

**Council for Licensed Conveyancers
Schedule 4 Rules Change Application
CLC Professional Indemnity Insurance Code
and CLC Professional Indemnity Insurance Operating Framework**

LSB Application Requirement	Case for CLC Regulatory Arrangements Amendment
a. Contact	Simon Blandy, Director of Regulatory Standards, simonb@clc-uk.org , 0207 250 8465 CAN Mezzanine, 49-51 East Road, London N1 6AH
b. Details of the proposed alteration	The replacement of the Master Policy Scheme with the facility for alternative Professional Indemnity Insurance (PII) policies to be approved by a Participating Insurers Agreement which will incorporate run off at no additional cost to practices at the point of closure, and for amendment of the CLC PII Arrangements to reflect these changes (see PII Arrangements with tracked changes at Annexes 1 and 2 to Appendix B)
c. Regulatory Arrangements Details	
i. Nature and effect of the existing regulatory arrangement	The CLC has had a Master Policy Scheme in place since the mid 1990s through which CLC Practices have obtained PII (see further Appendix A paragraphs 1-4). The PII terms include a requirement for practices to take out run off cover. However, many practices are unable to afford the cost of run off cover at the point of closure.
ii. Nature and effect of the proposed alteration	The CLC proposes the introduction of a Participating Insurers Scheme (see further Appendix A paragraphs 12-16). This will include 6 year run off cover at no additional cost to practices at point of closure
iii. Explanation why the applicant wishes to make the alteration in question	The PII market for CLC practices has changes radically since 2015 PII renewal round (see further Appendix A paragraphs 10-11). The Participating Insurers

	<p>Agreement ensures a competitive and transparent market for CLC practices to source their PII which protects the interests of consumers and is in the wider public interest.</p> <p>The proposed approach will:</p> <ul style="list-style-type: none"> • Improve consumer protection • Provide firms with improved choice of PII • Reduce the regulatory compliance burden on CLC practices and streamline regulatory processes • Reduce the exposure of the Compensation Fund
<p>d. How and why the alteration will help to promote, be neutral towards or be detrimental to the Regulatory Objectives</p>	<p>Protecting and promoting the public interest</p> <p>The changes proposed as part of the CLC’s review of client financial protection arrangements are intended to maintain a high degree of financial protection which is in the interest of all stakeholders but particularly the consumers of legal services. The introduction of Participating Insurers Agreement formalises a sustained commitment by insurers to provide PII for CLC practices in the medium to long term. The requirement for insurers to provide six year run off at no additional cost at point of closure will provide certainty for practices which close. Together these requirements will help create more stable and sustainable conditions in the professional indemnity market for CLC practices to the benefit of consumers of legal services.</p> <p>Supporting the constitutional principle of the rule of law</p> <p>The CLC considers that the introduction of the PIA and run off requirements will be neutral towards this objective.</p> <p>Improving access to justice</p> <p>The LSB has defined access to justice as ‘the acting out of the rule of law in particular or individual circumstances. The tools to achieve that outcome range from informing the public about their rights, through routine transactional legal services [such as conveyancing and probate services] and personalised advice, through to action before tribunals and courts...Access to justice is</p>

	<p>the securing of ‘just’ outcomes rather than the process of dispute resolution¹.</p> <p>The Master Policy Scheme has provided a framework within which CLC practices have been able to access PII. The PIA is a development of that framework. The CLC believes that the new arrangements provide additional assurance that clients will obtain appropriate compensation when things go wrong and this in turn will provide confidence that the services they are provided by CLC practices are of a competent standard.</p> <p>Whilst there has been a change in the profile of CLC practices there are still a significant number of small practices including sole practitioners. The CLC is willing to consider and will approve applications by smaller practices to be licensed by it. Cumulatively, this will increase the availability of conveyancing and probate services in those (predominantly rural) areas where they are less easily accessible.</p> <p>Protecting and promoting the interests of consumers</p> <p>Consumers of legal services are entitled to expect a good quality service from their solicitor, and they should be able to have confidence that if something does go wrong resulting in a financial loss to them that there is in place a source of financial redress. The changes proposed are aimed at providing those consumers with continued assurance and confidence that enhanced financial protection arrangements will be in place after the PIA and run off provisions are introduced.</p> <p>Promoting competition in the provision of services</p> <p>The PIA will promote competition between insurers and will have a positive impact on CLC practices. At present two sets of insurers have signed up to the PIA. We do not currently anticipate that either has any intention of exiting the market, nor do we anticipate that there will be another entrant between now and 30 June 2016. In developing the CLC has been conscious of the need to minimise the risk of any practice closing simply as a result of the changes to PII arrangements.</p>
--	--

¹ From paragraphs 17 & 18
http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf

	<p>Encouraging an independent, strong, diverse and effective legal profession</p> <p>The introduction of PIA will help create the conditions for a more sustainable competitive market for CLC PII. The changes also help to encourage a diverse and independent legal profession since they will benefit small firms, some of which are BME.</p> <p>Increasing public understanding of the citizen’s legal rights and duties</p> <p>The CLC considers that the changes will be neutral towards this objective.</p> <p>Promoting and maintaining adherence to the professional principles</p> <p>The CLC considers that the changes will be neutral towards this objective.</p>
<p>e. How and why the alterations requested fulfil the CLC’s obligations under section 28 of the Legal Services Act 2007 to have regard to the Better Regulation Principles</p>	<p>Proportionality</p> <p>The CLC has to balance the demands of the participating insurers who underwrite the compulsory professional indemnity scheme with the differing needs of CLC practices and consumer protection. The CLC has responded in a proportionate way to these conflicting requirements to develop a sustainable and flexible PII product for CLC practices.</p> <p>Accountability</p> <p>The CLC is accountable to all its stakeholders in relation to client financial protection matters: consumers, CLC practices and participating insurers. The CLC has to provide arrangements that are effective but sustainable. Ineffective client financial protection arrangements will impact on all these stakeholders, and the larger public interest.</p> <p>The changes proposed have been in the course of development over a number of years, but the experience of 2015 PII renewal round for CLC practices, participating insurers and the CLC has made the need for the immediate introduction of the new PII arrangements more urgent.</p> <p>Consistency</p>

	<p>The PIA, CLC PII Policy Terms and the amended PII arrangements are consistent with previous PII requirements but are in the process of evolving to meet changing needs and market conditions.</p> <p>Transparency</p> <p>The changes to the PII arrangements and the CLC PII Policy Terms will be published on the CLC website. The PIA will also be made available to interested insurers. However, no decision has been made to publish the PIA on the CLC website.</p> <p>Because requirements relating to the financial standing of insurers are being standardised and incorporated into the PIA and that all PIA must provide cover in accordance with CLC PII Policy Terms, CLC practices will more easily be able to compare quotations offered by different insurers. The CLC will be assured that the evidences of insurance from different insurers meet its required standards.</p> <p>Targeted</p> <p>The changes proposed to the CLC’s PII arrangements are targeted at ensuring CLC practices have PII cover commensurate with the risks they evidence.</p>
<p>f. Desired outcome of the alteration and how an assessment will be made that the desired outcome has been achieved</p>	<p>The desired outcome is that there is a smooth transition from the CLC Master Policy Scheme with the option for PII to be sourced elsewhere to a scheme where Participating Insurers provide PII for CLC practices and that after renewal in 2016 there is a continuing competitive market for CLC PII. As suggested by LSCP, the CLC will carry out a review in spring 2018 to ensure this has been achieved.</p>
<p>g. Affect on areas regulated by other Approved Regulators.</p>	<p>As the CLC had already identified and as the LSCP and TLS commented in their responses to the PII Consultation Paper, there is the potential for conflict in particular with the SRA. The CLC is in discussions with the SRA to ensure that any risk of conflict is mitigated and that the interests of consumers in particular are protected.</p>
<p>h. Implementation timescale.</p>	<p>The CLC wishes to implement the amended PII Code and PII Operating Framework with effect from 30 June 2016</p>

<p>g. Consultation processes undertaken and responses received.</p>	<p>The CLC has been in discussions with insurers for some months who have now agreed the terms of a Participating Insurers Agreement and the CLC PII Policy Terms. Brokers have been in contact with CLC practices in relation to PII renewal. The Consultation Paper was published on 5 May 2016. The Consultation Period ended on 20 May 2016.</p> <p>See further: Appendix A – paragraphs 25-29 Appendix B – PII Consultation Paper Appendix C – Responses from four stakeholders Appendix D – Summary of Responses to the PII Consultation Paper</p>
--	--

List of Appendices

Appendix	Page No	Content
A	8-13	Supporting Statement
B	14-42	PII Consultation Paper including at Annex 1 draft amended CLC Professional Indemnity Code (pages 25-28) Annex 2 draft amended CLC Professional Indemnity Insurance Operating Framework (page 29) Annex 3 CLC PII Policy Terms (pages 30-42)
C	43-53	Responses to Consultation Paper from 1. Legal Services Consumer Panel (LSCP) (pages 43-44) 2. Council of Mortgage Lenders (CML) (pages 45-46) 3. Society of Licensed Conveyancers (SLC) (pages 47-48) 4. The Law Society (TLC) (pages 49-53)
D	54-59	CLC Summary of Responses to PII Consultation Paper
E	60-75	Participating Insurers Agreement (PIA)

Appendix A Supporting Statement

CLC Master Policy Scheme

1. The CLC is required to make rules for CLC practices to take out professional indemnity insurance (PII). S.21 Administration of Justice Act 1985 permits the CLC to make rules which:
 - (a) may authorise or require the Council to establish and maintain a fund or funds (Mutual Fund);
 - (b) may authorise or require the Council to take out and maintain insurance with authorised insurers (Master Policy Scheme);
 - (c) may require licensed conveyancers or licensed conveyancers of any specified description to take out and maintain insurance with authorised insurers (proposed scheme).

2. From the mid 1990s the CLC made rules requiring CLC practices to obtain PII through a Master Policy Scheme. The Lead Insurer has remained the same since 2004. Currently, the Master Policy Scheme is underwritten by three insurers. Whilst the CLC insurance scheme was characterised as a Master Policy Scheme, no terms were agreed as between the CLC and insurers which required insurers to offer PII for any practice licensed by the CLC. In at least two instances, insurers have put practices on notice of their intention to refuse to continue to provide PII resulting in the CLC exercising its powers of intervention in relation to those practices.

3. The terms of the Master Policy have been largely unchanged over a number of years²:

1	Indemnity	Indemnify the CLC practice in respect of a claim for civil liability
2	Minimum Cover	£2 million any one claim plus defence costs
3	Geographical Scope	England and Wales
4	Exclusions	Fraud unless one or more of the principals is not implicated in the fraud (in which cover is available for that principal(s))
5	Claims series ³	Wording broadly follows the SRA minimum terms
6	Rights of Third Parties	Excluded unless expressly incorporated
7	Run Off	Available for 6 years on payment of premium

4. From 2002 whilst the number of CLC practices has remained constant their total turnover has increased by 300%. Taking advantage of the CLC's rules made in 2000 which permitted external ownership, some practices either became or were set up as part of a larger group of companies. These groups generally find that they are able to obtain better insurance terms by negotiating cover for the group as a whole, rather than for individual parts of the group. For these practices the Master Policy was an additional and (and in their view) an unnecessary cost.

² The table sets out a briefly overview of the terms to give an indication of their effect. The CLC PII Policy Terms are at Annex 3 of Appendix B.

³ See definition at paragraph 1.3 CLC PII Policy Wording at Annex 3 of Appendix B

LSB Guidance on Indemnity Arrangements

5. In preparation for the authorisation of licensing authorities to license and regulate alternative business structures (ABS) the LSB undertook a review in 2009 and 2010 of the approach which approved regulators should take to regulation. In its Consultation Paper alternative business structures: approaches to licensing published in November 2009⁴, the LSB stated:

- a) There was general consensus that ABS should be subject to the same indemnification and compensation requirement as for non-ABS firms (paragraph 118)⁵
- b) A further general view was that arrangements must be put in place to ensure that consumers are protected but bodies must be free to adopt whatever cover arrangements are suitable (paragraph 119)
- c) Respondents thought that the LSB should set core standards for indemnity cover and compensation (paragraph 121)
- d) PII is always provided on a “claims made” basis. This means that the insurance policy against which a consumer claims is the one providing cover when the claim is made, not when the actual event occurred. In some cases there may be many years difference (paragraph 129).

6. In its reply to the Consultation Responses, the LSB said

we do not think that master policies should be prohibited per se. We consider that a LA’s indemnification requirements must be sufficiently flexible to allow a variety of products and approaches to develop to meet changing market conditions and provide appropriate levels of consumer protection⁶.

7. Crucially, the LSB said:

The LA’s indemnification requirements must be sufficiently flexible to allow other products and approaches to develop to meet changing market conditions. LAs can provide guidance on the types of arrangements that they would find acceptable but they must also consider alternatives to those arrangements if they are proposed by an ABS and consider any evidence that the alternative provides an equivalent level of consumer protection.⁷

8. In its response to the Consultation on the CLC’s Application to be authorised as a Licensing Authority the Office of Fair Trading stated:

we welcome CLC’s proposal to allow opt out from the Master Policy as a positive move towards greater flexibility for the regulated entities. However, we note that the application is currently unclear on the meaning of “opt-out” and believe that it should specify that this refers to the open market⁸.

9. These views are reinforced on the LSB’s Website ‘Choice of Insurer’⁹ which states:

⁴ http://www.legalservicesboard.org.uk/what_we_do/consultations/2009/pdf/consultation_181009.pdf

⁵ This was echoed at paragraph 51 of the LSB Response Document Alternative business structures: approaches to licensing March 2010

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_guidance.pdf

⁶ Paragraph 54 LSB Summary of Responses

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/abs_guidance_on_licensing_rules_summary_of_consultation_and_response.pdf

⁷ Paragraph 51 of the LSB Response Document

⁸ http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/oft_advice.pdf

⁹ http://www.legalservicesboard.org.uk/Projects/thematic_review/Choice_Of_Insurer.htm

Monopoly situations can give rise to the ability for significant market power to be exercised, with potential for market interactions to be distorted and consumer detriment to result. Choice is generally, therefore, the default approach.

Alternative PII and Effect on Master Policy Scheme

10. Taking account of this very clear guidance, in the context of its application for authorisation as a licensing authority, and also of the representations of some practices, the CLC decided to amend its requirements for PII to permit CLC practices to obtain PII other than through the CLC's Master Policy provided the alternative policy was 'in all its conditions and extent at least equivalent to the cover provided under the CLC Master Policy'¹⁰. Over the period 2011-2014 four practices sourced their PII other than through the Master Policy. The growth in turnover of the remainder of CLC practices offset any reduction in total premiums caused by practices exiting the Master Policy.
11. The CLC PII market changed radically in 2015 when a third of CLC practices chose to obtain PII cover other than through the CLC's Master Policy. Inevitably, this has resulted in a reduction in total PII premium receipts for insurer to the Master Policy. Further, the process for approving the PII arrangements for those practices which wished to obtain PII other than through the Master Policy was time consuming and burdensome.

Participating Insurers Agreement

12. After completion of the PII renewal period in 2015, the CLC had discussions with brokers and later with insurers to investigate whether it might be possible to move to a new set of PII arrangements which would provide a stable platform for CLC practices to obtain PII. The Participating Insurers Agreement (PIA) at Appendix E was quickly identified as an appropriate vehicle.
13. The proposed CLC PII Policy Wording which under pins the PIA:
 - (a) incorporates wording which has been in force subject to minor amendments since the mid 1990s
 - (b) is similar to the SRA minimum terms¹¹.
 - (c) introduces run-off for practices which close at no additional cost at point of closure (see further paragraph 12).
14. The PII Consultation Paper explained¹² the difficulty the CLC had had over a number of years of securing a sustainable and cost effective solution to the risk of claims occurring after a practice had closed. The SRA's minimum terms require insurers to provide six year run off for practices which close whether or not the practice has paid for that run off cover (the cost of run off premium payable in full at point of closure is understood to be between 250% and 300% of the premium paid by a practice in its last year of trading).
15. The effect of the new run off requirements¹³ is to:
 - (a) ensure that all practices are able to secure run off cover at no additional cost at point of closure

¹⁰ Paragraph 11.1 CLC Professional Indemnity Code <http://www.clc-uk.org/CLCSite/media/PDFs/Professional-Indemnity-Insurance-Code.pdf>

¹¹ At <http://www.sra.org.uk/solicitors/handbook/indemnityins/appendix-1/content.page>

¹² Paragraphs 18-29

¹³ Paragraphs 8.10 & 8.11 of the CLC PII Policy Wording (see Annex 3 of Appendix B)

- (b) provide £2 million cover in aggregate (inclusive of defence costs) for six years from the date of closure of a practice (in contrast to continuing PII cover which provides cover of £2 million per claim plus defence costs)

16. The cumulative effect of the PIA and the CLC PII Policy Terms is to:

- (a) obtain assurance as to the financial standing of insurers and have a mechanism for insurers to advise the CLC if that changes
- (b) provide for controlled exit of any insurer from the market¹⁴
- (c) ensure that the CLC continues to have access to data about practices, and in particular to identify practices which are at serious risk either because they have taken insufficient steps to renew their PII cover or because of a serious deterioration in their claims record
- (d) provide assurance as to the continuing commitment of insurers to the CLC market
- (e) provide terms which are already very familiar to CLC practices and to the CLC,
- (f) provide run off cover at no additional cost to CLC practices at the point of closure.

