



Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

Purpose of notice
To set out the LSB's decision to grant the application in full from the CLC for approval of alterations to its professional indemnity insurance arrangements.
Alterations that are being approved by this decision
<p>Alterations to the <i>CLC Professional Indemnity Insurance (PII) Code and Guidance</i> and the <i>CLC Professional Indemnity Insurance Operating Framework</i> to reflect the replacement of the CLC Master Policy with a Participating Insurers Agreement (PIA).</p> <p>CLC regulated entities will be free to choose from amongst all participating insurers and participating insurers have agreed to provide six year run-off cover of £2 million in aggregate. The changes will also mean that the cost of future run-off is taken into account when determining premiums provided, without additional cost to the practice when the business ceases.</p>

Decision notice

The Council for Licensed Conveyancers' application for approval of changes to regulatory arrangements to its *Professional Indemnity Insurance Code and Guidance* and to its *Professional Indemnity Insurance Operating Framework*

The Legal Services Board (“**LSB**”) has granted an application from the Council for Licensed Conveyancers (“**CLC**”) for approval of amendments to its *Professional Indemnity Insurance Code and Guidance* and *Professional Indemnity Insurance Operating Framework*.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The CLC is an approved regulator. The notes at page 7 of this notice explain the statutory basis for the decision.

This decision notice sets out the decision taken, including a brief description of the changes. The chronology for the LSB's handling of this application is also set out at the end of this decision notice.

Proposed changes

1. The proposed changes are to the CLC Professional Indemnity Insurance Code and Guidance and to the CLC Professional Indemnity Insurance Operating Framework. The current arrangements include a Master Policy which offers practices insurance unless they choose to opt-out and insure on the open market. Under the new arrangements, CLC regulated entities will be required to obtain insurance from “participating insurers”, being insurers who have signed up to a Participating Insurers Agreement (PIA); participating insurers agree to provide policies that meet minimum terms and conditions of cover. A significant difference from the current rules will be in relation to run-off cover. Participating insurers have agreed to provide six year run-off cover of £2 million in aggregate, inclusive of defence costs. If this limit were to be exceeded, an application could be made for a grant out of the CLC's Compensation Fund. The current Master Policy, while providing run-off cover, does so at an additional cost. The changes mean that the cost of future run-off is taken into account when determining premiums provided, without additional cost to the practice when the business ceases.
2. These changes are mostly technical, replacing references to the current CLC Master Policy with wording that reflects the new PIA arrangements (for example, replacing “*authorised insurers*”, with “*participating*” insurers, and “*Master Policy*” with “*professional indemnity insurance*”).

Key issues considered in the assessment of the application

3. The LSB recognises that the CLC, in making these changes, is trying to address the risks to practices and consumers of continuing the current Master Policy, from which,

according to the CLC, about one-third of practices opted out in 2015. In assessing the application, the LSB requested further information in order to address particular concerns and issues. These key concerns and issues were:

- The length of the CLC consultation on the changes
- The evidence base for the £2m aggregate run-off cover
- How the CLC intended to manage the risk that practices would not obtain insurance renewal under the new arrangements
- How the CLC intended to manage the changes against the SRA proposals on switching regulators
- The plans the CLC had to review the new arrangements

Length of consultation

4. The CLC held a short public consultation on the proposals, between 5 and 20 May 2016. The CLC explained in the application that the period was short because the new insurance year starts on 1 July 2016 and the CLC wished to have new terms in place from that date. It said in further information provided, that it was concerned not to raise practices' expectations about the PIA scheme, until it was confident that both sets of insurers would agree to the terms. It said it had also publicised the consultation widely (for example, through its newsletter which is sent to all the regulated community and reported in the trade press). Nonetheless, given the brevity of the consultation, the LSB wanted to know what other engagement the CLC undertook prior to the formal consultation, and how this had informed the CLC's approach to altering its regulatory arrangements for PII.
5. The CLC responded that the policy on PII had been developed over a period of years. The CLC explained that since the early 2000s, a number of CLC practices have regularly expressed dissatisfaction with the Master Policy being the only source of PII. Primarily, these have been the larger practices by turnover. The CLC reported that, in the view of some practices, the lack of competition meant that they were unable to source PII at the rates available on the open market. The CLC added that there was further pressure on the Master Policy during the economic downturn from 2008 to 2011 when premiums reduced in line with the turnover of practices and claims increased (as illustration of this, one of the insurers decided not to participate in the Master Policy).
6. The CLC further explained that the Society of Licensed Conveyancers, which is the representative body for licensed conveyancers, had developed an alternative scheme from which some practices secured more competitive premiums. This was a factor in one-third of CLC practices choosing to opt-out of the Master Policy in 2015. The practices which opted out of the Master Policy in 2015 represented the full range of turnover of CLC practices. As a consequence, the CLC's aim has been to ensure that the 2016 renewal is managed in a much more structured way than the 2015 renewal. It has had an open dialogue with both sets of insurers to ensure that all CLC practices have ample opportunity to obtain the policy which best suits their needs. This further information provided by the CLC led us to conclude that the

