26. If a cap were to be introduced, the opinion of those that responded to the question was roughly evenly divided on the level that should be set. Many respondents however indicated, as above, that they did not support the idea of a cap at all.
- 3.27. As before, the Law Society does not support the proposal which it feels is fundamentally flawed placing both consumers and firms at an "intolerable level" of risk. It believes the current "any one claim" wording should remain.
- 3.28. Suggestions range from a cap of £50,000, through to whatever a firm chooses. Ideas include basing it on the size of the firm and the type of work, the fee-earner and the turnover of a firm, with larger firms having higher limits. On the other hand, there are many reservations: that a low cap is inadequate if there is a number of claims; about the potential for impact on undertakings; and the possibility that for some firms cover may be exhausted early in the policy period. There were concerns about lack of clarity for consumers, even where firms have stated what their cover is - both as to when the limit is reached and how the cap is to be applied.

**SRA response**

- 3.29. The SRA's position on this issue is as stated in response to question 2.

**Question 4: Do you agree that the introduction of a cap should be balanced by reducing the opportunity for claims to be added together to treat them as "one claim"?**

- 3.30. Opinion was evenly divided for those respondents that replied to this question.



- 3.31. The Law Society does not support the proposal, believing that the disadvantages of a cap will not be balanced by any advantages from changing the definition of a claim.
- 3.32. The main concern of respondents that were opposed was that aggregation clauses are the most difficult and contentious clauses in PII insurance and even the best drafted clauses are open to dispute. It was said that as the current aggregation clause reflects the legal position and has been adopted by many markets, it is unclear why such a clause would be tampered with at this time. Other concerns include the additional financial impact on firms given the potential for an excess to be applied to each claim where it is not "one claim". There is disquiet over the interpretation of "one claim" or "one series of related acts" in what is a highly legal subject, and that change through the mode of this consultation is inappropriate. Some thought it unlikely that insurers will accept such an introduction, leading to a reduction in insurer numbers or increased premiums.
- 3.33. Comments from those that supported the claim included that this was a necessary corollary to an aggregate limit. A number of respondents felt that greater certainty in the definition of 'a claim' was desirable.

#### **SRA response**

- 3.34. The SRA's position on this issue is that this proposal is linked to introduction of a cap and any change should be considered as part of the wider review of the minimum terms and conditions of compulsory professional indemnity insurance.

#### **Question 5: Do you agree with limiting the compulsory cover requirements to individuals, small enterprises, charities and trusts?**

- 3.35. A majority of respondents disagreed, with a substantial minority agreeing..
- 3.36. The Law Society does not support the proposal. It stated that there seems to be the expectation that a firm will be able to assess the value of a client's turnover at some given time. They feel it is naïve to assume that large financial institutions will not require firms to hold such cover and that this cover is crucial to ensuring a wide and a diverse range of legal services suppliers. The Law Society sees no savings from this proposal.
- 3.37. Comments from respondents opposed include:
- Lack of clarity and confusion for consumers as well as firms. This proposal does not protect the interests of consumers;
  - Alarm about the definition of "individuals" and of "small and medium enterprises", as well as for the beneficiaries of trusts;





- Anti-competition issues as small firms may lose attraction for commercial and lender clients. It does not encourage an independent, strong, diverse and effective legal profession;
- It is unreasonable or unrealistic to expect larger firms to self-insure entirely;
- It will need a robust professional obligation properly to inform clients of what the insurance arrangements are, including information about future years' PII cover given the "claims made" way in which PII works.

3.38. The Council of Mortgage Lenders felt that this reform could have unforeseen effects on the conveyancing market – that lenders would insist on this cover in any event and that some would review their panels as a result.

3.39. Comments from those that supported the proposed or a similar restriction include the need to focus on the more vulnerable consumers. The Legal Services Board Consumer Panel were content with the proposal on the basis that it was right to prioritise those consumers that are less able to give voice to their own interests.

3.40. Other suggestions include allowing professional and sophisticated clients to contract out of protection, bearing in mind the impact of the Unfair Contract Terms Act 1977 as to the reasonableness of any such limitation.

#### **SRA response**

3.41. The SRA's position remains that the protection afforded by compulsory professional indemnity cover should be focussed on the least sophisticated clients. However, we accept that a number of stakeholders have concerns about a number of issues including lack of clarity in the wording which we need to address. The issue of timing is also of particular concern to lenders and we accept introduction on 1 October 2014 would give them little time to prepare for the change in an orderly manner. This could adversely affect the interests of clients. We are going to return to the proposal as part of the wider review of the minimum terms and conditions.