Progress Report on PII Renewal 2016

17. Insurers which provided cover in 2015-2016 insurance year to over 98% of current CLC practices have signed the terms of the Participating Insurers, subject to the LSB agreeing the CLC's application for amendment of its PII Arrangements. Those PII policies may be sourced through two sets of brokers. It has now had discussions with the practices which constitute the remaining 2% and are in a position to agree in principle how those practices will be able to transition to the new PII arrangements. The CLC will follow up on those initial discussions to ensure they (and their PII advisers) understand the new requirements.

18. As at 23 May 2016 over 65% of CLC practices have returned completed proposal forms. Of those over half have received renewal terms (subject to LSB approval of this application). This is substantially in advance of the progress which had been made by the same date in 2015 (or indeed previous years).

19. CLC has further received confirmation:

- a. That on the basis of current information both sets of insurers:
 - i. will be willing to quote renewal terms for all practices they currently insure, and
 - ii. anticipate being willing to quote renewal terms for CLC practices for which do not currently provide PII; and
- b. That insurers will provide the CLC with regular updates confirming the names of practices to whom a proposal form has been sent, from whom a completed proposal form has been received, when terms are quoted and when they are accepted.

20. This will enable the CLC to identify those practices which are not taking timely steps to ensure they have PII in place before expiry of the current insurance year on 30 June 2016. Following the same process as for 2015 and on the basis of information provided as agreed by insurers, the CLC will carry out a full review of progress on or about 10 June 2016 and 17 June 2016, and liaise with brokers to ensure that contact is made directly with those practices which are not sufficiently advance in the PII renewal process. A further review will be carried out on 23 June

¹⁴ Paragraph 9.7

2016 and where appropriate daily contact will be made between 23 and 30 June 2016. The CLC will be able to identify any practice which has decided not to renew or which is at risk of not being offered renewal terms.

Risks of CLC Practices not obtaining PII

21. The CLC's experience is that when a decision has been made to close a practices, the closure will usually take effect immediately before PII renewal (on 30 June) or before licence renewal (31 October). As at 24 May 2016 the CLC has not had notice of any practice which intends to close. Equally, both sets of brokers, following enquiry, have confirmed that they are not aware of any practice where insurers will be unwilling to provide renewal terms. On the basis of the current evidence it is therefore exceeding unlikely that any practice will close between 24 May 2016 and 30 June 2016.
22. It is suggested that the prospect of a practice being eligible for 6 year run-off cover at no additional cost at the point of closure will provide an additional incentive for practices to continue trading for the year 1 July 2016 to 30 June 2017.
23. There may be an increased risk that a greater number of practices will close in the lead up to PII renewal in June 2017. However, the CLC identified this risk in the mid 2000s as sole practitioners who had transferred to CLC regulation from the late 1980s came up for retirement¹⁵. The CLC has been actively encouraging sole practitioners to put in place Business Continuity Plans and, in particular, Succession Plans. Where a decision has been made to close and a transfer as a going concern is not possible, the CLC works with the practice to put into effect a plan to complete as many active matters as possible prior to closure, to arrange for the transfer of any remaining active files to another practice and for safe storage of closed files.
24. The CLC's powers of intervention are invoked only as a last resort, where the principal(s) of the practice are unable or unwilling to ensure that the interests of consumers are protected.

PII Consultation and Responses Received

25. The Consultation Period (5 May 2016 to 20 May 2016) was short because the new insurance year starts on 1 July 2016, and the CLC wishes to have the new PII terms in place from that date. This has been agreed by two sets of insurers who cover 98% practices. The remaining 2% practices have renewal dates other than 1 July. The CLC has notified those practices that it will expect them that on next renewal it expects them to have in place provisions which comply with the new PII arrangements.
26. The CLC notified all CLC practices of the PII Consultation Paper through the CLC newsletter sent on 6 May 2016 to all the regulated community and stakeholders (it was the lead item). It was reported in Today's Conveyancer¹⁶, the Law Society Gazette¹⁷ and Legal Futures¹⁸. Notice of the Consultation was tweeted four times between 6 May 2016 and 16 May 2016. It was promoted on the CLC's LinkedIn page. The Consultation Paper was also sent direct to the LSB, the Legal Services Consumer Panel, the SRA, the brokers to the two sets of insurers and to the practices

¹⁵ See further paragraphs 20-22 of PII Consultation Paper (Appendix B)

¹⁶ <http://www.todayconveyancer.co.uk/clc-opens-up-consultation-on-professional-indemnity-insurance-for-members-cms-16250>

¹⁷ <http://www.lawgazette.co.uk/law/niche-regulator-moves-to-attract-conveyancers-from-sra/5055160.article>

¹⁸ <http://www.legalfutures.co.uk/latest-news/clc-consults-open-market-indemnity-scheme-bid-attract-solicitors>

which do not currently fall within the scheme for the two sets of insurers. The CLC held a webinar on 16 May 2016 (11 attendees) continues to be available to view on demand¹⁹. During the course of the webinar attendees were asked whether they had received a PII proposal form for completion. 45% declared they had not, no one said that they had. On analysis it was found that the CLC would not have expected two of the attendees to have received a PII proposal form. The CLC contacted the remaining three attendees: they confirmed that they had respectively received a PII proposal form on 16 May, 20 May and 23 May 2016.

27. Simultaneously, the Society of Licensed Conveyancers (SLC) have held a series of Roadshows. The CLC has been advised that ‘the PI element is [a] short session talking about the renewal and quote process at the end of the event (the main [insurance broker] section is on the introduction of the new SLC Cyber insurance policy). Mention is made of the fact that the ‘Master Policy’ is likely to be discontinued and that run-off costs will be rolled into the premium. The attendances so far have been:
- Cambridge – 30 people
 - London – 40 people
 - Cardiff – 30 people
- And there 45 booked in for Manchester next Tuesday [24 May 2016]’.
28. The CLC’s principal target audience for the PII Consultation has been CLC Practices, and to ensure that they are aware of the current proposals. The CLC is confident that all practices have been made aware of the proposed changes either directly by the CLC, through one (or both) insurance brokers or through the SLC. They have all had an opportunity to comment on the proposals. Further, they are being actively engaged in the PII renewal process and the CLC has put in place arrangements for the exchange of information with brokers leading up to renewal to identify any practices which have not started the renewal process or are not making sufficient progress in securing renewal terms in good time before 30 June 2016.
29. Responses from LSCP, CML, SLC and TLS are at Appendix C. A Summary of the Responses to the PII Consultation is at Appendix D.

¹⁹ <http://www.clc-uk.org/Regulation-by-CLC/Current-Consultations.aspx>

Appendix B
PII Consultation Paper



CLC Professional Indemnity Insurance Code and Guidance

CLC Professional Indemnity Framework

CLC Consultation Paper

May 2016

Deadline for receipt of responses: Friday, 20 May 2016

Summary

- I. The Council for Licensed Conveyancers (CLC) is proposing to move away from its Master Policy arrangements with a right for practices to opt-out of the Master Policy for Professional Indemnity Insurance. Instead, insurers will be asked to sign up to a Participating Insurers Agreement setting out Minimum Terms and Conditions of cover. CLC regulated entities will then be free to choose from amongst all Participating Insurers.
- II. These new PII Arrangements will make it much easier for CLC practices to compare PII policies offered by different insurers. It will make the PII approval process for CLC Practices and for the CLC much more straightforward than last year. Preliminary indications are that the changes will be welcomed by the profession because they make clear the requirements for CLC Practices to obtain PII and simplify the application procedure. Insurers' financial standing will need to be rated 'A' or above and the terms of PII cover must be equivalent to the CLC PII Policy Wording.
- III. The effect of the new arrangements is:
 - (a) to provide wider choice
 - (b) to encourage CLC practices to take responsibility
 - (c) to help the CLC set standards and regulate effectively
- IV. The changes are consistent with the regulatory objectives and in particular increase protection for consumers.
- V. The only significant difference between the PII terms currently in force and the CLC's new PII Arrangements relate to Run Off Cover. 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.
- VI. The CLC's PII regulatory arrangement have been amended (see Annex 1 & 2) to reflect the change in arrangements which are relatively straightforward.

Questions

- (A) Do you agree with the proposal for the CLC to permit insurers who sign up to its Participating Insurers Agreement to provide professional indemnity insurance for CLC practices incorporating the CLC PII Policy Wording at Annex 3?
- (B) Do you agree the proposal for run off cover to be provided to practices which close at no additional cost to those practices when they close?
- (C) Do you agree the proposed amendments to the CLC's Professional Indemnity Code and Guidance and to the CLC's Professional Indemnity Insurance Framework at Annex 1 and 2 respectively?

Responding to this Consultation

1. You are invited to respond to the questions at page 1. The CLC also welcomes comments on the proposals as a whole including alternative proposals to achieve the policy objectives outlined in this Consultation Paper.
2. When you respond could you please give your name and address and whether you are a licensed conveyancer. If you are not a licensed conveyancer, could you please state, if relevant, your status or professional qualification. The CLC reserves the right to publish any response and to refer to it specifically in any further document it publishes following this Consultation. If you wish your response to be treated as confidential could you please let us know when you respond.
3. All responses should be sent by email to consultations@clc-uk.org or by post to

The Council for Licensed Conveyancers
CAN Mezzanine
49-51 East Road
London N1 6AH

Or to DX36603 FINSBURY

Deadline for receipt of responses: 5pm on Friday, 20 May 2016

Introduction

Statutory Framework

4. The CLC was established by the Administration of Justice Act 1985 (AJA) and is an Approved Regulator under the Legal Services Act 2007, subject to the oversight regulation of the Legal Services Board. It licenses and regulates licensed conveyancers and CLC Practices in the provision of reserved legal activities, currently conveyancing and probate services and other non-reserved legal activities (including will writing). It is also a Licensing Authority authorised to license and regulate Alternative Business Structures (ABS). It has no representative function.
5. As an approved regulator the CLC 'must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives'.²⁰

CLC's Approach to Regulation

6. The CLC's role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services.
7. The CLC's regulatory activities include:
 - setting educational and training standards for entry to the profession
 - issuing licences to practise to those qualified to provide conveyancing and probate services and to Alternative Business Structures
 - maintaining a register of all licensed conveyancers and regulated bodies
 - setting standards to regulate the professional practice, conduct and discipline of licensed conveyancers and regulated bodies
 - setting standards to maintain adequate professional indemnity insurance and a compensation fund to protect consumers
 - monitoring the work and conduct of regulated bodies
 - providing guidance and advice to regulated bodies to maintain compliance with our regulatory requirements
 - investigating allegations of misconduct and where appropriate taking disciplinary action and
 - collaborating with key stakeholders in the legal services market to monitor and shape future policy.
8. The CLC's approach to regulation is proportionate, risk-based and outcomes-focused. Licence holders are required to demonstrate that they:
 - act with independence and integrity
 - maintain high standards of work
 - act in the best interest of clients
 - deal with regulators and ombudsmen in an open and cooperative way and
 - promote ease of access and service.

CLC Professional Indemnity Insurance (PII) Requirements

²⁰ S.28(2) LSA 2007

Generally

9. Professional Indemnity Insurance policies are written on a 'claims made' basis rather than the 'losses occurring' basis used in general insurance²¹. The insurer responsible for paying a claim is the insurer of the practice at the time the claim arises or is first notified, rather than the insurer at the time the alleged negligent act which results in a claim. The purpose of run off cover at the point of closure of a firm is to protect the firm, its owners and employees against any future claims. The CLC only requires cover for six years after a practice has closed, although in some rare instances it is possible for claims to be made up to fifteen years after an event which could lead to a claim.

CLC's PII Arrangements

10. The CLC makes rules for indemnifying CLC practices against losses arising from claims in respect of any description of civil liability incurred by them, or their employees in connection with their practices as licensed conveyancers.
11. Since its inception the CLC has had a Master Policy in place through which CLC practices have been required to take out professional indemnity insurance as a condition of being licensed by the CLC. The terms of the Master Policy have been largely unchanged over a number of years²²:

1	Indemnity	Indemnify the CLC practice in respect of a claim for civil liability
2	Minimum Cover	£2 million any one claim plus defence costs
3	Geographical Scope	England and Wales
4	Exclusions	Fraud unless one or more of the principals is not implicated in the fraud (in which cover is available for that principal(s))
5	Claims series ²³	Wording broadly follows the SRA minimum terms
6	Rights of Third Parties	Excluded unless expressly incorporated
7	Run Off	Available for 6 years on payment of premium

12. In 2011 as part of its review of regulatory arrangements, the CLC amended its PII requirements. Since October 2011 CLC practices have been able to take out PII other than through the Master Policy if they are able to satisfy the CLC that any PII policy obtained 'is in all its conditions and extent at least equivalent to the cover provided under the CLC Master Policy'²⁴. Over the period 2011-2014 four practices sourced their PII other than through the Master Policy.

13. The CLC PII market changed radically in 2015 when a third of CLC practices chose to obtain PII cover other than through the CLC's Master Policy.

Objectives of the CLC's new PII Arrangements

14. The CLC's new PII Arrangements make it much easier for CLC practices to compare PII policies offered by different insurers.

²¹ See also paragraph 8 SRA Consultation 'Removing barriers to switching regulators' at <https://www.sra.org.uk/sra/consultations/removing-barriers-switching-regulators.page>

²² The table sets out a briefly overview of the terms to give an indication of their effect. The terms themselves are at Annex 3.

²³ See definition at paragraph 1.3 CLC PII Policy Wording at Annex 3

²⁴ Paragraph 9 of the CLC Professional Indemnity Insurance Code and Guidance at <http://www.clc-uk.org/CLCSite/media/PDFs/Professional-Indemnity-Insurance-Code.pdf>

15. Any insurer who intends to provide PII cover for CLC practices will need to enter a Participating Insurers Agreement with the CLC which confirms that:
- (a) they will be bound by the terms of that Agreement
 - (b) all policies issued will be on terms equivalent to the CLC PII Policy Wording at Annex 3
 - (c) they have a minimum 'A' financial rating
 - (d) they comply with the CLC 's reporting requirements.
16. The CLC has been in discussions with insurers which provide cover over 98% of current CLC practices. Those insurers have agreed to enter the new PII Arrangements. The CLC will follow up on initial discussion with the remaining CLC practices to ensure they (and their PII advisers) understand the new requirements.
17. This will allow an adequate opportunity for insurers to consider revised terms in advance of renewal on 30 June 2016. It will make the PII approval process for CLC Practices and for the CLC much more straightforward than last year. Preliminary indications are that the changes will be welcomed by the profession because they make clear the requirements for CLC Practices to obtain PII and simplify the application procedure.

Run Off

18. The only significant difference between the PII terms currently in force and the CLC's new PII Arrangements relate to Run Off Cover.
19. Any claim in negligence made against a practice which has closed is primarily the liability of that practice and for any former principal of that practice. If neither the practice nor the former principal is able to meet a claim, the claim will ultimately be treated as an application for a grant out of the CLC's Compensation Fund. The challenge for the CLC has been to be able to find an affordable arrangement to manage and meet the needs of former clients of who have claims in negligence against practices which have closed.
20. Up until 2008 the CLC arranged run off cover for all closed practices through its Run Off Block Policy which was combined with the CLC's Compensation Fund Policy. By then, the number of practices in the Run Off Block Policy were approaching as many as the number of practices then licensed by the CLC. The premium paid increased year on year. The CLC was concerned that the cost of the Run Off Block Policy, mitigated as it was by an increase in the excess payable, was becoming a disproportionate burden on the profession, and would ultimately become unaffordable.
21. Insurers were willing to provide run off cover for practices on an individual basis provided a one off premium of up to three times the annual premium was paid when the policy was taken out. From 1 July 2008 the CLC closed the Run Off Block Policy to any further practices which closed and provided financial incentives (which progressively reduced over a four year period and came to an end in 2012) to encourage them to take out their own run off cover.
22. Whilst there is a requirement under the CLC's Code of Conduct²⁵ to purchase run off cover for a minimum of six years following closure of a practice, in a number of instances the former principals have not had the funds to do pay the premium. The CLC has been in discussions with insurers to investigate ways in which run off cover could be incorporated into CLC PII Provisions at no additional cost to CLC practices at point of closure.

