

SRA Indemnity Insurance Rules 2012

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

Part 1: General

Rule 1: Authority and commencement

- 1.1 These Rules are made on [date to be inserted] by the Solicitors Regulation Authority Board under sections 31, 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and paragraph 19 of Schedule 11 to the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.
- 1.2 These Rules come into force on 1 October 2012.
- 1.3 These Rules require *solicitors*, *REs*, *RFLs*, *recognised bodies* and their *managers* and *licensed bodies* (in respect of their *regulated activities*) in *private practice* in England and Wales to take out and maintain professional indemnity insurance with *qualifying insurers* with effect from 1 October 2012.

Commentary:

These Rules apply to:

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

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

- 1.4 These Rules will apply to any *indemnity period* beginning on or after 1 October 2012.

Commentary:

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

Rules. From 1 October 2012, firms must take out insurance in accordance with these Rules with one or more qualifying insurers. Continuing arrangements dealing with past claims on the Solicitors Indemnity Fund are covered in the Solicitors' Indemnity Rules and the SRA Indemnity Rules.

- 1.5 The SRA Indemnity Insurance Rules 2011 shall not apply in respect of any *indemnity period* beginning on or after 1 October 2012 but they shall remain in force in respect of the *indemnity period* from 1 October 2011 to 30 September 2012 inclusive subject to the provisions of Rules 19.1(a), 19.1(b), 19.1(c) and 19.1(d) below.

Commentary:

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

Rule 2: Citation

- 2.1 These Rules may be cited as the SRA Indemnity Insurance Rules 2012.

Rule 3: Definitions and interpretation

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

Part 2: Responsibility and monitoring

Rule 4: Obligation to effect insurance

- 4.1 All *firms* carrying on a *practice* during any *indemnity period* beginning on or after 1 October 2012 must take out and maintain *qualifying insurance* under these Rules.
- 4.2 A *firm* that has been unable to renew its existing *policy* of *qualifying insurance* or obtain a *policy* of *qualifying insurance* from an alternative *qualifying insurer* prior to the expiration of the *extended indemnity period* must cease *practice* promptly, and by no later than the expiration of the *cessation period* unless the *firm* obtains a *policy* of *qualifying insurance* on or before the expiry of the *cessation period* which provides cover that incept with effect on and from the commencement of the *extended indemnity period* and covers all activities in connection with *private*

legal practice carried out by the *firm* including, without limitation, any carried out in breach of Rule 5.3.

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

Commentary:

Under these Rules, firms have a continuing obligation to ensure that they have qualifying insurance in place at all times with effect from 1 October 2012. Refer to the definitions of practice, amongst others, to establish whether a firm falls within the scope of these Rules. Firms should also check that any insurance that they take out in order to comply with these Rules (as opposed to any 'top-up' cover) is taken out with a qualifying insurer. A list of qualifying insurers appears on the website of the SRA at www.sra.org.uk, and is also available from the SRA. Contact details appear at the end of the introductory commentary.

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

If a firm, on or before the expiry of the 2012 indemnity period, fails to obtain a policy of qualifying insurance from a qualifying insurer for a period of insurance commencing on 1 October 2013 the firm's qualifying insurer (except for the ARP) is required to extend cover under the existing policy for a further 30 days. If a firm fails to obtain an alternative policy of qualifying insurance prior to the expiration of the 30 day extended indemnity period it must cease practice within a further period of 60 days (that is, before the expiry of the cessation period) unless the firm obtains a policy of qualifying insurance on or before the expiry of the cessation period which provides cover that incept or is backdated to incept with effect on and from the commencement of the new indemnity period. Any such policy of qualifying insurance must cover all activities carried out in connection with private legal practice by the firm, including any carried out during the cessation period in breach of Rule 5.3. During the cessation period, the firm (and its principals, employees, consultants and agents) may only engage in activities in connection with private legal practice on behalf of the firm to discharge its obligations within the scope of the existing instructions the firm held before the cessation period commenced or which are necessary in connection with the discharge of such obligations. Disciplinary action will be taken against those who accept new instructions and/or engage in other non-permitted legal activities during the cessation period. The firm's qualifying insurer (except for the ARP) is required to provide cover during the cessation period which, as a minimum, satisfies the MTC.