#### **Question 6: Do you agree with reducing the run-off cover to 3 years?**

3.42. Again this question prompted a great deal of debate.

3.43. The Law Society does not support the proposal. The grounds include: The assumptions underpinning this proposal are flawed. A large number of consumers' claims will not be met, with no discussion of how those losses will be redressed. Some claims, such as conveyancing, take many years to emerge. The proposal will erode the existing confidence that consumers have in a profession that up to now has been able to ensure no clients suffer loss. The ability to purchase extended run-off cover is unknown and will not result in lower costs; rather the higher costs will be passed on to consumers.

3.44. Other comments from those opposed echo the Law Society's position: limitation periods and the slow emergence of many claims; the availability and affordability of longer run-off for the conscientious retired solicitor who wants, and deserves, to "sleep easy"; confusion given the "claims made" nature of PII; and the application of aggregation. . Support for the measure from practitioners centres on the removal of what is perceived as a "retirement tax" and "age discrimination". The costs of run-off cover are seen as preventing people from retiring as they cannot afford to do so, sometimes with resultant quality, conduct or financial issues. Some responses advocate less than three years or no run-off cover at all. A number of insurance companies felt that the restriction of run off cover could have a positive effect on the market.

3.45. Other suggestions include:

- Extend the "SIF fund" beyond 2020, or otherwise expand the current "post six year" run-off cover indefinitely;
- Build in some flexibility to require a longer period of run-off where a firm has a history of late emerging claims;
- Apply an aggregate limit for the run-off period;
- Move to "date of event" cover.

#### **SRA response**

3.46. The SRA's position on this issue is that the current arrangements are flawed as they impose a significant exit cost on many sole practitioners who wish to retire. Indications from further data that to which we have been given access are that that the proportion of claims that are made within the first three years is much higher than the 60% referred to in the consultation paper. However, we believe that there is merit in undertaking further research and discussion before making any final decision.

#### **Question 7: Do you agree with the proposed changes to Code of Conduct Outcome?**

3.47. Opinion was fairly equally divided on those that responded to this proposal.

3.48. The Law Society does not support the proposal, believing it will place another additional layer of burdensome regulation on small firms. The same issues about the "claims made" nature of PII work and on aggregation apply and will lead to uncertainty. The Law Society feels that a firm that innocently gets its assessment of cover wrong will be subject to sanctions, and wonders how this will be "policed".

3.49. Objectors believe that such a measure will reduce the level of protection for consumers when compared to compulsory terms. They are concerned too about the potential for accidental breach or lack of cover as firms do not know

necessarily what future instructions they may receive within a policy period. Concerns were expressed about how such an Outcome could be enforced in retrospect. On the other hand, some respondents believe no Outcome is needed because the point is already covered by the Principle 8 requirement for firms to carry on their business in accordance with sound financial and risk management principles and well-run firms will therefore identify the risks they face and purchase cover beyond the regulatory minimum if appropriate.

- 3.50. A number of practitioners that supported the measure did so with the corollary that they felt that it would be important to introduce such a principle if any of the other measures were introduced. Comments included the fact that it might lead to a more considered approach from firms, and that the measure should be supported if it results in firms engaging more on the subject.
- 3.51. The Legal Services Consumer Panel supported the proposal, stating that, whatever the minimum level of cover, it is important that firms undertake their own risk assessment and ensure that they hold the level of cover they need in relation to the risks that their business raise.
- 3.52. There was strong support from insurer respondents for the measure. For example, Zurich stated that this would be an appropriate change regardless of whether other measures were implemented given the work profiles of many firms.