²⁵ Principle 3(o) Code of Conduct <http://www.clc-uk.org/CLCSite/media/PDFs/Code-of-Conduct-Code.pdf>

23. These terms have now been agreed and are set out at paragraphs 8.10 and 8.11 of CLC's PII Policy Terms²⁶ which require insurers to provide six year run off cover at no additional cost to CLC Practices at point of closure. In contrast with the terms of continuing PII cover which provide for cover of £2 million per claim plus defence costs, the run off cover is £2 million in aggregate inclusive of defence costs for the six years (ie the total sum payable in respect of claims including legal costs over the six year period of cover is £2 million). If the £2 million aggregate limit were to be exceeded for any practice in run off, an application could then be made for a grant out of the CLC's Compensation Fund.
24. Fraud and dishonesty are excluded from run off cover. Any such claims would be treated as applications for grants out of the CLC's Compensation Fund and determined in accordance with the CLC's Compensation Fund Operating Framework²⁷. Fraud and dishonesty is already excluded under the current PII terms, though an indemnity is currently provided to managers who can demonstrate that they are not implicated in such fraud and dishonesty.
25. Insurers report that since 2011 the aggregate claims paid per practice in run off have not exceeded £100,000, well within £2 million aggregate limit, or £200,000 in any one year. The CLC has received one application for a grant out of 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.
26. Since 2011 41 CLC practices have closed which may be analysed as follows:

Year	Retired	Transfer*	Successor practice	Death	Insolvency	Intervened	Total
2011	2		1			1	4
2012	5	1		2	2		10
2013	3		1	1	1	5	11
2014	5		1		1		7
2015	5		1		2	1	9
Total	20	1	4	3	6	7	41

* transfer to another legal regulator

27. Interventions into practices have resulted in grants being made out of the Compensation Fund primarily to make good shortages on the client account.
28. An important part of the CLC's monitoring activity over the last 18 months to 2 years has been to encourage practices to have a Business Continuity Plan in place. This has avoided the closure of a number of practices. Where a decision has been made to close a practice, the CLC works with the managers (partners and directors) to achieve a managed closure. A managed closure means that all current matters are either completed or sent to another conveyancing practice, all monies due to clients have been paid and arrangements are put in place for safe storage of closed files.
29. There is a risk (assessed as low) that some CLC practices may not be able to afford to obtain Professional Indemnity Insurance. The CLC will seek to identify any such practices at as early a stage as possible. It is likely that any practices adversely affected would have been forced to close in any event.

²⁶ At Annex 3

²⁷ In particular paragraph 10 http://www.clc-uk.org/CLCSite/media/PDFs/1_Comp_Fund_Operating_Framework1.pdf

Amendment to the CLC's Professional Indemnity Insurance Arrangements

30. The CLC's Professional Indemnity Insurance Code and Guidance (Annex 1) and the CLC's Professional Indemnity Insurance Framework (Annex 2) have been amended (see tracked changes) to reflect the change in arrangements which are relatively straightforward.

Switching Regulators

31. The SRA's consultation paper 'Removing barriers to switching regulators'²⁸ proposes to make a variation to the terms of their Participating Insurer's Agreement to allow the run-off cover requirement not to be activated when the practice is moving to another Approved Regulator. This would avoid the practice having to pay a one off premium for six years run off cover amounting (it is understood) in many instances to between two and a half and three times the last annual premium. Many practices have not been able to afford this cost and as the SRA consultation paper explains this has acted as a significant barrier to firms who wish to leave SRA regulation to be regulated by another Approved Regulator.
32. The CLC welcomes the SRA's proposal. Any insurer who has signed up to the Participating Insurers' Agreement will be able to provide PII for the practice which has moved to CLC regulation, provided it meets the CLC's criteria set out in the CLC's Participating Insurers' Agreement and signs that agreement. This may be one of the current insurers of CLC practices. It may be the insurer who provided PII whilst the practice was under SRA regulation. It will be for the insurer to determine, having carried out its own due diligence, whether it is willing to provide PII to the transferring practice and if so on what terms.
33. As with any other application for a license, the CLC will carry out its own due diligence. It is aware of the risk that a practice might choose to transfer to CLC regulation because of the approach taken by the SRA to monitoring that practice. It may equally be the subject of disciplinary proceedings. The CLC is authorised to license and regulate conveyancing and probate services (as well as other related non-reserved legal activities). Any practice moving to CLC regulation will therefore have to take out run off cover in relation to any other legal services it provides or ensure there is a separate entity appropriately regulated to continue to provide those other services.
34. Arguably, there may be an immediate advantage to practices which transfer to CLC regulation in that the cost of PII cover may be less than equivalent PII cover obtained under SRA regulation. Immediate reduced cost of PII cover under CLC regulation may be attributable to the narrower scope of legal services provided by practices and increased specialisation, and the fact that their past liability remains with their SRA Participating Insurers. The CLC has been advised that this is not the case for the vast majority of CLC practices which have enjoyed lower rates than their SRA counterparts. This experience has been attributed to the smaller pool of firms under CLC regulation with their specialisation resulting in generally a better claims performance when compared to the issues faced historically by SRA regulated firms.

Assessment of the Changes Proposed

35. CLC PII Policy Wording

- a. The CLC PII Policy Wording is almost identical to the Master Policy Terms currently in force. Subject to the discussion below about run off cover, cover provides the same

²⁸ See note 2 above

indemnity for CLC practices and therefore for claimants of CLC practices as is currently in place.

- b. The CLC PII Policy Wording is reinforced by the Participating Insurers Agreement (which is not part of this consultation). That agreement requires insurers to:
 - (i) Only to provide cover to CLC Practices in accordance with the terms of the CLC PII Policy Wording
 - (ii) If there is an inconsistency between the CLC PII Policy Wording and the terms of any policy, the Insurer will be required to amend the policy so that it gives full effect to the CLC PII Policy Wording
 - (iii) Participating Insurers must have a minimum Financial Strength Rating of A, and notify the CLC immediately if they cease to have A rating
 - (iv) Comply with the CLC's reporting requirements
 - (v) Provide run off cover to practices which cease trading at no additional cost to the practice.

36. Run Off Cover

- a. For the first time for CLC Practices will be provided by insurers at no additional cost at the point of closure. This will remove a major disincentive for practices to close, although the CLC will continue to encourage practices to put in place and implement Business Continuity Plans with succession arrangements to seek to avoid closures.
- b. Many practices which close are not able to afford the substantial cost of the run off premium. The arrangements which the CLC has asked insurers to put in place will benefit the practices, former principals of those practices and their clients. This is the minimum cover. It will be possible for insured to increase the level of cover (e.g. to increase the aggregate limit above £2 million, to enable the policy to respond to each and every claim, to reduce the level of excess, to extend cover beyond six years from the point of closure).
- c. Subject to making suitable arrangements for payment of any excess, the former principals will not be at personal financial risk when a claim is made. It will enable former clients to submit claims which are then processed by insurers applying the same criteria as for continuing practices. The new requirement on insurers to provide run off at no additional cost at the point of closure may lead to an increase in premiums charged.
- d. There are a number of factors which make it difficult to gauge the extent of any increase. Premiums are generally determined taking account of turnover of a practice, its claims history, the organisational structure of the practice, the policies and procedures it has in place and the nature of the PII market at the point of renewal (of the conveyancing market in general and of CLC practices in particular). A change in the way the market is functioning and the arrival of new providers may at least in the short term lead to a downward pressure on premiums. The net effect may be to lessen or even neutralise any increase in premiums resulting from the introduction of run off cover.
- e. Whilst it is not possible to predict the profile of claims, the experience of insurers to date is that cover of £2 million in aggregate over a six year period is sufficient to deal with claims experience to date. In the event it is not sufficient, claims may be referred to the CLC as applications for grants out of the Compensation Fund.

- f. The information arrangements the CLC will put in place with insurers will enable claims experience for run off cover to be monitored. On any subsequent review, having regard to that it may be appropriate for the level of cover to be changed.

37. CLC's Professional Indemnity Insurance Code and Guidance and the CLC's Professional Indemnity Insurance Framework

The changes marked at Annexes 1 and 2 enable the CLC to put in place the new arrangements.

38. Summary

- a. The effect of the new terms is:
 - (i) to provide wider choice
 - (ii) to encourage CLC practices to take responsibility
 - (iii) to help the CLC set standards and regulate effectively.
- b. The changes are consistent with the regulatory objectives and in particular increase protection for consumers.

Impact of the proposed changes

39. As explained, the changes to the CLC PII Policy Wording and to the CLC's Professional Indemnity Insurance Regulatory Arrangements will not have any direct negative impact in terms of scope or cost on any of the interest groups the CLC has identified: consumers, practices which close, continuing practices, insurers or the CLC.
40. Continued opening up of the PII market for CLC practices will encourage competition between insurers on price and service. CLC practices will be able to make direct comparisons between insurers knowing that the terms of cover offered must be the same and that insurers must have financial strength of A or above.
41. On the basis of the evidence accumulated to date there is no immediate adverse impact on clients, and any such impact may be mitigated in appropriate cases by a grant out of the Compensation Fund. In the CLC's view, there is a substantial immediate benefit to claimants (generally former clients) in that principals will be able to refer claims promptly to insurers for assessment and resolution.
42. There are no direct costs for the CLC, though it will incur costs if practices close without making adequate arrangements for the management of ongoing transactions.
43. In the medium to longer term, as a result of the changes to terms, all practices which close will have six year run off:
 - the CLC will be able more effectively to manage the closure of practices
 - the number of applications for grants arising out of the negligence of CLC practices which have closed will reduce.

Timetable for Introducing the proposed changes

44. The Timetable proposed is as follows:

28 April 2016	Council approve terms
---------------	-----------------------

6 May 2016	Publish Consultation Paper
20 May 2016	End of consultation period
w/c 23 May 2016	Application to LSB to approve amended PII Code
w/c 30 May 2016	Start of PII renewal process
30 June 2016	PII terms expire and all CLC Practices need to have new terms agreed and in place

45. Timing is necessarily tight (in particular the Consultation Period is scheduled to last two weeks). Proposal forms are being circulated to CLC practices with a request that they are returned by early May 2016. It will be open to practices to contact other potential providers. Copies of the proposed revised wording will be circulated.
46. Given the CLC's experience in May and June 2015, it is likely that more CLC Practices will wish to approach more than one potential provider. The CLC has already received enquiries from a number of different providers. This makes more urgent adoption of the proposed scheme which also provides assurance about the financial standing of insurers offering PII terms.

Annex 1



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 ***purchasing-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**, either through the **CLC's Master Policy** or with another **Authorised Insurer** (see requirement 11), provided the **CLC** is satisfied that in all its conditions and extent it is at least equivalent to the cover provided under the **CLC's Master Policy**.
10. You must:
 - 10.1 Pay the applicable annual premium for **professional indemnity insurance Master Policy** cover;
 - 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 134) 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 **Authorised Participating Insurers** or the **Brokers** to notify the **CLC** should any circumstances arise whereby the **Participating Authorised 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.

~~**Professional Indemnity Insurance other than through the CLC's Master Policy**~~

~~11. — If on application:~~

- ~~11.1 — you satisfy the **CLC** that any **Professional Indemnity Insurance** policy obtained other than through the **CLC's Master Policy** is in all its conditions and extent at least equivalent to the cover provided under the **CLC Master Policy** then you will be exempted from the obligation to comply with requirement 10.1 whilst the **Professional Indemnity Insurance** policy (and any agreement with the cover provider) remains in force and is complied with; or~~
- ~~11.2 — to the extent it is not in its conditions and extent at least equivalent to the cover provided under the **CLC Master Policy**, you obtain a **Supplemental Policy** from an **Authorised Insurer** so that the **CLC** is satisfied that the combined effect of the original and **supplemental policy** is in all~~

~~its conditions and extent at least equivalent to the cover provided under the **CLC Master Policy** you will be exempted from complying with requirement 10.1 whilst the **Professional Indemnity Insurance** policy (and any agreement with the cover provider) and **supplemental policy** remain in force and is complied with.~~

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

~~1211.~~ If on application:

~~1211.1~~ 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** equivalent to the ~~**CLC Master Policy**~~ 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;

~~1211.2~~ 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

~~123.~~ In the event of a ~~**professional indemnity insurance Master Policy claim**~~ you produce any information the **CLC** deems appropriate within five **working days** of the **CLC's** information request.

Self Insured Excess

~~134.1~~ 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 Master Policy**~~) 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.

~~134.2~~ 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.

~~134.3~~ 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 [134](#) 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 2



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 ~~–whether through the **CLC**'s **Master Policy** or through another policy it has approved–~~ 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**. ~~take out and maintain with **Authorised Insurers** a **Master Policy** and to approve schemes of **professional indemnity insurance** offered by other **Authorised Insurers**.~~ It requires **Authorised Participating Insurers** to issue ~~of~~ **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 ~~the **Authorised**~~ **Participating Insurers**, their representatives or the **Brokers**;
 - b) require **Participating Authorised Insurers**, their representatives or the **Brokers** to deliver to the **CLC** details of the turnover declared;
 - c) receive any notification from **Participating** ~~the **Authorised Insurers**~~ or the **Brokers** in accordance with requirement 10.5 of the Professional Indemnity Insurance Code.

Annex 3
CLC PII Policy Wording as reflected in the Participating Insurers Agreement and setting out the Minimum Terms and Conditions

1. DEFINITIONS

Throughout this Policy, the following words shall have the meanings given to them in this Definitions section.

1.1 Associated Entities

Associated Entities means practices, whether regulated by the CLC or not, whose Professional Business includes the conduct of Estate Planning and Probate Services and which have common ownership within the Insured Practice.

1.2 Claim

Claim means a demand for, or an assertion of a right to, compensation or damages or an intimation of an intention to seek compensation or damages in respect of any civil liability whatsoever.

1.3 Claims Series

For the purpose of determining the Insurers' liability or the amount of the Excess or Penalty Excess, one Claim means:

1.3.1 all Claims against any one or more Insured arising from:

1.3.1.1 one act or omission;

1.3.1.2 one series of related acts or omissions;

1.3.1.3 the same act or omission in a series of related matters or transactions;

1.3.1.4 similar acts or omissions in a series of related matters or transactions;

1.3.2 all Claims against one or more Insured arising from one matter or transaction will be regarded as one Claim;

1.3.3 all Claims or losses stemming from the dishonesty of one person or persons acting in collusion shall constitute a single Claim or Loss.

1.4 CLC

CLC means the Council for Licensed Conveyancers established under Section 12 of the Administration of Justice Act 1985.

1.5 Circumstances

Circumstance means information or facts or matters of which the Insured is aware which the Insured believes may give rise to a Claim against the Insured for which the Insured could become legally liable.

1.6 Code of Conduct

Code of Conduct means the Code of Conduct promulgated by CLC.

1.7 Defence Costs

Defence Costs means all costs and expenses reasonably and necessarily incurred by the Insured with the Insurers' prior written consent (such consent not to be unreasonably withheld):

1.7.1 in the defence or settlement of any Claim;

- 1.7.2 in conducting any proceedings for indemnity, contribution or recovery relating to a Claim;
- 1.7.3 in investigating, reducing, avoiding or compromising any actual or potential Claim;
- 1.7.4 in relation to any Circumstances as defined in Definitions 1.5.

Defence Costs do not include the salaries or office expenses of the Insured.

1.8 Documents

Documents means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms, computer programmes or information stored, written or punched into card or tape or magnetic discs or tapes or any other data media, and documents of any nature whatsoever, whether written, printed or reproduced by any other method (other than bearer bonds, coupons, bank notes, currency notes and negotiable instruments), the property of or entrusted to the Insured, which may now or hereafter be, or be supposed or believed to be, in the custody of the Insured, or in the custody of any other person to or with whom such Documents have been entrusted, lodged or deposited by the Insured in the ordinary course of business.

1.9 Employee

Employee means any person other than a Principal:

- 1.9.1 employed or otherwise engaged in the Insured Practice (including under a contract for services) including, without limitation, office or clerical staff members;
- 1.9.2 seconded to work in the Insured Practice; or
- 1.9.3 seconded by the Insured Practice to work elsewhere.

Employee does not include any person who is engaged by the Insured Practice under a contract for services in respect of any work where that person is required under the rules of any other professional body, to take out or to be insured under separate professional indemnity insurance in respect of that work.

1.10 Estate Planning and Probate Services

Estate Planning and Probate Services means advice given and services performed as estate planning or administration consultants (including without limitation advice and services performed in connection with will drafting, will storage, advance directives, joint tenancies, establishment of trusts, powers of attorney, codicils and pre-paid funeral plans) or probate specialists.

1.11 Evidence of Insurance

Evidence of Insurance means the certificate provided by Insurers representatives to the Insured confirming that the Insured is entitled to indemnity under the terms of this Policy.

1.12 Excess

Excess means the applicable amounts stated in the Evidence of Insurance for which the Insured is responsible under this Policy in respect of any one Loss or Claim against the Insured. The Excess shall not apply to Defence Costs. The Excess does not reduce the limit of liability of the Insurers.

1.13 Insured

The Insured means:

- 1.13.1 the Practice;
- 1.13.2 any Principal or former Principal thereof;
- 1.13.3 any person who is a consultant to or an associate in the Practice;

- 1.13.4 any Employee or former Employee who is or has been under a contract of service for and/or on behalf of the Practice;
- 1.13.5 any Locum appointed by the Practice who shall for the time being carry out the duties of any person conducting Professional Business on behalf of the Practice;
- 1.13.6 the estate and/or the personal representatives of any of the foregoing;
- 1.13.7 any Predecessor.

Each of the foregoing are severally insured hereunder.

1.14 Insurers

Insurers mean those participating Insurers registered with the CLC to provide insurance on behalf of the Practices regulated by the CLC and whose names and percentage of the risks and liabilities underwritten by them are identified in the Evidence of Insurance. The Insurers named thereon bind themselves each for their own part and not one for another. Each Insurer's liability under this insurance shall not exceed the percentage or amount of the risk shown against that Insurer's name.

1.15 Licensed Body

Licensed Body means a body which holds a licence in force under Part 5 of the Legal Services Act 2007 issued by the CLC.

1.16 Loss

Loss means the indemnity provided by Insurers to the Insured pursuant to Insuring Clauses 2 of this Policy.