proposals were aimed at helping the CLC to address weaknesses in the Master Policy approach, which risked detriment to practices and consequently consumers.

7. In the light of the wider context and rationale explained by the CLC, the LSB does not consider there is sufficient reason to refuse the application solely on the basis of the short consultation. Nonetheless, the LSB considers that the CLC should build into its planning a longer consultation period. It considers that the longer period would have allowed more practices to present their views and this would have better supported the application. The LSB view is that the CLC could have commenced the consultation earlier, while managing the expectations of practices about the proposed PIA scheme, for example, through appropriate messaging in the consultation.

£2m aggregate run-off cover

8. The LSB sought clarification of the evidence on which the CLC relied to come to the £2m aggregate run-off figure, and why it considered this to be sufficient. It explained that the figure was achieved through negotiations with insurers, who were initially reluctant to agree to provide run-off cover at no additional cost at the point of closure of a practice. Furthermore, it said that insurers reported that since 2011 the aggregate claims paid per practice in run-off have not exceeded £100,000, or £200,000 in any one year, well within the proposed £2 million aggregate limit. The CLC has received one application for a grant from the Compensation Fund (albeit in respect of a practice which closed before 2011) which is expected to result in total payment not exceeding £250,000. The CLC said its experience of insurers is that the majority of claims paid are in the range £0-50,000 and rarely exceed £100,000, and that it is unusual to receive more than two or three claims in any one year.
9. The CLC's view is that the size of a practice is in any case not necessarily a decisive predictor for the claims experience of a practice. It considers it is dependent on the structure of the practice; how matters are managed in terms of day to day supervision; the quality of service provided to client; the internal audit function, and the processes in place for managing claims made against the practice. These are all factors which the CLC said it will take into account when it considers any application by a large practice to be regulated by the CLC and this will be followed up in regular monitoring visits and other contact with the practice. The CLC said if it is not satisfied at the point of licence that it has had the assurances required, the application will be refused. The CLC also has the power to impose conditions on a practice if it is not satisfied with the way in which matters or claims are managed, this could include limiting the work flow of the practice.

Risk of firms not renewing

10. The LSB asked the CLC how the transition from the Master Policy would be managed, in particular how confident it was that most practices would obtain cover and what contingencies there were for those that did not. The CLC has said that the expected participating insurers have agreed to offer terms to everyone who is currently insured under the Master Policy. It had exchanged information with brokers so that it is able to identify those practices which are likely to close, either because

they do not take out PII, or for any other reason. It said it will work with such practices to ensure a managed closedown. If as a result there is immediate risk to the interests of clients, the CLC will exercise its powers of intervention and will instruct another CLC practice on intervention to attend at the practice to manage and close outstanding matters, as instructed by clients.

SRA switching regulator proposals

11. The LSB noted that the application said the CLC was in dialogue with the SRA about the SRA's proposals to remove barriers to switching regulators, and to vary the terms of SRA PIA to allow the run-off cover requirement not to be activated when the practice is moving to another approved regulator. The LSB wanted to know more about how the CLC's new approach to PII would sit with those of the SRA on switching regulators.
12. The CLC response noted the view expressed by the SRA in its consultation that the SRA does not consider that it has a quasi-regulatory role after a practice has ceased to be regulated by it. The CLC's view is that regulatory responsibility passes to the successor regulator at the point at which it issues the practice with a licence. Therefore the CLC would have to assess the full regulatory risk associated with any practices who switch.
13. The CLC said it understands from the SRA's Consultation Paper, the earliest the proposals are likely to come into effect is 1 December 2016. The CLC is continuing its dialogue with the SRA, but it is unlikely to conclude this until after the end of the consultation period and after the SRA has determined whether to proceed with its proposal. The CLC's estimate is that there will be at least 8 weeks between a decision to proceed with the proposal and the proposal coming into force. The CLC concluded that this is more than adequate time to agree the respective responsibilities of the SRA and the CLC with regard to PII.