### **SRA response**

- 3.53. The SRA will proceed with this proposal. Our view is that a reduction in the minimum cover for any one claim should be coupled with an express obligation on firms to assess what level of professional indemnity insurance cover is appropriate for the practice. The firm is in the best place to assess its potential exposure to claims arising from work undertaken in the past which are covered by its policy and its current and future needs during the policy period.
- 3.54. The new outcome will provide additional client protection as it is not limited to the compulsory layer and it will make it clear that firms should opt for the minimum level of compulsory cover only if it is appropriate.
- 3.55. Whilst we have noted the concerns relating to the proposal, it is interesting that they range from 'good firms do this anyway' to 'firms cannot be expected to have the knowledge to do this'. In some ways, this issue goes to the heart of the programme of changes to regulation that the SRA is taking forward. It reflects the move from burdensome, restrictive 'one size fits all' rules to allowing firms to take more responsibility for the management of their own business whilst maintaining important principles of client protection.
- 3.56. In some ways it is surprising and indeed worrying that some respondents consider that a professional firm should be unable to assess its insurance needs. Nevertheless, we accept that are real concerns with how the revised



Outcome will operate –and whether for example the SRA will take a harsh punitive ‘after the event’ approach if a firm ever gets a claim that exceeds their limit. We accept that the corollary of giving firms the duty to assess the needs that are appropriate to their clients is that they have to be given the latitude to do so. As one respondent pointed, no firm is ever 100% insured, and the intention of the obligation is to ensure firms obtains the right protection overall, not that their insurance covers all possible liability in all work that they take on. We have endeavoured to reflect these concerns in the final drafting of the Outcome, and will consider, with the Law Society and others whether further guidance is necessary.

**Question 8: Do you have any views about our assessment of the impact of these changes?**

- 3.57. The Law Society is critical of what it feels is superficial analysis, the lack of consultation with key stakeholders, and inadequate impact or equality and diversity impact assessments. Points include: the proposed timing is too tight to address the unforeseen consequences of these changes. More time is needed for the market to adjust, and to produce guidance.
- 3.58. Others' concerns predominantly concentrate too on the same points, particularly lack of data and request more time for full investigation of the consequences, some of which may be unintended or anomalous, as well as leading to gaps in client protection, especially for vulnerable clients. Many are highly sceptical of reductions in premium or of improved access to legal services for consumers. There are concerns that the changes favour large firms to the detriment of small ones, and that the risk to consumers is much underestimated. There is disquiet that these changes may destabilise the market and put the future of High Street conveyancing firms at risk. Others wonder how the SRA will "police" the existence or not of suitable cover.

**SRA response**

The SRA's response is that we have listened to the concerns expressed and have decided not to proceed at this stage with the proposals to introduce an aggregate limit on claims; to restrict the compulsory cover to individuals, micro-enterprises, trusts and charities to £2m; and to reduce run-off cover to a minimum of three years. These proposals will be developed as part of a wider review of the minimum terms and conditions of compulsory cover for implementation in 2015 and we will be able to look at impacts in the wider context.

- 3.59. Nevertheless we consider that we have sufficient information to reasonably make the decision to reduce the MTC minimum limit to £500,000 and to amend the Code of Conduct outcome, for the reasons given earlier in this paper and our finalised impact statement in relation to those proposals

**Question 9: Are there any impacts, available data or evidence that we should consider in finalising our impact assessment?**

3.60. The Law Society referred to its concerns about the lack of data, and stated that impacts on premiums, consumers, the Compensation Fund, BAME clients and firms and lenders should be considered. They were also concerned about the use of historic claims data.

3.61. Many other responses feel that the consultation paper makes too many assumptions and that more engagement with stakeholders, including consumers, insurers and lenders, is required. A number stated that the time allowed for consultation did not allow them to consider this issue properly. The implications cannot be viewed in isolation from the Compensation Fund, which together with professional indemnity insurance, form the entirety of consumer redress. Some identify the possibility for unmet claims against non-principal fee earners. A common theme was the need for a fuller impact assessment in relation to BAME clients and providers

**SRA response**

3.62. We refer to the response to question 8 above, and to our published impact statement. Whilst we have obtained further data during the consultation period, we accept the need to obtain more information in relation to the outstanding proposals and the further ideas that have been submitted. We will therefore be issuing a call for evidence later this month. This will include a request to insurers to co-operate by providing anonymised information.

**Question 10: Are there any other aspects of the Minimum Terms and Conditions for PII that you think we should review?**

3.63. The Law Society's view is that the effectiveness of the MTC as a whole should be examined, coupled with analysis of why there has been instability in the market, and work to examine how to reduce the barriers to, and costs of, retirement.