1.17 Penalty Excess

Penalty Excess means the amount (set out in the Evidence of Insurance) for which the Insured is responsible under this Policy in respect of any one Loss or Claim against the Insured arising out of:

- 1.17.1 the Insured's failure when acting in the purchase of a property to obtain an appropriate undertaking in relation to the redemption/removal of all existing charges or restrictions and/or other encumbrances contained within either the proprietorship or charges register of the title(s) maintained under the Land Registration Act 2002 and relating to the property;
- 1.17.2 the Insured's failure when acting on behalf of the purchaser following completion but before registration to maintain priority with the Land Registry so that a charge, charging order or restriction and/or other entry relating to the seller is entered on the register maintained under the Land Registration Act 2002 by a third party and which enjoys priority over those entries intended to be made by the purchaser and his or her lender;
- 1.17.3 the Insured's failure when acting in relation to the sale of a property to retain sufficient funds when accounting to the vendor to redeem a charge or release a restriction having given an undertaking to do so and which the Insured is obliged to comply with despite the funds have been released to the client;
- 1.17.4 the Insured's failure when acting in relation to a re-mortgage of a property to retain sufficient funds when accounting to the borrower to redeem any pre-existing charge or release a restriction on completion or following completion but before registration to maintain priority with the Land Registry so that a charge, charging order or restriction and/or other entry is entered on the register maintained under

the Land Registration Act 2002 in priority to that of the lender instructing the Insured;

1.17.5 the application of the provisions of Exclusions 5.12.

If a Penalty Excess is applicable in accordance with Definitions 1.17.1 to 1.17.5 above then it shall apply in substitution for, and not in addition to, the Excess defined in Definitions 1.12.

The Penalty Excess shall not apply to Defence Costs.

1.18 Period of Insurance

Period of Insurance means the period specified as such in the Evidence of Insurance.

1.19 Practice

Practice means the Recognised Body or Licensed Body named in the Evidence of Insurance and shall include any Practice which is the Predecessor or Successor to that Practice.

1.20 Predecessor

Predecessor means a Recognised Body or Licensed Body whose Practice has been wholly or partially merged with or acquired by the Insured Practice or one of its Predecessors to be insured under this insurance through the application of provisions equivalent to those in General Conditions 8.11 in the Successor Practice's insurance policy.

1.21 Principal

Principal means a person who is a sole practitioner or a partner or a director of a Practice and shall include any such person held out as a Principal.

1.22 Professional Business

Professional Business means, unless otherwise excluded by this Insurance, any advice given or services performed including professional services carried out by or on behalf of the Insured Practice or an Insured or any person or entity for whom the Insured Practice is legally responsible provided always:

1.22.1 that such advice or services form part of the professional services provided by the Insured Practice; and

1.22.2 that any entitlement to any fee or a portion of any fee accruing from such work shall inure to the benefit of the Insured Practice or other person or entity for whom the Insured Practice is legally responsible; or

1.22.3 that if such work is done for a fee which does not inure to the benefit of the Insured Practice or is done without fee, that it is undertaken in the name of or on behalf of the Insured Practice or any other person or entity for whom the Insured Practice is legally responsible.

1.23 Recognised Body

Recognised Body means a body corporate for the time being recognised by the CLC under Section 32 of the Administration of Justice Act 1985.

1.25 Successor Practice

Successor Practice means a Recognised Body or Licensed Body which has acquired or merged with the whole or part of a Recognised Body or Licensed Body and the acquired or merged Body has not exercised its right to invoke the Run-off cover under the terms of General Conditions 8.11 of this Policy.

1.25 **Terrorism**

Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

2. **INSURING CLAUSES**

2.1 **Civil Liability**

The Insurers, to the extent and in the manner provided in this Policy, agree to indemnify the Insured against any Claim or Claims first made or intimated against the Insured during the Period of Insurance arising from Professional Business undertaken by the Insured or by any person acting on behalf of the Insured or for whom they are responsible or by one or more of its' Associated Entities on or after the date when the Insured first became regulated by the CLC.

2.2 **Loss of Documents**

The Insurers, to the extent and in the manner provided in this Policy, agree to indemnify the Insured against costs and expenses incurred by the Insured in replacing or restoring Documents which the insured discovers during the Period of Insurance and after diligent search to have been destroyed, damaged, lost or mislaid, provided that any claim for such costs or expenses shall be supported by bills or accounts approved by a competent person to be nominated by the Insurers with the approval of the Insured.

2.3 **Regulatory Indemnity**

The Insurers, to the extent and manner provided in this Policy, agree to indemnify the Insured up to but not exceeding the Sum Insured and subject to the Excess against any amount paid or payable in accordance with the recommendation or determination of the Legal Ombudsman or the Ombudsman appointed by the Financial Conduct Authority provided that the Insurers shall have no liability in respect of any determination or award requiring the Insured to refund any fees paid to the Insured.

3. **PREMIUM**

3.1 **Payment of Premium**

Each Practice in respect of its business shall pay or cause to be paid a premium agreed with the Insurers.

4. **SUM INSURED**

4.1 **Sum Insured**

The liability of the Insurers in respect of each Claim or Loss shall not exceed the Sum Insured specified in the Evidence of Insurance for the total of all damages, interest and costs awarded against the Insured or agreed between the Insured, the claimant and the Insurers in excess of the Excess or, if applicable, the Penalty Excess.

4.2 **Defence Costs**

(This clause 4.2 shall not apply to indemnification provided by Insuring Clauses 2.2, Loss of Documents)

In addition, the Insurers will pay all Defence Costs as and when they are incurred provided that, if a payment in excess of the said Sum Insured is made to dispose of any such Claim the Insurers' liability for any such Defence Costs so incurred shall be limited to such proportion thereof as the said Sum Insured bears to the amount of the payment so made.

5. EXCLUSIONS

5.1 Any business controlled by any Principal

This insurance shall not indemnify any Principal in respect of any Claim(s) or Loss(es) or Defence Costs arising out of any transaction or professional services in which any Principal or any person acting in concert with him or on his behalf acted for:

- 5.1.1 that Principal or any other Principal of the same Practice; or
- 5.1.2 that Principal's spouse or children or the spouse or children of any other Principal of the same Practice; or
- 5.1.3 any business, firm, company, enterprise, association or venture owned or controlled by said Principal or any other Principal.

This Exclusions 5.1 shall not apply to the extent that the Principal shall establish that any such transaction or professional service was conducted or provided by him or on his behalf:

- 5.1.4 without that Principal (or any person providing the service on his behalf) knowing that the service provided was or was likely to be undertaken for the persons or entities described in Exclusions 5.1.1 to 5.1.3 above;
- 5.1.5 with the full knowledge and agreement of any other party involved in the same transaction and for whom the Practice also acted in connection with that transaction.

In any Claim or Loss and in any proceedings to enforce a claim for indemnity under this Policy, the burden of proving that such indemnity does not fall within Exclusions 5.1 shall be upon the Insured and the cost thereof will not be recoverable under this Policy.

5.2 Excess or Penalty Excess

Insurers shall not be liable for the amount of the Excess or, if applicable, the Penalty Excess.

5.3 Bodily injury or physical damage

This Policy shall not indemnify the Insured in respect of any Claim or Loss for death or bodily injury (including sickness, mental stress or disease) or physical loss of or physical damage to property of any kind whatsoever except property in the care, custody and control of the Insured in connection with the Professional Business of the Practice for which the Insured is responsible and not being property occupied or used by any of the Insured for the purposes of the Practice.

5.4 Wrongful dismissal/termination

This Policy shall not indemnify the Insured in respect of any Claim or Loss:

- 5.4.1 arising from wrongful dismissal or any other alleged breach or any other relief in respect of any contract of employment by the Insured; and/or
- 5.4.2 for wrongful termination or any other alleged breach or any other relief in respect of any contract for supply to or use by the Insured of services and/or materials and/or equipment and/or other goods.

5.5 Payment of a trading debt

This Policy shall not indemnify the Insured in respect of any Claim or Loss concerning the payment of a trading debt incurred by the Insured.

5.6 Circumstances notified to other insurance

This Policy shall not indemnify the Insured in respect of any Claim or Loss in respect of any Circumstances or occurrences which have been notified under any other insurance attaching before the inception of this Policy.

5.7 Radioactive contamination

This Policy shall not indemnify the Insured in respect of any Claim or Loss directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5.8 Sonic Boom

This Policy shall not indemnify the Insured in respect of any Claim or Loss directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

5.9 War, terrorism, asbestos and toxic mould

This Policy shall not indemnify the Insured in respect of the liability of any Insured in respect of, or in any way connected with or arising directly or indirectly out of:

5.9.1 Terrorism, war or other hostilities; and/or

5.9.2 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; or

5.9.3 the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind.

However, with the exception of costs and expenses incurred by the Insured in replacing or restoring Documents this exclusion shall not apply to the liability of the Insurers to indemnify any Insured against any Claim or related Defence Costs arising from the matters referred to in Exclusions 5.9.1 to 5.9.3 inclusive.

5.10 Practice outside England or Wales

This Policy shall not indemnify the Insured in respect of any Claim or Loss in respect of any liability incurred in connection with:

5.10.1 a Practice conducted wholly or partly outside England or Wales;

5.10.2 work in connection with contracts performed outside England or Wales.

5.11 Claims made in the USA or Canada

This insurance shall not indemnify the Insured in respect of any judgment, Claim or Loss or allegation made against the Insured in any legally constituted Court in the United States of America or Canada.

5.12 Dishonest or fraudulent act or omission

5.12.1 This Policy shall not indemnify the Insured in respect of any Claim or Loss arising out of any dishonest or fraudulent act or omission of the Insured. If Insurers rely on this exclusion and the CLC, having become aware of the Insurers' intent, choose to make representations to Insurers, Insurers shall consider such representations promptly and in good faith and advise CLC and the Insured of their final decision after consideration of such representations.

5.12.2 Notwithstanding Exclusions 5.12.1, Insurers agree to indemnify any and all Insureds not concerned in such dishonest or fraudulent act or omission subject always to the other terms and conditions of this Policy. Where the Practice or Insured is indemnified in accordance with this Exclusions 5.12.2 such Practice or Insured shall at the request of the CLC or the Insurers:

5.12.2.1 take or procure to be taken at Insurers' expense all reasonable steps to obtain reimbursement of the benefit of this insurance from any Insured concerned in such dishonest or fraudulent act or omission (or from the personal representatives of that Insured); and

5.12.2.2 procure that any money so obtained, together with any money which, but for such fraud or dishonesty is due to the Insured concerned in a dishonest or fraudulent act or omission, shall be paid to Insurers up to but not exceeding any Claim, Defence Costs or Loss paid by Insurers consequent upon the dishonest or fraudulent act or omission.

For the avoidance of doubt, where Exclusions 5.12.1 applies to any Insured or Practice so that indemnity is refused, Insurers will continue to indemnify the Insured or Practice against any Claim or Loss arising out of any other Claim whether the Claim is made or becomes payable after the refusal of an indemnity pursuant to Exclusions 5.12.1 provided it otherwise falls within the remaining terms and conditions of this Policy. In these circumstances, a Penalty Excess shall be applied in place of an Excess.

5.13 **Documents stored on magnetic or electronic media**

This Policy shall not indemnify the Insured against any Loss or Claim arising from the physical loss of or damage to Documents which are stored on magnetic or electronic media unless such Documents are duplicated on magnetic or electronic media with the intention that, in the event of loss or damage, the duplicate can be used as the basis for restoring the Documents to their original status.

5.14 **Data Corruption**

This Policy shall not indemnify the Insured in respect of any Claim or Loss arising from the transmission of any virus or any other programme or code that causes loss or damage to any party except where the damage is caused to a wholly independent third party and the transmission of the virus, other programme or code that causes the loss or damage is inadvertent. In that case the extent of the coverage afforded by this Policy is restricted only to that Loss or damage caused before the Insured became aware or with the exercise of reasonable diligence should have become aware of the transmission of the virus, whichever is the earlier.

5.15 **Fraudulent use of electronic signature or external email**

This Policy will not indemnify the Insured in respect of any Claim or Loss arising from the fraudulent misuse of the Insured's electronic signature or external email which occurs after the Insured discovered or with the exercise of reasonable diligence should have discovered that misuse, whichever is the earlier.

6. **CLAIMS**

6.1 **Notice of Claim**

6.1.1 The Insured shall give to the Insurers written notice as soon as practicable of any Claim made against the Insured or the discovery by the Insured of loss or destruction of or damage to any Document.

6.1.2 The Insured shall give to the Insurers written notice as soon as practicable of any Circumstances, including:

6.1.2.1 the receipt of notice, whether written or oral, from any person of an intention to make a Claim against the Insured;

- 6.1.2.2 the discovery or reasonable cause for suspicion of dishonesty or fraud on the part of a past or present partner or director or employee or consultant or locum of the Practice whether giving rise to a Claim or Loss under this Policy or not;
- 6.1.2.3 any letter of complaint expressing dissatisfaction with the Insured's work and/or indicating an intention to make a Claim against the Insured;
- 6.1.2.4 the discovery of any matters which may give rise to a Claim, Circumstances or claim by the Insured for indemnity under Insuring Clauses 2.3 of this Policy arising from an investigation or disciplinary proceedings by the CLC or any other regulator.

6.1.3 The Insured shall at all times and at their own expense give to Insurers or their duly appointed representatives all such information, cooperation, assistance, signed statements or depositions as may properly be required to facilitate compliance with the Civil Procedure Rules, Practice Directions and Pre-Action Protocols approved by the Head of Civil Justice.

The Insured must allow the Participants or their duly appointed representatives to develop and deploy the best possible defence of a Claim within the applicable time limits. The Insured must have adequate internal systems in place to allow ready access to material information.

In addition, the Insured shall, at their own expense, continue to keep the Insurers informed of all material developments with respect to any other matter in relation to any Claim, Loss or Circumstance.

6.1.4 The Insured shall pay the Excess or Penalty Excess on demand by Insurers or their duly appointed representatives.

6.2 **Notice of Circumstances**

If Circumstances are notified during the Period of Insurance, then any Claim arising from those Circumstances and made after the expiration of the Period of Insurance shall be deemed for the purpose of this Policy to have been made on the date that the Insured notified Insurers of the Circumstances.

6.3 **Claims control**

6.3.1 The Insured shall not admit liability for or settle any Claim or any costs in connection therewith without the prior written consent of the Insurers, who shall be entitled at their own expense at any time to take over and conduct in the name of the Insured the defence or settlement of any such claim.

6.3.2 Nevertheless, neither the Insured nor the Insurers shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Insurers and in default of agreement to be nominated by the Chief Executive of CLC) shall advise that proceedings could be contested with a reasonable prospect of success. The costs of instructing Queen's Counsel and his fees shall be paid by Insurers.

6.4 **Claim settlement**

Insurers shall not settle any Claim without the consent of the Insured. However, if the Insured shall refuse to consent to any settlement recommended by Insurers, then Insurers' liability shall not exceed the amount for which the Claim could have been settled plus the Defence Costs up to the date of such refusal.

7. NOTICES

7.1 Claims Notices

All Claims Notices required to be given by the Insured under the terms of Claims 6.1 above shall be addressed to:

{Name of Insurer or Intermediary}

Any such notice given in writing by the Insured to {Name of Insurer or Intermediary} shall be deemed to be notice to Insurers.

7.2 All other Notices

Any other notices that may from time to time be required to be given by the Insured to Insurers shall be addressed to:

{Name of Insurer or Intermediary}

Any such notice given in writing to {Name of Insurer or Intermediary} shall be deemed to be notice to Insurers.

8. GENERAL CONDITIONS

8.1 Innocent Non-Disclosure

Insurers will not avoid this Insurance where it is alleged that there has been non-disclosure or misrepresentation of facts or untrue statements in the proposal form provided always that the Insured shall establish to the Insurers' satisfaction that such alleged non-disclosure, misrepresentation or untrue statement was free of any fraudulent intent.

If the Insured cannot establish that the non-disclosure, misrepresentation or untrue statement was free of fraudulent intent:

8.1.1 the Insured shall not be entitled to indemnity in respect of any Claim, Defence Costs or Loss arising from or connected with the non-disclosure, misrepresentation or untrue statement;

8.1.2 if Insurers intend to deny indemnity on the basis of General Conditions 8.1.1, CLC, having become aware of Insurers' intention, may, if they consider it appropriate, make representation to Insurers. Insurers shall consider such representations promptly and in good faith and advise the CLC of their final decision after consideration of such representations;

8.1.3 the Insured shall be entitled to indemnity in respect of any other Claim, Defence Costs or Loss not arising from or connected with the non-disclosure, misrepresentation or untrue statement whether or not the Claim, Defence Costs or Loss arise or are notified to Insurers before or after discovery by Insurers of the non-disclosure, misrepresentation or untrue statement;

8.1.4 the Insurers are not entitled to avoid or repudiate this Policy on any grounds whatsoever including, without limitation, non-disclosure, misrepresentation, breach of warranty, condition or condition precedent save as set out in Exclusions 5.12 and General Conditions 8.6;

8.1.5 if the Insured is entitled to indemnity under General Conditions 8.1 above despite a non-disclosure, misrepresentation or untrue statement made with fraudulent intent on the part of any Principal or former Principal of the Insured Practice, the Practice or the Insured shall at the request of the CLC or the Insurers:

8.1.5.1 take or procure to be taken at Insurers' expense all reasonable steps to obtain reimbursement of the benefit of this Policy from any Principal or former Principal of the Insured concerned in or making such fraudulent

non-disclosure, misrepresentation or untrue statement (or from the personal representatives of that Principal); and

8.1.5.2 procure that any money which but for such fraudulent non-disclosure, misrepresentation or untrue statement is due to the Principal or former Principal concerned in or making any such fraudulent non-disclosure, misrepresentation or untrue statement shall be paid to Insurers up to but not exceeding any Claim, Defence Costs or Loss paid by Insurers consequent upon such fraudulent non-disclosure, misrepresentation or untrue statement.