Review

14. The LSB welcomed and was reassured by the CLC's intention to review the implementation of the PIA arrangement after two years. The LSB asked for more detail about this. The CLC confirmed that while it is not possible to be definitive at this early stage, it is likely that the review will consider:
 - (a) Any changes in experience of practices in obtaining PII
 - (b) Any changes in premiums payable by practices, so it can understand the drivers for such change
 - (c) The experience of run-off cover identifying the types of practice which have closed, and the nature and value of any claims
 - (d) The profile of any practices which have transferred from SRA regulation, their performance and whether any have closed.

Future Actions

15. The CLC to review the implementation of the new arrangements after two years.

Decision

16. The LSB has considered the CLC's application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application; accordingly, the application is granted.
17. Annexes A and B to this decision notice contains the amendments to the regulatory arrangements approved by the LSB:

Annex A CLC Professional Indemnity Insurance Code and Guidance

Annex B CLC Professional Indemnity Insurance Operating Framework

Chronology

- The LSB confirmed receipt of an application from CLC on 25 May 2016.
- The 28 day initial decision period for considering the application ends on 21 June 2016.
- This decision notice is effective from 14 June 2016.
- The decision notice will be published on our website on 16 June 2016.

Neil Buckley, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

14 June 2016

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules¹ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

¹ Rules for Rule Change Applications – Version 2 (November 2010)

Annex A



Professional Indemnity Insurance Code & Guidance

Professional Indemnity Insurance Code

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies regulated by the **CLC** must comply with this Code. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

Outcomes-Focused

The **Code of Conduct** requires you to deliver the following **Outcomes**:

- **Each *Client's* best interests are served; (*Outcome 3.1*)**
- **You act in accordance with your regulatory responsibilities. (*Outcome 5.1*)**

Providing **clients** with access to appropriate redress helps you deliver these **Outcomes** and requires you to act in a principled way:

1. **Act in the best interests of your *Clients*. (*Overriding Principle 3*)**
2. **Deal with regulators and ombudsmen in an open and co-operative way. (*Overriding Principle 5*)**
3. You only accept instructions and act in relation to matters which are within your professional competence. (**CoC P3a**)
4. You only provide **Regulated Services** whilst you have **CLC**-approved **professional indemnity insurance** in force. (**CoC P3i**)
5. You ensure there are adequate indemnity **arrangements** in respect of **claims** made against you for work carried out by you before you ceased to practice by taking out **professional indemnity insurance** for a minimum period of 6 years from the expiry of the period of

professional indemnity insurance stated in your evidence of insurance or policy document. (CoC P3o)

6. If you seek to exclude or limit liability, you do so only to the extent that such exclusion or limitation is above the minimum level of cover afforded by **CLC**-approved **professional indemnity insurance**; you must obtain the written informed consent of the **Client** for such exclusion or limitation to be effective. (CoC P3p)

You must also comply with the following **specific requirements**:

7. When providing services which are not regulated by the **CLC**, you advise your **Client** of this and inform them in writing that the activity is not covered by **CLC**-approved **professional indemnity insurance** or the **CLC**-administered **Compensation Fund**. (CoC P3q)
8. You **promptly** notify insurers in writing of any facts or matters which may give rise to a claim under **CLC**-approved **professional indemnity insurance**. (CoC P5k)

Professional Indemnity Insurance

9. When providing **CLC-regulated services** you must have **professional indemnity insurance** in place at all times, which complies with the minimum requirements of Article 3 IMD and the **CLC's PII Policy Wording**.
10. You must:
 - 10.1 Pay the applicable annual premium for **professional indemnity insurance**;
 - 10.2 Comply with the **professional indemnity insurance** terms as apply to you;
 - 10.3 Comply with the Self Insured Excess policy (set out at 13) and such other policies as the **CLC** may issue;
 - 10.4 Produce a current **Evidence of Insurance** when requested by the **CLC**;
 - 10.5 Permit the **Participating Insurers** or the **Brokers** to notify the **CLC** should any circumstances arise whereby the **Participating Insurers** or the **Brokers** consider that the body has failed to comply with their responsibilities as a **CLC** body or when any **Evidence of Insurance** is avoided.