3.64. Suggestions from others include:

- Tailor insurance to specialist work (such as immigration or employment only);
- Incorporate regulatory defence costs as standard cover;
- Reduce the MTC still further, or remove them entirely;
- Allow claims to be avoided due to dishonesty/non disclosure/misrepresentation/non payment of premium;
- Put PII on a "date of event" basis (as opposed to "claims made");
- Review the financial strength rating of insurers;



- Review the operation of the successor practice rules;
- Require lenders to have separate representation;
- Introduce controls over clients' money - reduce the frequency of solicitors holding client money and explore Escrow Accounts;
- Allow full cover for all elements of poor service awards.

3.65. Non MTC related suggestions are to look at the disparity between premiums for incorporated and unincorporated practices, and the resistance from the insurance market to making payments through "restrictive interpretation".

**SRA response**

3.66. The SRA's response we will consider these comments and suggestions as part of a wider review of the minimum terms and conditions of compulsory cover for implementation in 2015.

**Appendix 1: Summary of responses**

<b>Question</b>	<b>Yes</b>	<b>No</b>	<b>Unsure Unclear No response</b>
<b>Question 1</b> Do you agree with reducing the compulsory cover to £500,000	<b>34</b>	<b>92</b>	<b>16</b>
<b>Question 2</b> Do you agree with introducing a cap on insurers' liability?	<b>32</b>	<b>83</b>	<b>27</b>
<b>Question 3</b> Do you think any such cap should be £1,500,000, £5,000,000 or another figure?	<b>£1.5m 16</b>	<b>£5m 18</b>	<b>108</b>
<b>Question 4</b> Do you agree that the introduction of a cap should be balanced by reducing the opportunity for claims to be added together to treat them as "one claim"?	<b>46</b>	<b>48</b>	<b>48</b>
<b>Question 5</b> Do you agree with limiting the compulsory cover requirements to individuals, small enterprises, charities and trusts?	<b>36</b>	<b>84</b>	<b>22</b>
<b>Question 6</b> Do you agree with reducing the run-off cover to 3 years?	<b>47</b>	<b>81</b>	<b>14</b>
<b>Question 7</b> Do you agree with the proposed changes to Code of Conduct Outcome?	<b>50</b>	<b>59</b>	<b>33</b>

## Appendix 2: Respondent Information

We received 142 submitted by, or on behalf, of a range of organisations as follows:

### Breakdown of Respondents

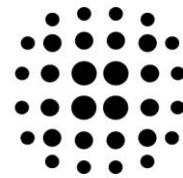
• The Law Society	1
• Firms in private practice	90
• Other legal professional	2
• Representative groups	10
• Local law societies	22
• Participating Insurers	10
• Brokers	6
• Academic	1

### Respondents to the Consultation

This list includes only those who have agreed to their names appearing in a list of respondents

- Jacky Lewis Family Law
- Minim Law Limited
- Julian Cohen
- A. L Hughes & Co.
- Martin Ross
- Steeles Law Solicitors Limited
- Ian Newbery & Co
- Mark Robinson Transactional Intellectual Property Services
- Legal Risk LLP
- Colin Palmer & Co
- Access Law LLP
- Devon & Somerset Law Society
- Elvin & Co
- Miller Insurance Services LLP
- Hailsham Chambers
- Chancery Pii
- AON
- O'Neill Patient Solicitors
- Bryan & Armstrong Solicitors
- Mark Cook Solicitors
- Mayfield Bell
- Law Centres Network
- Southern Area Association of Law Societies
- International Insurance Company of Hannover
- Birmingham Law Society
- PNCr Ltd
- Hertfordshire Law Society





- Libra Barbican
- Phil Crier Licensing Limited
- Duchennes
- The Building Societies Association
- Driver Belcher Solicitors
- DAC Beachcroft
- Scotts Wright
- The Conveyancing Association
- Manchester Law Society
- Clifton Ingram LLP
- Yewco Law
- Just Employment Solicitors
- R & B Legal Limited
- Rowe Radcliffe
- Lewes Smith
- Kiteleys Solicitors Limited
- Paul Finn Solicitors
- Starr Companies
- Newnham & Jordan Solicitors
- The Kent Law Society
- Sue Petritz Solicitor
- Tunbridge Wells, Tonbridge & District Law Society
- Outer Temple Chambers
- Lockton Companies LLP
- Leung & Co
- JLT Specialty Ltd
- Warner and Richardson
- The Legal Ombudsman
- The Legal Services Board Consumer Panel
- Zurich