8.2 Previous Knowledge of Circumstances

In any case of a Claim first made against the Insured or a Loss incurred by the Insured during the Period of Insurance where:

- 8.2.1 they had previous knowledge of the Circumstances which could give rise to such Claim or Loss; and
- 8.2.2 they should have notified the same under any preceding insurance then where the indemnity or cover under this Policy is greater or wider in scope than that to which the Insured would have been entitled under such preceding insurances (whether with other insurers or not) Insurers shall only be liable to afford indemnity to such amount and extent as would have been afforded to the Insured by such preceding insurance.

8.3 Breach of or Non-Compliance with Conditions

Where the Insured's breach of or non-compliance with any condition of this Insurance has resulted in prejudice to the handling or settlement of any Claim or Loss, the indemnity afforded by this Insurance in respect of such Claim or Loss (including Defence Costs) shall be reduced to such sum as in the Insurers' opinion would have been payable by them in the absence of such prejudice.

8.4 Rights of Third Parties

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999, and for the avoidance of doubt:

- 8.4.1 except as stated in General Conditions 8.4.3, this Insurance is not intended to confer any enforceable rights upon any third party, whether or not an interest of such third party is acknowledged by Insurers;
- 8.4.2 the parties to this Insurance shall be entitled to rescind or vary such without the consent of any third party, whether or not an interest of such third party is acknowledged by Insurers;
- 8.4.3 it is expressly provided that CLC may enforce any or all terms of this Insurance but solely in the event that the Practice insured hereunder shall have ceased trading for any reason;
- 8.4.4 if proceedings are commenced by a third party against Insurers to enforce this Policy, Insurers shall be entitled to rely on any defence or set off that would have been available to them if the proceedings had been brought by the Insured.

8.5 Governing Law and Jurisdiction

This Policy shall be governed by and construed in accordance with the laws of England and Wales and that the courts of England and Wales shall have exclusive jurisdiction.

8.6 **False or Fraudulent Claims**

- 8.6.1 If the Insured shall make any claim for indemnity under this Policy knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall not indemnify any Insured in respect of any Claim or Loss giving rise to such claim for indemnity.
- 8.6.2 Notwithstanding General Conditions 8.6.1, Insurers agree to indemnify any and all Insureds not concerned in such false or fraudulent claim for indemnity, subject always to the other terms and conditions of this Policy.
- 8.6.3 If Insurers intend to rely on General Conditions 8.6.1 they must provide CLC with sufficient information to enable it to understand the reasons for Insurers' intention and to enable it to take such steps as it considers appropriate including making representations to Insurers. Insurers shall consider such representations promptly and in good faith and advise CLC and the Insured of their final decision after consideration of such representations.
- 8.6.4 For the avoidance of doubt, where General Conditions 8.6.1 applies to any Insured or Practice so that indemnity is refused, Insurers will continue to indemnify the Insured or Practice against any other Claim or Loss regardless of whether the Claim or Loss is made or becomes payable after the refusal of an indemnity pursuant to General Conditions 8.6.1 provided it falls within the remaining terms and conditions of this Policy.

8.7 **Resolution of Dispute**

If there is a dispute between Insurers and the Insured in relation to Insurers' liability to provide indemnity under this Policy, Insurers will reimburse the Insured, following resolution of that dispute, any amount paid by the Insured which, on the basis of resolution of the dispute, Insurers are liable to pay.

In the event of any such dispute or difference between the Insurers and Insured arising under this Policy, other than with regard to the contesting of legal proceedings, the dispute or difference will be referred to a mutually agreed Queen's Counsel for resolution.

If the parties cannot mutually agree on a Queen's Counsel then the Insurers and the Insured shall attempt, in good faith, to settle the dispute or difference by mediation on terms that are mutually agreed.

Should mediation be unsuccessful, the dispute or difference shall be finally settled by arbitration of a single arbitrator whose appointment is agreed by the Insurers and the Insured or, if the parties cannot agree upon a single arbitrator, by the decision of two arbitrators (one to be appointed by each party) and in the case of disagreement between the arbitrators, by the decision of an umpire who shall have been appointed in writing by the arbitrators before entering on the reference. The decision of the arbitration shall be final and binding on both parties and responsibility for the cost of the arbitration shall be allocated as decided by the arbitrator(s). The provisions of the Arbitration Act 1996 shall apply to such arbitration.

8.8 **Costs Payable as Incurred**

The Insurers shall pay the Defence Costs as and when they are incurred.

8.9 **Payment to Claimant**

Any sums payable by the Insurers to indemnify an Insured against a Claim will be paid only to the Claimant, or at the Claimant's direction, and the Insurers shall not set off against any such amount any payment due to the Insurers from any Insured including, without limitation, any payment of premium or other sum by way of reimbursement to the Insurers.

8.10 Run-off Cover

If the Insured's Practice ceases during the Period of Insurance, or at the expiry of the Period of insurance (known as 'cessation') this Insurance provides run-off cover. The Insured's Practice shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the Insured firm becomes a non-CLC Regulated Practice.

8.11 Scope of run-off cover

This Insurance will provide run-off cover at no additional cost in the circumstances set out in General Conditions 8.10 above and in accordance with the Insuring Clauses (but subject to the limits, exclusions and conditions of this Policy) on the basis that 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).

In respect of this six year extension to the Period of Insurance only the Sum Insured shall be limited to £2,000,000 any one claim and in all, inclusive of Defence Costs, for the six year extension and shall not indemnify the Insured in respect of any Claim or Loss arising out of any dishonest or fraudulent act or omission of the Insured.

8.12 Sanctions Limitation

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any Claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such Claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the Commonwealth of Australia, European Union, United Kingdom or United States of America.

Appendix C
Responses to PII Consultation Paper

1. Response from Legal Services Consumer Panel

The Council of Licenced Conveyancers
CAN Mezzanine
49-51 East Road
London
N1 6AH

20 May 2016



Dear Simon,

CLC Professional Indemnity Insurance

The Legal Services Consumer Panel welcomes the opportunity to respond to the Council for Licensed Conveyancers (CLC's) consultation on changes to its Professional Indemnity Insurance (PII) arrangements.

The Legal Services Act 2007 requires Approved Regulators to have appropriate insurance and compensation arrangements. Such financial protections are designed to protect consumers from identifiable financial loss due to dishonesty, fraud, negligence or failure to account. These arrangements also benefit the profession, covering lawyers for civil liabilities and helping to maintain public confidence.

In June 2013, the Panel assessed the financial arrangement in the legal services sector and raised a number of issues directly relevant to this consultation, e.g. the need for joined up working amongst Approved Regulators and greater openness and sharing of data. Overall, we want to see consistent consumer protection across the landscape, with risks monitored, and mitigated against adequately. That said, the Panel appreciates the reality of commercial insurance and accepts that trade-offs will be necessary when balancing varying interests.

We are supportive of the CLC's proposal to move away from its Master Policy arrangements. The new proposal will instead ask insurers to sign up to a Participating Insurers Agreement. This will enable CLC regulated entities to choose from a number of participating insurers. We agree that this will enhance choice and competition.

The Panel is broadly supportive of the accompanying provision relating to run-off cover. The CLC has brokered an agreement which will see insurers include run-off cover in the PII. The run-off cover will be for a duration of 6 years and have a limit of £2 million aggregate (inclusive of defence cost). We do not object to this approach in principle, and recognise that this method guarantees run-off cover for all the entities regulated by the CLC. However, we are concerned that the cap of £2 million aggregate may leave some gaps in consumer protection; consumers may be left out of pocket in multiple negligence cases for example.

The CLC has provided evidence which suggest that the £2 million aggregate cap is sufficient because insurers' figures since 2011 show the aggregate claims per practice in run-off have not exceeded £100,000. However, it is plausible for

Legal Services Consumer Panel | 3rd Floor, One Kambale Street, London WC2B 4AN | T 0207 271 0076 | www.legalservicesconsumerpanel.org.uk

multiple claims to exceed £2 million aggregate, especially in the area of property law. In 2013, our research on financial arrangements noted that stakeholders broadly agreed that residential and commercial property conveyancing, wills, estate administration and probate are the highest risks area of law with the potential for larger sums of money to be involved.

We have considered the CLC's proposals alongside the Solicitors Regulation Authority's (SRA) concurrent consultation to make a variation to the terms of its own Participating Insurers Agreement. The SRA will no longer require firms to have run-off covers when firms are switching to another regulator. The SRA's consultation states that removing this requirement will enable regulated individuals or entities to choose between regulators. We agree. However, if larger SRA regulated firms move to the CLC, there is likely to be an accompanying increase in liabilities and risks which may impact on run off covers. The figures used to assess the appropriateness of the proposed run off cap may change. We would therefore suggest a review two years post implementation of the changes.

It is uncertain how regulators plan to deal with situations where a firm with a mixture of portfolios e.g family, conveyancing, and probate switches regulators, from the SRA to the CLC for example. Such a firm may obtain the necessary PII and run off cover for the conveyancing and probate arm of its business, but not the family law work, as this would fall outside the CLC's regulatory oversight. Approved Regulators must work together to ensure that gaps or loopholes do not result in consumer detriment or lack of clarity. In 2013, the Panel highlighted inconsistency across the legal services landscape as an issue that needed to be addressed. Shopping around for a regulator is likely to exacerbate this issue. In the same report we strongly supported the idea of a centralised protection arrangements for all regulated legal advice providers, in lieu of this, it is imperative that the Approved Regulators collaborate to prevent and monitor gaps.

Yours sincerely



Elisabeth Davies
Chair

2. Response from Council of Mortgage Lenders



CLC Professional Indemnity Framework

Response by the Council of Mortgage Lenders to the Council of Licensed Conveyancers consultation

Introduction

1. The CML is the representative body for the residential mortgage lending industry that includes banks, building societies and specialist lenders. Our 135 members currently hold around 95% of the assets of the UK mortgage market. In addition to home ownership, CML members also lend to support the social housing and private rental markets. CML members use licensed conveyancers in the course of their mortgage business.

2. We welcome the opportunity to respond to this consultation. Enquiries on the content of this consultation should be sent to jennifer.bourne@cml.org.uk

General Comments

3. We note the changes planned by the Council for Licensed Conveyancers (CLC) are intended to increase protections for consumers and this is welcome. We have assumed that all clients, regardless of whether they are individuals or companies, will be entitled to make a claim under the revised framework and terms of the participating insurers agreement (PIA).

4. We have assumed, and would welcome confirmation, that the CLC plan to retain, at least for time being, their Master Policy, for those firms who wish to continue insuring under that arrangement.

5. Overall, we welcome the aim to provide greater protections for firms and consumers, but our members are concerned that the introduction of the provision of free run-off cover may result in the level of protection provided for our members and their customers being reduced, given that the run-off cover provision is £2 million in aggregate over the six year period. We also note that the changes are reliant on a healthy PII market for licensed conveyancers; and in part, a reliance on the SRA changing their PIA to remove barriers for changing regulator. It would be helpful to understand what contingency CLC have in place if either, or both of these requirements do not materialise.

SRA's concurrent consultation on Participating Insurers' Agreement

6. We note that the SRA are proposing to amend their participating insurers agreement (PIA) so that run-off provisions are not triggered on a firm moving to another regulator, but that this consultation ends mid-July, i.e. well after changes will have been made as a result of this consultation. Have the CLC considered what they will do in the event that the SRA do not ultimately change their PIA – albeit we accept that a change to the SRA's existing PIA is the most likely outcome?

7. If, for example, the SRA's PIA was unchanged, would the CLC look to put in place measures to help assist firms who did wish to switch to the CLC?

8. Linked to this, if as the CLC expect, this development leads to more firms switching to CLC regulation, we would welcome reassurance of the measures CLC will have in place to identify any firms who may be looking to move regulator due to poor performance/monitoring or disciplinary issues with their former regulator.

Run off cover changes

9. We welcome the moves to require participating insurers to provide run-off cover free of charge and agree that this in principle at least, should help protect firms and their clients alike in that it will increase the likelihood that firms will have insurance in place post-closure. We would like to have

reassurance that the CLC feels confident that there is a healthy PII insurance market – indicative numbers, for example, insurers who the CLC expect to sign up to the PIA.

10. However, in terms of the run-off cover amount, we note that the amount of total cover will be £2 million over 6 years per firm. This, will, we understand, provide a lesser amount of cover than under the current Master Policy arrangements. Some of our members have experienced losses related to conveyancing which have exceeded £2 million and there is a concern that this level of cover may not provide adequate protection to consumers, our members included, given that claims involving conveyancing can easily reach large sums. As such, our members would prefer to see a higher level of cover amount, or the existing Master Policy cover maintained.

11. Some lenders may wish to guard against the risk that the cover is exceeded by requiring firms who act for them to have higher levels of cover over the run-off period. At least one of our members has indicated that they may review whether they wish to have firms choosing this option over the CLC Master Policy, on their panels.

12. In the event any claims were to exceed the run-off cover in place what assurances are the CLC able to give that the Compensation Fund will be able to provide clients, including our members alternative protection?

13. As part of the overall review of its PII arrangements and move away from a master policy approach we would request that the CLC agree with its insurance providers and members that a process is put in place to proactively notify lenders if a firm's cover lapses. We feel this would mitigate the increased risk of dealing with an uninsured firm.

14. The CLC notes that premiums under the new agreement may be increased, but that market forces may lead to downward pressure in the short-term. It would be helpful to understand how the CLC has assessed the risk of how potential premiums for the new cover might lead to pressure on the Compensation Fund, if firms are unable to obtain cover.

May 2016

3. Response from Society of Licensed Conveyancers

Dear Sir/Madam

I am pleased to provide the response from the Society of Licensed Conveyancers to the Consultation on insurance arrangements that was released on 6th May.

Opening comments:

The Society of Licensed Conveyancers (SLC or the Society) is the professional body that represents the interests of individual Licensed Conveyancers and regulated Licensed Conveyancer practices. The SLC was instrumental in creating a competitive market for the provision of Professional Indemnity (PI) Insurance through the introduction of the SLC PI scheme provided by RKH (now Howden) in 2015.

By way of general comment:

- Against a backdrop of the clear intention of the CLC to proceed with the proposed changes in insurance arrangements, and the attendant aggressive timeline, this Consultation appears to be an exercise of 'going through the motions'. Indeed it would seem that the CLC has allowed only two days over a weekend to review and publicise the responses to the consultation, consider any potential changes to the proposals (and documentation), implement those changes and prepare and submit an application to the LSB.
- Is it feasible that a submission to the LSB can be turned around within a week?
- The consultation does not make it clear that the changes to the run-off requirements and cessation of the Master Policy arrangement are entirely separate issues.
- The SLC is sympathetic to the CLC moving away from the provision of the master policy.
- The SLC supports the concept of wrapping run off cover into the PI Insurance policy of the Participating Insurers and congratulates the CLC on this move.
- The SLC's main concern is that PI insurance should be available for all Licensed Conveyancer practices regardless of size or claims history (always provided that they hold a current a licence to practice from the CLC). Whilst the SLC will always attempt to mandate that the provider of its own PI Insurance scheme will quote for every CLC regulated entity, the Society would favour the Participating Insurers Agreement making provision for this for every insurer entering into an Agreement.

In respect of the specific questions.

A. Do you agree with the proposal for the CLC to permit insurers who sign up to its Participating Insurers Agreement to provide professional indemnity insurance for CLC practices incorporating the CLC PII Policy Wording at Annex 3?

The SLC would agree, and without reservation, the proposal for the new Participating Insurers Agreement arrangement, provided there is a requirement within the Agreement that the insurers will always provide a premium quote for all CLC regulated entities. Without such a requirement the Society is concerned that at some point in the future, individual firms (particularly small firms) may find it difficult to obtain a quote at such a premium that enables them to continue to trade – or indeed to obtain a quote at all. This would raise the question of how the regulator would deal with such a circumstance.

B. Do you agree the proposal for run off cover to be provided to practices which close at no additional cost to those practices when they close?

The Society agrees with this proposal, and it should be an attraction for solicitor firms considering switching regulator.

C. Do you agree the proposed amendments to the CLC's Professional Indemnity Code and Guidance and to the CLC's Professional Indemnity Insurance Framework at Annex 1 and 2 respectively?

The Proposed amendments appear fit for purpose subject to the proposed requirement as outlined under A above.

We would be delighted to discuss the foregoing with the CLC if this would be useful.

With regards

Mike Ockenden
Head of Secretariat
The Society of Licensed Conveyancers

4. Response from The Law Society



CLC consultation on new arrangements for PII The Law Society's response May 2016



© 2016 The Law Society. All rights reserved.