European Union (EU) Bodies – if you are a European Lawyer

11. If on application:
 - 11.1 you satisfy the **CLC** that the **EU body** (of which you are a **Manager**) has **EU Professional Cover** which complies with the **CLC's PII Policy Wording** in all its conditions and cover then the **EU body** will be exempted from obligation to comply with requirement 10.1 whilst the **EU Professional Cover** (and any agreement with the cover provider) remains in force and is complied with;
 - 11.2 you satisfy the **CLC** that the **EU body** (of which you are a **Manager**) has **Partial EU Professional Cover** then the **EU body** and its **Managers** shall be exempted from the

obligation to comply with regulation 10.1 whilst the **Partial EU Professional Cover** (and any agreement with the cover provider) and a **Supplemental Policy** remain in force and is complied with.

Claims

12. In the event of a **professional indemnity insurance claim** you produce any information the **CLC** deems appropriate within five **working days** of the **CLC's** information request.

Self Insured Excess

- 13.1 Should your self-insured Excess exceed:

(1) £3,500 or

(2) the sum of the following:

(i) 5% Fees (as defined in the **CLC's PII Policy Wording**) where the Fees are

no more than £200,000; plus

(ii) 3% Fees on Fees between £200,001 and £500,000; plus

(iii) 2% Fees on Fees between £500,001 and £1,000,000;

you report this to the **CLC**. The **CLC** will need to be satisfied that the body will avoid additional exposure of the **CLC's Compensation Fund** to unpaid excesses.

- 13.2 If you are satisfied that the body you manage has the ability to meet additional liability over and above this you may make a specific application to the **CLC** to increase the self-insured Excess where Fees are greater than £1,000,000.

- 13.3 Your application outlines how the body intends to meet the obligation to avoid additional exposure of the **CLC's Compensation Fund** to unpaid excesses.

Professional Indemnity Insurance Guidance

1. A **Licence** will not be issued to a **Manager** unless the applicable **Evidence of Insurance** for your **Body** has been produced to the **CLC**.
2. As a guide to the provisions under requirement 13 a body should be able to demonstrate it can fund the self insured excess for no less than two **claims** per year.

Examples of Limits on Self Insured Excess:

- Fees £250,000 Maximum Excess = £200,000 X 5% + £50,000 X 3% = £11,500

- Fees £600,000 Maximum Excess = £200,000 X 5% + £300,000 X 3% + £100,000 X 2% = £21,000

- Fees £900,000 Maximum Excess = £200,000 X 5% + £300,000 X 3% + £400,000 X 2% = £27,000

3. We would remind you of your responsibility under the [Provision Of Services Regulations 2009](#) to make the following 'available': contact details for the Professional Indemnity Insurance provider, and the geographic coverage of that PII. It is at your discretion as to how make this available e.g. given in writing to the client at the outset, hard copy at the firm's offices, on website, or in documents provided to the client during a transaction etc.'

Annex B



CLC Professional Indemnity Insurance Operating Framework

1. The **CLC**'s requirement for all **CLC** regulated bodies to have **professional indemnity insurance** cover in place at all times provides protection to both **CLC** bodies and their **Clients**.
2. The **CLC** is authorised to set **CLC PII Policy Terms** for CLC Regulated Bodies and enter agreements with **Participating Insurers** for offering **Professional Indemnity Insurance**.. It requires **Participating Insurers** to issue **Evidence of Insurance** to the bodies who have **professional indemnity insurance** cover in place with them.
3. The **CLC** is entitled in respect of each **CLC** regulated body to:
 - a) exchange information concerning **claims** with **Participating Insurers**, their representatives or the **Brokers**;
 - b) require **Participating Insurers**, their representatives or the **Brokers** to deliver to the **CLC** details of the turnover declared;
 - c) receive any notification from **Participating Insurers** or the **Brokers** in accordance with requirement 10.5 of the Professional Indemnity Insurance Code.