Introduction

1. The Council for Licensed Conveyancers (CLC) is [consulting](#) on new arrangements for professional indemnity insurance (PII). While the CLC invites answers to specific questions, it also welcomes comments on the proposals as a whole.
2. The Law Society (the 'Society') notes the interaction between this consultation and the current SRA consultation '[Removing Barriers to switching regulators](#)'. SRA participating insurers are obliged to provide six years' run off cover to firms closing down or switching to become regulated by another 'Approved Regulator'¹. The SRA believes that the considerable cost of run off cover² acts as a barrier to firms who wish to leave SRA regulation. It therefore proposes to waive the run off cover requirement for firms transferring to another Approved Regulator. The CLC's proposed arrangements for PII dovetail with the SRA's consultation in that they would facilitate the ability for firms to choose the most appropriate regulator. The Society will be responding to both consultations.
3. A significant characteristic of the CLC's proposals is that a firm switching to CLC regulation would be able to purchase PII from a CLC Participating Insurer, inclusive of six years' run off cover at no additional cost at the point of closure. There is no reason in principle why CLC Participating Insurers should not provide insurance to firms carrying out conveyancing and/or probate work that were previously regulated by another Approved Regulator. However, we would not support a system that allows SRA-regulated firms to switch regulator where the result is a dilution in the financial protections afforded to clients of the SRA-regulated firm. In particular, the high level of consumer protection provided by the SRA run off requirements is not reflected in the PII arrangements of other Approved Regulators. For example, if the CLC's proposed PII arrangements are approved, there is a potentially negative impact on clients who make a claim that would have been covered under SRA-mandated run off cover but is not covered under CLC-mandated run off cover. We will be raising the issue of consumer protections in our response to the SRA's consultation.

Responses to specific questions

- (A) Do you agree with the proposal for the CLC to permit insurers who sign up to its Participating Insurers Agreement to provide professional indemnity insurance for CLC practices incorporating the CLC PII Policy Wording at Annex 3?
4. The Law Society has no particular view on the move from the Master Policy arrangement to a Participating Insurers Agreement. However, in finalising the new arrangements, the CLC may wish to consider the following:
 - The CLC states that it will seek to identify at an early stage practices that may not be able to afford PII from a participating insurer. The CLC has not addressed in the consultation paper how it will respond to

¹ As defined under the Legal Services Act 2007.

² The Law Society's 2015-16 PII survey found the median cost of run-off cover to be 300% of annual premium.

situations where firms have no PII cover but are closing down. This could be of immediate concern in light of the timetable for introducing the Participating Insurers Agreement.

- Where claims in the run off period exceed £2 million in aggregate, clients may apply for a grant out of the CLC's Compensation Fund. The CLC will need to consider the level of funding that the Compensation Fund will require in order to cover such claims. We note that the Compensation Fund has been subject to successful challenges in recent years.³
 - CLC participating insurers must have a financial standing rating of 'A' or above, and notify the CLC if their rating falls below this level. The CLC will have to consider what action it will take in these circumstances.
5. The Law Society's comments in relation to Annex 3 clauses 8.10 (Run-off Cover) and 8.11 (Scope of Run-off Cover) are included in response to (B) below.
- (B) Do you agree the proposal for run off cover to be provided to practices which close at no additional cost to those practices when they close?
- Run off cover provided at no additional cost
6. Although six year run off cover would be provided at no additional cost to practices at the point of closure, it is to be expected that the premiums paid by CLC-regulated firms would be higher than they currently experience, in order to reflect the included cost of run off cover. This arrangement could be beneficial to some firms, in spreading the cost over a period of time rather than requiring a substantial one-off payment at the point of closure (as is the current process). However, a firm that continues to trade for a long time could end up paying substantially more than the market cost of the run off cover.
7. If the SRA's proposals are enacted, firms switching from SRA to CLC regulation may not find any saving. An underwriter would price the insurance premium for the first year in the knowledge that it would have to cover six years' worth of run off claims at some point in the future. The exception may be that, theoretically, a regulated firm wishing to close could simply switch to CLC regulation for its final year in practice and avoid the run off premium set by the SRA insurer. CLC participating insurers would not know how for how long the entity intended to continue to practice and could therefore have difficulty setting an appropriate premium. Indeed, an insurer knowing that it has to potentially provide seven years' cover for one year's premium may be more likely to offer cover at substantially higher cost than the market rate or decline cover, particularly for smaller firms.

³ *Queen on the application of Nigel Coatman and Andrew Golub v Council for Licensed Conveyancers* [2012] EWHC 1648 (Admin)

Scope of cover

8. The risk that regulated firms wishing to close could switch to CLC regulation in order to avoid a run-off premium is significant. The CLC can have little indication of to what extent this might occur, and what liabilities previously regulated firms may bring. Conveyancing is one of the work areas of highest risk and can give rise to high value claims. It therefore imperative that consumers are adequately protected by way of an appropriate level of insurance cover if something goes wrong. For this reason, the lack of equivalence of SRA and proposed CLC MTC PII cover is a cause for concern.
9. There are a number of differences between the proposed CLC minimum terms and conditions (MTCs) and the existing SRA MTCs.
 - While both sets of MTCs require insurers to provide £2 million in compulsory cover for any one claim, the SRA requires ABSs, limited companies and LLPs to have £3 million of cover. There is no such requirement in the CLC's proposals for CLC-regulated ABSs, limited companies and LLPs.

In relation to run off cover:

- The SRA MTCs prescribe a £2 million limit on individual claims during the run off period, whereas the proposed CLC MTCs require a £2 million limit on claims in aggregate. If the SRA's proposals are enacted, clients of previously SRA-regulated firms could be left exposed as a result of the reduced level of run off cover under the CLC PII arrangements. This is a significant risk, given that conveyancing is typically one of the highest risk areas of work and could produce high value claims, easily exceeding liabilities in excess of £2 million over six years. While the CLC notes that 'since 2011 the aggregate claims in run off have not exceeded £100,000'⁴, this is an incomplete figure. This figure would appear to relate to their current market and makes no attempt to forecast the market should solicitors' firms switch. In addition, although the book for the year 2011 is quite mature, it still has another year to run in which claims may surface. By contrast, the claims year 2015 is very immature in run off terms, and the full extent of claims will not be known until 2021. Indeed, bearing in mind that the market in the last four years has been characterised by low interest rates⁵ and low claims, there is insufficient basis for extrapolating the £100,000 figure. Rather, it is possible that the number and value of claims will rise to the extent that a £2 million limit on claims in aggregate over six years will not be sufficient. Solicitors' clients should not receive a lower level of cover because their provider has switched regulator. In response to the SRA's consultation, we will argue that clients should be afforded equivalent SRA MTC run off cover if the firm switches to another Approved Regulator.

⁴ Paragraph 25

⁵ In any settlement of a successful claim, the insurer will have to take into account interest on the amount payable over the years of detriment suffered at the prevailing rates. A few years of interest rates at 6%, for example, would increase the level of damages significantly.

- (C) Do you agree the proposed amendments to the CLC's Professional Indemnity Code and Guidance and to the CLC's Professional Indemnity Insurance Framework at Annex 1 and 2 respectively?

The Law Society has no comments.

Appendix D Summary of Responses to PII Consultation Paper



CLC Professional Indemnity Insurance Code and Guidance CLC Professional Indemnity Insurance Operating Framework Summary of Responses to the CLC Consultation Paper May 2016

Summary

The CLC published its Consultation Paper on 5 May 2016. The Consultation Period ended on 20 May 2016. Although the consultation period was short, the CLC is pleased to note the number of responses received raising important points. The CLC has indicated in this Summary of Responses how it will take account of the points made.

None of the points raised lead the CLC to conclude that the proposals it has made are flawed and there was wide support for them.

The proposed approach will

- Improve consumer protection
- Provide firms with improved choice of insurance
- Reduce the regulatory compliance burden on firms and streamline regulatory processes
- Reduce the exposure of the Compensation Fund

The CLC is therefore now making its application to the LSB for approval of the amendments it has proposed to the CLC Professional Indemnity Insurance Code and Guidance or to the CLC Professional Indemnity Insurance Operating Framework, and for the Participating Insurers Agreement (PIA) and the CLC PII Policy Terms with revised run off provisions to be approved and come into force in time for PII renewals on 30 June 2016.

Introduction

By way of background, it is important to remember that allowing free choice of insurer on the open market was a recommendation of the Office of Fair Trading in 2011²⁹. It was always possible that, given widespread uptake of that free choice, the Master Policy Scheme could become unsustainable. In 2015, there was widespread opt-out from the Master Policy for the first time when one third of CLC practices secured their PII through an insurer new to the market promoted by the SLC.

The evolution of the PII market for CLC practices demanded a response by the CLC. As with any regulatory action, we are guided by the need for proportionate measures that effectively target risk to maintain or enhance consumer protection while supporting innovation and growth in the provision of legal services.

²⁹ http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/oft_advice.pdf

In preparing its proposals, the CLC held discussions with the two current insurers of CLC firms to ensure that the new model for PII was workable and would support provision of cover to all currently insured firms. It was also an opportunity to close gaps in the extent of run off coverage of closed practices to improve consumer protection and reduce the exposure of the Compensation Fund. We also looked at past claim levels to ensure that provision would meet all reasonably foreseeable circumstances. The proposals are therefore evidence-based and robust.

The PII Consultation Paper set out the CLC's proposal to move away from its Master Policy arrangements with a right for practices to opt-out of the Master Policy for Professional Indemnity Insurance. Instead, insurers will be asked to sign up to a PIA setting out Minimum Terms and Conditions of cover. CLC regulated entities will then be free to choose from amongst all Participating Insurers. As explained in the Consultation Paper:

- VII. These new PII Arrangements will make it much easier for CLC practices to compare PII policies offered by different insurers. It will make the PII approval process for CLC Practices and for the CLC much more straightforward than last year. Preliminary indications are that the changes will be welcomed by the profession because they make clear the requirements for CLC Practices to obtain PII and simplify the application procedure. Insurers' financial standing will need to be rated 'A' or above and the terms of PII cover must be equivalent to the CLC PII Policy Wording.
- VIII. The effect of the new arrangements is:
 - (d) to provide wider choice
 - (e) to encourage CLC practices to take responsibility
 - (f) to help the CLC set standards and regulate effectively
- IX. The changes are consistent with the regulatory objectives and in particular increase protection for consumers.
- X. The only significant difference between the PII terms currently in force and the CLC's new PII Arrangements relate to Run Off Cover. 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.
- XI. The CLC's PII regulatory arrangement have been amended (see Annex 1 & 2) to reflect the change in arrangements which are relatively straightforward.

Questions

The Consultation asked three questions:

- (E) Do you agree with the proposal for the CLC to permit insurers who sign up to its Participating Insurers Agreement to provide professional indemnity insurance for CLC practices incorporating the CLC PII Policy Wording at Annex 3?
- (F) Do you agree the proposal for run off cover to be provided to practices which close at no additional cost to those practices when they close?
- (G) Do you agree the proposed amendments to the CLC's Professional Indemnity Code and Guidance and to the CLC's Professional Indemnity Insurance Framework at Annex 1 and 2 respectively?

No specific question was asked about the SRA proposals set out at paragraphs 31-34 of the Consultation Paper which are the subject of the SRA's Consultation Paper 'Removing barriers to switching regulators' although some respondents chose to comment on them³⁰.

Circulation of the Consultation Paper

The Consultation Paper was sent to managers of CLC practices and to other stakeholders, was posted on the CLC website and promoted in the CLC's email newsletter, on Twitter and LinkedIn. It was reported in the Today's Conveyancer, the Law Society Gazette and Legal Futures.

The CLC received 15 responses:

- 8 from CLC practices - the CLC currently regulates 230 practices (8 respondents represent 3.5% of CLC practices).
- 3 from SRA practices
- 4 from other stakeholders, namely the Legal Services Consumer Panel (LSCP), the Council of Mortgage Lenders (CML), the Society of Licensed Conveyancers (SLC) and the Law Society (TLS).

The Responses

The responses must be seen in the context that the two sets of insurers who provided PII to 98% CLC practices in the 2015-2016 insurance year have signed up to the PIA which incorporates the CLC PII Policy Wording. Whilst a case may be made that some of the terms, such as for run off, may be more onerous for insurer than is currently required elsewhere in the market, they have been accepted by those insurers. To that extent the CLC is able to demonstrate that there are insurers with current direct experience of CLC practices who are willing to continue providing PII on the revised terms for that market. Should a firm fail to secure coverage, the CLC has proven systems in place to ensure an orderly managed close down if sale or merger is not possible.

The SLC said that the consultation did not make it clear that the changes to the run off requirements and cessation of the Master Policy issues are entirely separate issues. It is noted that in its response the SLC agreed both proposals, although the PIA proposal was agreed strictly on the basis that the PIA should continue in effect to act as a Mater Policy (in the traditional sense). This point is addressed further below.

Responses to Question (A) and the CLC's Reply to the Issues raised

The CLC asked:

Do you agree with the proposal for the CLC to permit insurers who sign up to its Participating Insurers Agreement to provide professional indemnity insurance for CLC practices incorporating the CLC PII Policy Wording at Annex 3?

Responses from CLC practices

Responses from 3 CLC practices agreed that the CLC should move to the PIA, as proposed. Whilst in principle in agreement with the proposition, one practice considered that the requirements of the PIA are too onerous for insurers. The fact that insurers have already agreed PIA terms suggests this is not correct for all insurers. The other four CLC practices which did not agree the proposal were concerned that moving away from the Master Policy is likely to mean that some CLC practices will not be able to secure PII under the new arrangements. The SLC has suggested that the PIA should require all insurers

³⁰ <https://www.sra.org.uk/sra/consultations/removing-barriers-switching-regulators.page>

to offer terms to all CLC practices. Both sets of current insurers have confirmed that they are willing to offer terms to all practices which they currently insure.

The experience of PII renewal in 2015 was that many CLC practices chose to move away from the Master Policy, because of enhanced renewal terms offered both other insurers. As reported in the CLC Consultation Paper, a third of CLC practices moved away from the Master Policy in 2015. It appears that whilst approving a market based solution for PII, there is a continuing desire for retention of the Master Policy. In the view of the CLC these aspirations are mutually exclusive. Insurers will of course wish to maximise their coverage of the CLC market, but they must ultimately be able to determine whether to offer PII terms to any practice which they consider puts at risk the ability of the insurer to continue offering PII to that market.

Responses from SRA practices

Two of the SRA practices indicated that they agreed to the PIA proposal. The third did not consider that the CLC's changes had gone far enough to accommodate SRA requirements and so enable them to transfer to CLC regulation.

Responses from stakeholder organisations

LSCP said in its response that it supports the CLC's proposal to move away from its Master Policy arrangements on the grounds that this will enhance choice and competition. TLS said it had no particular view. CML said that they would welcome confirmation that the CLC plan to retain, at least for the time being, their Master Policy for those firms who wish to continue insuring under that arrangement. For the reasons set out above, the CLC does not propose that the Master Policy arrangements should be retained. However, it has been reassured by confirmation that insurers who have underwritten the CLC's Master Policy since 2004 have signed up to the PIA and to that extent there is continuity, albeit not under the Master Policy itself.

Responses to Question (B) and the CLC's Reply to the Issues raised

The CLC asked:

Do you agree the proposal for run off cover to be provided to practices which close at no additional cost to those practices when they close?

Responses from CLC practices

With one exception, all CLC practices agreed to the CLC's proposal for run off. The practice which did not agree considered that the requirement was too onerous for insurers. It also considered that it might also prove over the longer term to be unnecessarily expensive in terms of additional premiums for practices which continue to trade beyond six years. This was a point also made by TLS. In the CLC's view this will be a factor which should be taken into account by all parties in agreeing renewal terms. As set out above, these requirements have been accepted by two sets of insurers, although the CLC agrees it may not be accepted by other insurers.

Responses from SRA practices

Two of the SRA respondents agreed the proposal. The third thought that it did not go far enough in meeting the requirements of the SRA.

Responses from stakeholder organisations

The SLC agreed the proposal and commented that it should be an attraction for solicitors firms considering switching regulators. LSCP said that it is broadly supportive of the provision relating to run off cover. However, it is concerned that the cap of £2 million aggregate may leave some gaps in consumer protection; consumers may be left out of pocket in multiple negligence cases for example.

CML welcomed the move to require PI to provide run off cover. It was concerned that the effect may result in the level of protection provided for its members and their customers being reduced. It looked for assurance that there is a healthy PI insurance market. It would like to see higher levels of cover over the run off period. It also asked that a process is put in place to proactively notify lenders if a firm's cover lapses and for an explanation how the CLC has assessed the risk to the Compensation Fund in the event that practices are unable to obtain cover.

The CLC explained in the Consultation Paper that whilst there is a requirement to purchase run off cover for a minimum of six years following closure of a practice, in a number of instances the former principals have not had the funds to pay the premium. The CLC has been in discussions with insurers to investigate ways in which run off cover could be incorporated into CLC PII Provisions at no additional cost to CLC practices at point of closure. After discussions insurers have agreed to provide £2 million run off cover in aggregate. If the aggregate limit were to be exceeded an application could be made for a grant out of the Compensation Fund. This is a significant improvement on the current position which in effect places much greater reliance on the Compensation Fund and thus poses greater financial risk to the regulated community than provisions that fund.

It is important to note that insurers have acknowledged that they should price premiums at a level which will enable them to provide run off cover to practices at no additional costs at the point of closure.

LSCP states that they appreciate the reality of commercial insurance and accept that trade off will be necessary when balancing varying interests. This is the exercise which the CLC has undertaken.

Responses to Question (C) and the CLC's Reply to the Issues raised

Do you agree the proposed amendments to the CLC's Professional Indemnity Code and Guidance and to the CLC's Professional Indemnity Insurance Framework at Annex 1 and 2 respectively?

There were no substantive comments on the proposed amendments. Comments made which answered the question in the negative followed the responses to Questions (A) and (B).

Switching Regulators

In addition to asking for responses to the specific questions it had raised, the Consultation Paper invited comments on the proposals as a whole. Some respondents took advantage of this invitation by commenting on paragraphs 31 to 34 under the heading 'Switching Regulators' which were prompted by the SRA's Consultation Paper 'Removing barriers to switching regulators'.

LSCP commented that if larger SRA regulated firms move to the CLC, 'there is likely to be an accompanying increase in liabilities and risks which may impact on run off covers. The figures used to assess the appropriateness of the proposed run off cap may change. We would therefore suggest a review two years post implementation of the changes'. The CLC agrees it will carry out a review as suggested.

LSCP asked what the position would be if a SRA practice changing to CLC regulation provided services which the CLC is not currently authorised to regulate. We should make clear that only the conveyancing and probate operations of a mixed practice firm would be able to transfer to regulation by the CLC. Therefore, the point under discussion here is what might occur in a situation where a mixed SRA practice transfers conveyancing and probate into regulation by the CLC and either continues to provide other legal services under the SRA or ceases to provide those services, essentially closing its SRA practice. LSCP said that approved regulators must work together to ensure that gaps or loopholes in

run-off coverage that might arise do not result in consumer detriment or lack of clarity. The CLC has already identified this risk and will work with the SRA to agree appropriate mitigating steps. Further, any practice applying to be regulated by the CLC will need to satisfy the CLC that it had appropriately mitigated any such risk. This may be by continuing to provide such services under a different regulatory regime or by taking out run off insurance for that part of the practice.

CML noted that the SRA's consultation ended after the CLC's consultation and enquired whether the CLC had considered what it would do in such an event. It also asked for assurance of the measures which the CLC will have in place to identify firms who may be looking to move regulators due to poor performance/monitoring or disciplinary issues with their former regulator. The CLC carries out due diligence on all applicants for a licence which include asking the SRA to confirm the regulatory record of a practice and its principals. Insurers will separately carry out their own due diligence. No licence will be issued to a practice until evidence of insurance is produced and until the CLC is satisfied with the standards of that practice.

TLS commented that there is a significant risk in SRA firms wishing to close switching to CLC regulation in order to avoid the SRA run off premium. The CLC has identified this risk, as have insurers, and separate processes are in place to identify those practices seeking to transfer for this purpose.

TLS submit that solicitors' clients should not receive a lower level of cover because their provider has switched regulator. It says that in response to the SRA's consultation it will argue that clients should be afforded equivalent SRA MTC run off cover if the firm switches to another approved regulator. In the CLC's view, it is for the SRA to determine the appropriate level of cover.

**Appendix E
Participating Insurers Agreement**

Private & Confidential
Subject to Privilege

The Council for Licensed Conveyancers (1)

and

..... **(2)**

Participating Insurer Agreement 2016

Details of the Insurer

Company name (or managing agent of Syndicate) [for and on behalf of the members of the Syndicate specified below, for the [•] year(s) of account]

Company / syndicate number

Registered office

Telephone

Fax

Principal contact

Should contact be via broker only? If yes, place a X here

Commencement Date: 1 July 2016

Details for service of notice in accordance with clause 12

Address	
Contact name	

Details to appear in CLC publications

Company/trading name	
Postal address	
Website address	
Contact	
Credit rating and insurer financial strength rating (or state if none)	
Name of rating agency	

Contents

Clause	Page
1 Definitions and Interpretation	4
2 Scope	6
3 Warranties, Representations and Undertakings	6
4 Obligations	7
5 Claims Handling and Enforcement.....	10
6 Compliance with the CLC Code of Conduct	10
7 Rights of Inspection	10
8 Co-operation with the CLC	10
9 Termination	1
10 Insurer Disputes	11
11 Other Disputes and Dispute Resolution	12
12 Assignment.....	12
13 Notices.....	12
14 Confidentiality	13
15 Counterparts.....	13
16 Entire Agreement	13
17 Third Party Rights.....	13
18 Governing Law & Jurisdiction.....	13
19 Appendices.....	15
Appendix 1 CLC PII Policy Wording.....	15
Appendix 2 CLC Evidence of Insurance	26
Appendix 3 CLC Reporting requirements	28

THIS AGREEMENT is made on

BETWEEN:

- (1) **THE COUNCIL FOR LICENSED CONVEYANCERS** (the **CLC**) of CAN Mezzanine, 49 - 51 East Road, London N1 6AH;
- (2) The company or managing agency (for and on behalf of the members of the specified Syndicate for the specified year(s) of account), the details of which are set out on page 2 (the **Insurer**).

WHEREAS

- (A) The CLC has, in exercise of its powers under, inter alia, section 21 of the Administration of Justice Act 1985 made Rules (in this Agreement referred to as **the Rules**) concerning indemnity against civil liability incurred by, amongst others, licensed conveyancers in private practice in England and Wales.
- (B) Pursuant to the Rules, Practices are required to take out professional indemnity insurance on at least the equivalent terms to the CLC PII Policy Wording, applicable for the relevant Policy Period with a Participating Insurer which has entered into a Participating Insurer Agreement with the CLC.
- (C) The purpose of this Agreement is to set out the terms and conditions on which the Insurer may provide professional indemnity insurance to Practices as required under the Rules.

IT IS AGREED AS FOLLOWS

1 Definitions and Interpretation

1.1 In this Agreement, unless the context requires otherwise:

Cessation means where the Practice ceases trading during the Policy Period.

Claims Report means a report issued in accordance with clause 4.8.

CLC or the Council for Licensed Conveyancers means the body established under the Administration of Justice Act 1985 to license and regulate licensed conveyancers and Practices in England and Wales.

CLC PII Policy Wording means the CLC Policy Wording and conditions with which a Policy is required to comply, being the terms and conditions required from time to time under the Rules.

Commencement Date means the first date on which Policies written by the Insurer may incept, being the date set out on page 2.

Declaration Premium Income means the aggregate of Premium Payable in respect of each Policy issued in the Policy Period by the Insurer to the extent that such premium relates to cover required in accordance with the CLC PII Policy Wording.

Glossary means the Glossary of Terms set out in the CLC Handbook.

Insurance Premium Tax means the tax charged in accordance with Part III Finance Act 1994 or any tax of a similar nature introduced in substitution for, or in addition thereto (including any equivalent taxes payable in a jurisdiction outside the United Kingdom).

Offer means any offer to issue a Policy or quotation for a Policy.

Participating Insurer means any Insurer entering into this Participating Insurance Agreement.

Participating Insurer Agreement means an agreement setting out the terms and conditions on which a Participating Insurer is or was entitled to provide professional indemnity insurance to Licensed Conveyancers in England and Wales from 1 July 2016.

Participating Insurer Minimum Rating means any Insurer entering into this Participating Insurance Agreement must have a minimum rating the equivalent to an A.M. Best Financial Strength Rating of A, or Standard & Poor's Financial Strength Rating of A. In relation to a Lloyd's Syndicate, the published ratings shall be that which applies to Lloyd's as a whole, provided Lloyd's continues to be rated as a single entity by A.M. Best or Standard & Poor's.

Policy means a contract of professional indemnity insurance made between the Insurer (whether alone or together with other Participating Insurers) and a Practice complying with the CLC PII Policy Wording in accordance with clause 2.2.

Policy Period means the period of insurance in respect of which risks may attach under a Policy.

Practice means an entity regulated by the CLC: a recognised body regulated by the CLC as an approved regulator or an alternative business structure (also called a licensed body) regulated by the CLC acting as a licensing authority.

Predecessor means a Recognised Body or Licensed Body whose Practice has been wholly or partially merged with or acquired by a Practice or one of its Predecessors.

Premium Payable means the amount of the premium (including all levies and charges relating to a Policy) due from a Practice to a Participating Insurer (excluding any amount in respect of Insurance Premium Tax) in respect of any Policy issued in the Policy Period, less any amount due to any intermediary acting as agent of the Practice for the purpose of obtaining professional indemnity insurance.

Records means all documents and records of the Insurer in whatever form relating to current and expired Evidence of Insurance issued by the Insurer or to which the Insurer has subscribed.

Run-off means continuing cover under the terms and conditions stated in the CLC PII Policy Wording itself, other than in respect of any claim or claims arising out of fraud or dishonesty.

Successor Practice means a Recognised Body or Licensed Body which has acquired or merged with the whole or part of a Recognised Body or Licensed Body.

Value Added Tax means value added tax as charged in accordance with the provisions of the Value Added Tax Act 1994 or any tax of a similar nature introduced in substitution for, or in addition thereto.

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 references to a clause or schedule are to a clause of, or a schedule to, this Agreement, references to this Agreement include its schedules and references to a part or paragraph are to a part or paragraph of a schedule to this Agreement;

- 1.2.2 references to this Agreement or any other document or to any specified provision of this Agreement or any other document are to this Agreement, that document or that provision as in force for the time being and as amended from time to time;
- 1.2.3 the singular includes the plural and *vice versa*, words importing a gender include every gender and references to persons include bodies corporate, partnerships and other unincorporated associations or bodies of persons;
- 1.2.4 the contents table and the headings to clauses schedules parts and paragraphs are inserted for reference only and shall be ignored in interpreting this Agreement;
- 1.2.5 a reference to any statute, statutory provision, code or regulation includes:
- (a) any subordinate legislation (as defined by section 21(1) Interpretation Act 1978) made under it; and
 - (b) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it, either before or at the date of this Agreement, or after the date of this Agreement;
- 1.2.6 references to the CLC include any body or person which succeeds in whole or in part to the functions of the CLC or any such body or person.

2 Scope

- 2.1 The Insurer, having agreed to be bound in accordance with the terms of this Agreement, may:
- 2.1.1 issue Policies with an inception date on or after 1 July 2016;
 - 2.1.2 renew or replace any Policies; and
- at any time on or after the Commencement Date and before the Run-off Date to Practices on the terms set out in this Agreement.
- 2.2 Each Policy issued by the Insurer shall provide cover which complies at all times during the currency of the Policy being the equivalent of terms issued under CLC PII Policy Wording in force on the later of the date on which:
- 2.2.1 the Policy incepts;
 - 2.2.2 any extension to the Policy Period takes effect; or
 - 2.2.3 the Policy is renewed or replaced.
- 2.3 The Insurer shall issue (or procure the issuing of) an Evidence of Insurance in the form set out in Part A to this Agreement to each Practice in respect of each Evidence of Insurance issued, renewed or replaced or where the Policy Period is extended (as the case may be) to that Practice by the Insurer within 30 days of such inception, extension, renewal or replacement of the Policy.
- 2.4 The Insurer may underwrite Policies jointly with one or more other insurers, provided that each insurer underwriting any such Policy is a Participating Insurer at the date on which the Policy incepts, and provided that the Policy is fully underwritten by Participating Insurers.
- 2.5 Where the Insurer is the Lead Insurer (as defined in the CLC PII Policy Wording) it shall act as such including, without limitation, being responsible for the conduct of claims, advancing defence costs and compromising and arranging for the payment of claims, and it shall be responsible for meeting the reporting requirements set out in clause 4.4 in relation to the Policy. For the avoidance of doubt, the liability of the Insurer under any Policy shall not be increased by virtue only of the fact that it is acting as Lead Insurer.
- 2.6 The Insurer may not, under the terms on which it offers to issue any Policy or provides any quotation to a Practice (or to any intermediary in respect of a Practice), require that that Practice takes out any other policy (of whatever type or description) with the Insurer, or any other person. The Insurer shall provide each Offer in respect of a Policy on a separate and standalone basis from any other offer or quotation of insurance.
- 2.7 In the event of an inconsistency between the CLC PII Policy Wording and the terms of any Policy, the Insurer shall not be entitled to construe the Policy in a way that does not give full effect to the CLC PII Policy Wording, and shall, if and to the extent required, amend the terms of any Policy so that such Policy does give full effect to the CLC PII Policy Wording.
- 2.8 Clause 2.7 shall be directly enforceable against the Insurer by any Insured (as defined in the CLC PII Policy Wording) in his own right, where that Insured is required under the CLC PII Policy Wording to be insured under a Policy with the Insurer, in accordance with the Contracts (Rights of Third Parties) Act 1999 in relation to that Policy.
- 2.9 Clause 2.8 shall be without limitation mutually to the right of the CLC and the Insurer at any time and from time to time to vary the terms of, or terminate, this Agreement without reference to any third party.

3 Warranties, Representations and Undertakings

- 3.1 The Insurer warrants and represents to the CLC that, both as at the date of this Agreement and as a continuing warranty and representation for the duration of

this Agreement:

- 3.1.1 it is a Participating Insurer for the purposes of both effecting and carrying out contracts of insurance; and
 - 3.1.2 it shall effect and carry out Insurance and shall otherwise conduct its operations and activities in relation thereto at all times in compliance with all applicable laws and regulations, including but not limited to applicable provisions of the Equality Act 2010.
- 3.2 The Insurer undertakes that it shall notify the CLC in writing immediately if, at any time after the date of this Agreement
- any warranty set out in clause 3.1 ceases to be true in any respect.

Agency Arrangements

- 3.3 The Insurer undertakes to use its best endeavours to procure that any intermediary acting as its agent in any dealing with a Practice in relation to arranging or effecting a Policy discloses to the Practice, by means of a clear and prominent statement in writing, the fact that it is acting as agent for the Insurer, and whether it does so on an exclusive basis, whether or not it also acts as agent for the Practice.
- 3.4 Where the Insurer has delegated underwriting authority to one or more intermediaries for the purpose of effecting Policies, the Insurer must:
- 3.4.1 have in place at all times appropriate systems and controls to monitor and supervise the intermediary/ies for the purpose of ensuring that any such intermediary complies in full with all relevant laws and regulation and the terms of its delegated authority;
 - 3.4.2 notify the CLC of the name and contact details of any such intermediary so appointed;
 - 3.4.3 have entered into a written agreement with any such intermediary setting out the scope and terms of the underwriting authority conferred on the intermediary and provide to the CLC within seven days of being requested a copy of such agreement;
 - 3.4.4 notify the CLC within seven days of the delegated authority conferred on the intermediary being withdrawn, suspended or terminated.
- 3.5 Where the Insurer has permitted any intermediary to sub-delegate its underwriting authority to any other person or persons (each, a **sub-delegate**), any such sub-delegate appointed by an intermediary shall itself be considered an intermediary for the purposes of clause 3.4.
- 3.6 The Insurer acknowledges and agrees that it shall be bound by the acts of any intermediary that it has appointed and any sub-delegate of such intermediary and that as a consequence it shall not dispute whether a Policy has been validly effected by the intermediary or sub-delegate, or deny a claim under a Policy effected by the intermediary or sub-delegate by reason of any act or omission of the intermediary or sub-delegate.

4 Obligations

General Reporting Obligations

- 4.1. If, in the course of dealing with any Practice:
- 4.1.1 the Insurer becomes aware of:
 - (a) any matter or circumstances that would entitle it to avoid or repudiate a Policy but for the provisions of General Conditions 8.1 of the CLC PII Policy Wording (and/or the corresponding terms of the Policy);
- other than where the Insurer believes any relevant act or omission on the part of the Practice to have been innocent, or

- 4.1.2 the Insurer suspects or becomes aware of dishonesty or fraud on the part of that Practice or any insured under that Practice's Policy and as a result:
 - (a) reserves its position as regards any part of a claim made by that Practice; or
 - (b) notifies that Practice that it will not, or intends not to, indemnify that Practice in full in respect of a claim made by that Practice; or
 - (c) seeks, or reserves its right to seek, reimbursement of any amount paid out under any Policy from any insured,
- 4.1.3 the Insurer shall notify the CLC (or such person as the CLC may notify to the Insurer from time to time) in writing:
 - (a) as soon as reasonably practicable after it becomes aware of any of the matters referred to in clause 4.1.1(a) ; and
 - (b) within 14 days from the date on which the Insurer takes any of the steps referred to in clauses 4.1.2(a) to 4.1.2(c) inclusive,

setting out the nature of its awareness or suspicion (and any steps that it has taken as a result of that suspicion), and with the prior written consent of the Insured shall provide the CLC with such further information relating to the claim and the Practice concerned as the CLC may reasonably require from time to time so as to enable the CLC to investigate. If Insurers rely on this exclusion and the CLC, having become aware of the Insurers' intent, choose to make representations to Insurers, Insurers shall consider such representations promptly and in good faith and advise CLC and the Insured of their final decision after consideration of such representations.

- 4.2 If any Practice fails to pay any sum due to the Insurer in respect of any Policy, and the Insurer has reasonable grounds for believing that such failure constitutes a wilful refusal to pay such sum, the Insurer shall notify the CLC in writing of that fact.
- 4.3 The Insurer shall, within 14 days of any such request being made in writing by the CLC from time to time, provide to the CLC confirmation in writing that:
 - 4.3.1 a specified Practice has taken out a Policy issued by that Insurer;
 - 4.3.2 such Policy is in force or was in force on a particular date and the expiry date of the Policy; and
 - 4.3.3 such Policy complies with the CLC PII Policy Wording in force on the date on which such Policy inceptioned.
- 4.4 The Insurer shall provide to the CLC such information and data as the CLC may reasonably require from time to time to enable the CLC to verify that the Insurer is complying with its obligations under this Agreement, including but not limited to its warranty and undertaking to comply with all applicable laws and regulations, including but not limited to applicable provisions of the Equality Act 2010. The provisions of clause 13 shall apply in respect of any information provided in accordance with this clause 4.4
- 4.5 If any of the information provided by the Insurer contained on page 2 of this Agreement (under the heading "Details of the Insurer") changes after the Commencement Date (including, for the avoidance of doubt, the Insurer's credit rating and insurer financial strength rating), the Insurer shall notify the CLC and each Practice to which it has issued a Policy as soon as practicable and, in any event, not later than seven days after such change.
- 4.6 Without prejudice to its obligation to notify the CLC, the Insurer shall have complied with the notification requirements under clause 4.5 insofar as they relate to advising each Practice of its credit rating and insurer financial strength rating where, in the reasonable opinion of the CLC, the Insurer has:
 - 4.6.1 for the duration of this Agreement, displayed its credit rating and insurer financial strength rating accurately, in clear terms and in a readily accessible area on its website and updated such information within seven days of any

variation; and

- 4.6.2 at the inception, renewal or replacement of any Policy or the extension of the Policy, provided each Practice to whom it has issued such Policy with sufficient information to enable the Practice to access the Insurer's credit rating and insurer financial strength rating information maintained on its website.

Claims Reports

- 4.7 The Insurer shall provide a report (a **Claims Report**) to any Practice, and where requested to CLC, to which it has issued a Policy, either in the current or in any previous Policy Period, within seven days from receiving a request to do so, setting out (as applicable), as at the date specified in the Claims Report:
- 4.7.1 a summary of:
- (a) each claim (or series of related claims) made against the Practice of which the Insurer is aware under each Policy; and
 - (b) any circumstances notified to the Insurer by the Practice under each Policy; and
 - (c) the amount reserved by the Insurer against each claim (or series of related claims) or circumstances notified; and
 - (d) the amount reserved for defence costs by the Insurer against each claim (or series of related claims) or circumstances notified; and
 - (e) any amounts paid out by the Insurer against each claim (or series of related claims) or circumstances notified; and
 - (f) the amount paid for defence costs by the Insurer against each claim (or series of related claims) or circumstances notified.

Reports on Insured Practices

- 4.8 The Insurer shall provide reports (**Insured Practices Reports**) to the CLC in respect of Policies written by a Participating Insurer during any Policy Period and in the form required from time to time. If there are no Insured Practices required to be included by the Insurer on any Insured Practices Report the Insurer shall instead provide a statement to that effect.
- 4.9 Each Insured Practices Report shall constitute confirmation that a Policy has been validly issued to each of the Practice listed in the Insured Practices Report and that the Insurer is on risk in accordance with the terms of the Policy. This clause 4.9 shall be directly enforceable against the Insurer by any insured in his own right in accordance with the Contracts (Rights of Third Parties) Act 1999 in relation to that Policy and shall be without limitation to the right of the CLC and the Insurer at any time and from time to time to vary the terms of, or terminate, this Agreement without reference to any third party.

Run-off

- 4.10 The Insurer shall provide a report to the CLC within 14 days from being requested to do so, setting out, as at the date specified in the report:
- 4.10.1 the name of each Practice in respect of which run-off cover is being provided by the Insurer under a Policy issued in any Policy Period;
- 4.10.2 the date on which the Insurer believes that such run-off cover was triggered.
- 4.11 Each report shall constitute confirmation that run-off cover is being provided at no additional cost to the Practice at the point of Cessation by the Insurer in respect of each of the Practices listed in the Insured Practices Report and that the Insurer is on risk for run-off in accordance with the terms of the Policy, save where the Insurer subsequently confirms that any such Practice included in the report is insured as a Successor Practice within the meaning of and in accordance

with the CLC PII Policy Wording. This clause 4.11 shall be directly enforceable against the Insurer by any insured in his own right in accordance with the Contracts (Rights of Third Parties) Act 1999 in relation to that Policy and shall be without limitation to the right of the CLC and the Insurer at any time and from time to time to vary the terms of, or terminate, this Agreement without reference to any third party.

- 4.12 In the event that a Practice ceases to trade without a Successor Practice, then, for the purposes of the Policy, the ceased Practice is treated as going into "run-off". The run-off cover provides protection for the benefit of the former Principals and employees, their personal representatives and any prior practice but run-off cover will not apply to any client work conducted after the date of the Practice cessation other than concluding client matters and dealing with the orderly closure of the Practice.
- 4.13 Run-off cover may be cancelled at the request of the CLC to the Participating Insurer where the CLC mutually agrees with the Participating Insurer(s) to treat another Practice as a one and the same Practice as the run-off Practice and therefore deemed a Successor Practice.

Declaration Premium Income

- 4.14 The Insurer shall provide to the CLC a declaration in the form set out in Appendix 2 providing a figure for its Declaration Premium Income for the Policy Period by no later than 31 July 2016, and by no later than 31 July in any subsequent year. Monthly adjustments will be made for any Practices commencing to trade during the Policy Period.
- 4.15 The Insurer warrants and represents to the CLC that:
- 4.15.1 to the best of the knowledge information and belief of the Insurer the Declaration Premium Income declared pursuant to clause 4.14 does not materially understate the Declaration Premium Income as at the date of such declaration; and
- 4.15.2 it has taken all reasonable steps to verify the accuracy of the declaration of its Declaration Premium Income made pursuant to clause 4.14 and that such declaration has been made in good faith.

Compliance with Reporting Requirements

- 4.16 The Insurer shall nominate a director or officer of the Insurer to be the person responsible for compliance with the reporting obligations under this clause 4 (the **Reporting Officer**).
- 4.17 The Insurer shall:
- 4.17.1 provide to the CLC the name, title and contact details of the Reporting Officer on or before the Commencement Date and advise the CLC promptly of any changes to such details for the term of this Agreement; and
- 4.17.2 ensure that the Reporting Officer is appropriately authorised and has sufficient resources at all times to enable the Insurer to comply with its obligations under this clause 4.
- 4.18 In the event that the Insurer fails to comply with any of its obligations under this clause 4, the Insurer shall pay all costs and expenses incurred by the CLC (including the costs of engaging agents and advisors) in accessing the Records of the Insurer pursuant to clause 7.1.2. All such costs and expenses shall be paid by the Insurer within 30 days of receipt of an invoice issued to the Insurer by the CLC.

5 Claims Handling and Enforcement

- 5.1 The Insurer shall act at all times in all respects in accordance with clause 10 of this Agreement and the CLC PII Policy Wording.

6 Compliance with the CLC Code of Conduct

- 6.1 If any Practice fails to comply with the CLC Code of Conduct in relation to a Claim or

otherwise, the Insurers may report such non-compliance to the CLC or any other relevant regulator. If any such report would breach the privilege, confidentiality or privacy of any client or former client of the Practice any such report shall be redacted so as to preserve the privilege, confidentiality or privacy of the client or former client.

7 Rights of inspection

- 7.1.1 The Insurer shall maintain Records in respect of each Policy until final settlement of all claims made and capable of being made under and the expiry of all relevant periods of limitation in respect of that Policy, or for such longer period as the CLC may, in the case of any specified Policy, reasonably require.
- 7.1.2 The CLC (and its agents and advisers from time to time) shall be entitled to have access to any Records or, for the purpose of verifying or obtaining any information provided or required to be provided by the Insurer to the CLC, records of the Insurer at all times on reasonable notice during normal business hours.

8 Co-operation with the CLC

- 8.1 The Insurer shall at all times co-operate with the CLC, and with any person or body of persons carrying out any functions on behalf of the CLC, so as to enable the CLC to discharge its regulatory functions.
- 8.2 The Insurer authorises the CLC to publish, whether on any of its websites or otherwise, in such manner and form as it may determine, details of the Insurer, as set out on page 2 (under the heading "Details of the Insurer") or as the Insurer may advise the CLC from time to time, including in accordance with clause 4.5.
- 8.3 The Insurer undertakes that it shall provide to the CLC, and shall specify on each Offer it provides to a Practice, the rating or ratings it has from any credit rating agency (or agencies, as the case may be) at that time (or in the absence of any such credit rating, a statement to that effect).

9 Termination

- 9.1 The CLC may by giving notice in writing to the Insurer at any time terminate forthwith the right granted to the Insurer under clause 2.1 if:
- 9.1.1 the Insurer is in fundamental breach of its obligations under this Agreement; or
- 9.1.2 either of the events referred to in clause 3.1 occurs; or
- 9.1.3 the Insurer is in material breach of its obligations under this Agreement; and
- (a) (where such breach is capable of being remedied), the Insurer has failed to remedy such breach within three months from the date the CLC has specified; or
- (b) the Insurer has previously been in material breach of its obligations under this Agreement on at least one occasion during the previous six months or on more than one occasion within the previous two years.
- 9.2 The CLC may by giving not less than three months' notice in writing to the Insurer at any time terminate the right granted to the Insurer under clause 2.1. The Insurer may surrender such right in the same manner and on the same notice.
- 9.3 The effect of any notice given under clause 9.1 and 9.2 shall be that:
- 9.3.1 (in the case where notice has been given under clause 9.1) the right granted to the Insurer under clause 2.1 shall terminate on:
- (a) the date of termination specified in that notice; or
- (b) the date on which either of the events referred to in clause 3.1 occurs (where applicable);
- whichever is the earlier; or
- 9.3.2 (in the case where notice has been given under clause 9.2) the right granted to the Insurer under clause 2.1 shall terminate on the date of

the end of the first Policy Period ending not less than three months after the date on which notice under clause 9.2 is given.

- 9.4 The date on which the right granted to the Insurer under clause 2.1 terminates in accordance with clause 9.2 shall be referred to as the **Run-off Date**.
- 9.5 With effect from the Run-off Date, the Insurer shall cease to be a Participating Insurer and accordingly the Insurer shall not issue, renew or replace any Policy, or extend the Policy Period of any Policy after the Run-off Date, or hold itself out as being a Participating Insurer after the Run-off Date.
- 9.6 Clauses 9.4 and 9.5 shall each be without prejudice to the rights of either party under this Agreement either before or after the Run-off Date in respect of any act or omission of any other party under this Agreement, which shall otherwise remain in full force and effect.
- 9.7 This Agreement shall terminate upon the final settlement of all claims made and capable of being made under and the expiry of all relevant periods of limitation in respect of all of the Policies written by the Insurer under this Agreement, but without prejudice to the rights of any party under this Agreement as at that date.

10 Insurer Disputes

- 10.1 In the event of any dispute arising as to whether a claim is or would be properly payable by the Insurer (whether alone or together with any other Participating Insurer or Participating Insurers) rather than by any other Participating Insurer or Participating Insurers:

10.1.1 the Insurer shall seek to agree as soon as practicable with each of the other parties which party to the dispute shall conduct any claim, advance defence costs and, if appropriate, compromise and pay any such claim, whether on the basis that the party to whom the claim was first notified should do so or otherwise; or

10.1.2 where the parties to a dispute cannot agree in accordance with clause 10.1.1 who should handle a claim the Insurer or Participating Insurer who was first notified of the claim shall conduct such claim, advance defence costs and, if appropriate, compromise and pay any such claim.

In either case the dispute shall be referred to a mutually agreed upon Queen's Counsel for resolution and in default of agreement to be nominated by the Chief Executive of the CLC. The costs of instructing Queen's Counsel shall be paid by the Insurers who ultimately undertake conduct of the claim.

- 10.2 In respect of any claim which is handled by another Participating Insurer or Participating Insurers in accordance with clause 10.1.2, if it is subsequently found, whether as a consequence of arbitration of the dispute or otherwise, that the relevant claim is or would be properly payable by the Insurer (whether alone or together with any other Participating Insurer or Participating Insurers), then:

10.2.1 the Insurer shall promptly reimburse the other Participating Insurer or Participating Insurers all of the costs and expenses howsoever incurred by such insurer in the conduct of the claim (including where applicable, but without limitation, the amount of any claim paid and associated claimants costs), together with interest thereon at a rate equal to the base rate from time to time of Barclays Bank plc plus three per cent; and

10.2.2 the Insurer shall take over the conduct of the claim in place of the other Participating Insurer or Participating Insurers if it has not already been settled.

11 Other Disputes and Dispute Resolution

- 11.1 In respect of any dispute or claim arising out of or in connection with this Agreement, including any question regarding its validity or termination, the parties shall attempt, in good faith, to settle the dispute or claim by mediation on terms that

are mutually agreed. Should mediation be unsuccessful, the dispute or claim shall be finally settled by arbitration of a single arbitrator whose appointment is agreed by the parties.

- 11.2 If the parties cannot agree upon a single arbitrator, the dispute or claim shall be finally settled by the decision of two arbitrators (one to be appointed by each party) and in the case of disagreement between the arbitrators, by the decision of an umpire who shall have been appointed in writing by the arbitrators before entering into the reference. The decision of the arbitration shall be final and binding on both parties and responsibility for the costs of the arbitration shall be allocated as decided by the arbitrators. The provisions of the Arbitration Act 1996 shall apply to such arbitration.

12 Assignment

- 12.1 Neither this Agreement, nor any interest in it, shall be assignable by the Insurer in whole or in part at any time and the Insurer undertakes that it will not assign the whole or any part of any interest in the Agreement at any time to any person.
- 12.2 No Policy or any interest in any Policy shall be assignable or transferable by the Insurer except with the prior consent in writing of the CLC and the Insurer undertakes that it will not assign or transfer the whole or any part of any interest in any Policy at any time to any person without such prior consent.

13 Notices

- 13.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by first-class post pre-paid, or by email, to each of:

13.1.1 the Insurer, at the address, fax number or email address set out in and for the attention of the person named on page 2; and the Council for Licensed Conveyancers currently located at CAN Mezzanine, 49 - 51 East Road, London N1 6AH email Simon Blandy, Director of Regulatory Standards on simonb@clc-uk.org

or to such other address, number or addressee as each party may by notice advise from time to time to each of the other parties, but without prejudice to the effectiveness of any notice already given in accordance with this clause 13.

- 13.2 Any notice given in accordance with clause 13.1 shall be deemed to be given:

13.2.1 if delivered personally, when left at the relevant address referred to in clause 13.1.1;

13.2.2 if sent by mail, five days after it was posted;

13.2.3 if sent by fax or email, on completion of its transmission

provided that if, under the above provisions, any such notice would otherwise be deemed to be given before 9 am or after 5 pm on a business day, or at any time on any other day, such notice shall be deemed to be given at 9 am on the next business day.

- 13.3 In proving the giving of a notice under this clause 13, it shall be conclusive evidence to prove that it was left at the appropriate address or the envelope containing it was properly addressed and posted or the fax or email was sent in full to the relevant number or email address (as the case may be).

14 Confidentiality

- 14.1 Except as provided in this Agreement, each party shall treat as confidential all information relating to persons insured by the Insurer, where such information would enable that person to be identified, provided that, where the Insurer reports to the CLC any matter referred to in the Rules:

14.1.1 the CLC shall keep all such information confidential;

14.1.2 the CLC shall not (except where and to the extent required by law or in the proper performance by the CLC of its regulatory functions) at any time reveal

any such information to any person other than a duly authorised employee of the CLC or any of its subsidiaries; and

14.1.3 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 CLC or otherwise.

14.2 The provisions of clause 14.1 shall not prevent the CLC making use of any information referred to in that clause for the purpose of bringing disciplinary proceedings against any person.

14.3 Notwithstanding any other provision of this Agreement the CLC may, without limitation and in its absolute discretion, disclose and/or make available for public inspection the identity of the Insurer and any Practice to which it provides a Policy pursuant to the terms of this Agreement. Nothing in this Agreement shall prohibit the CLC from making such a disclosure, nor give rise to any liability of the CLC, for breach of confidence or otherwise.

15 Counterparts

15.1 This Agreement may be entered into in counterparts each executed by one of the parties but, taken together, executed by all and, provided that the parties so enter into the Agreement, the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original, but, taken together, they shall constitute one instrument.

16 Entire Agreement

16.1 This Agreement (together with any documents referred to in it) sets out the entire agreement and understanding between the parties in connection with the matters described in it. The Insurer acknowledges that it has not entered into this Agreement in reliance on any warranties, conditions, representations, covenants, undertakings, indemnities or other statements (whether implied or otherwise) whatever on the part of the CLC or any person acting for or on its behalf.

16.2 No variation to this Agreement shall be valid unless it is in writing and signed by or on behalf of the CLC.

17 Third Party Rights

17.1 Except as provided by clauses 2.8, 4.9 and 4.11 above no third party shall have any rights under or in connection with this Agreement by virtue of the Contract (Rights of Third Parties) Act 1999 or otherwise.

18 Governing Law and Jurisdiction

17.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and that the courts of England and Wales shall have exclusive jurisdiction.

IN WITNESS of which this Agreement has been entered into the day and year first above written.

Where execution is by an insurer on its own behalf:

SIGNED by)
.....) Duly Authorised
for and on behalf of **THE COUNCIL**)
FOR LICENSED CONVEYANCERS

SIGNED by)
.....) Duly Authorised
for and on behalf of.....)
.....)

Where execution is by a Lloyd's managing agent on behalf of a Syndicate:

SIGNED by)
.....) Duly Authorised
for and on behalf of **THE COUNCIL**)
FOR LICENSED CONVEYANCERS

SIGNED by)
[managing agent]) Duly Authorised
for and on behalf of the members of)
Syndicate [•] for the [•] underwriting year of)
account