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

qualifying insurance (excluding any extended indemnity period and cessation period (as may be applicable)).

Note that, under the MTC, a policy, once taken out, cannot be cancelled before the end of an indemnity period unless:

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

The effect of cancellation in the circumstances described in 3 or 4 above is that the firm ceases to have qualifying insurance in place with effect from the cancellation, and would therefore be in breach of Rule 4.1 if it were to carry on a practice thereafter without taking out a new policy.

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

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

Rule 5: Responsibility

- 5.1 Each *firm* carrying on a *practice* during any *indemnity period* beginning on or after 1 October 2012, and any person who is a *principal* of such a *firm*, must ensure:
- (a) that the *firm* has in place and maintains *qualifying insurance* outside the *ARP* during any such *indemnity period*;
or, in the case of an *eligible firm*,
 - (b) that the *firm* has applied to enter the *ARP* in accordance with the procedure set out in Rule 10;

in either case before the start of any relevant *indemnity period* or the start of *practice* whichever is later.

Commentary:

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

- 5.2 A *run-off firm*, and any person who was a *principal* of that *run-off firm* immediately prior to it becoming a *run-off firm*, must ensure that the *run-off firm* has applied to enter the *ARP* in accordance with the procedure set out in Rule 13.4(a). Making such an application does not absolve any *firm* or person from any breach of Rule 5.1.

Commentary:

A firm which has continued to practise without qualifying insurance immediately prior to closing down is required to apply for run-off cover through the *ARP*, but the firm and any principal of the firm may still face action for a breach of Rule 5.1 for practising without qualifying insurance.

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

Rule 6: Insolvency of qualifying insurer

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

or, in the case of an *eligible firm*,
 - (b) that the *firm* applies within that period of four weeks to enter the *ARP* in accordance with the procedure set out in Rule 10.

Commentary:

It is important to be aware that the arrangements for professional indemnity insurance put in place by the SRA do not seek to protect firms against the insolvency of a qualifying insurer. If an insolvency event occurs in respect of an insurer, that insurer will cease to be a qualifying insurer for the purposes of writing new policies and firms insured by that insurer must effect alternative insurance in accordance with these Rules. This is because, in such circumstances, the insurer may not be in a position to pay claims in full. Any firm which has

qualifying insurance with a qualifying insurer which is the subject of an insolvency event is required therefore to obtain replacement cover as soon as possible, and in any event within four weeks of the insolvency event occurring. Having done so, a firm should cancel the policy with the insolvent insurer and, if entitled to do so, seek a return of the premium relating to the balance of the policy period from the insurer which has become the subject of the insolvency event.

6.2 Any *firm* that enters the *ARP* by reason of a *qualifying insurer* being subject to an *insolvency event* may not remain in the *ARP* beyond 30 September 2013, regardless of the date on which the *firm* entered the *ARP*, except in respect of an *ARP policy* under which the period of run-off cover pursuant to clauses 5.1 and 5.2 of the *ARP policy* commences on or before 1 October 2013 or an *ARP run-off policy* which incept on or before 30 September 2013).

Rule 7: Monitoring

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

Rule 8: RELs

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

Part 3: The ARP

Rule 9: Operation of the ARP

9.1 The *ARP* shall be managed by the *ARP manager*.

Rule 10: Applying to the ARP

10.1 Where a *firm* carrying on a *practice* has not obtained *qualifying insurance* outside the *ARP* in respect of any *indemnity period* or part thereof to which these Rules apply it must, if an *eligible firm*, apply in accordance with the procedure set out in this Rule 10 to enter the *ARP*, subject to Rule 10.2, before the start of the relevant *indemnity period*.

Commentary:

A firm which for any reason does not have qualifying insurance in place should apply to the ARP before the start of the relevant indemnity period if it is an eligible firm. However, it is important to note that premiums payable to the ARP are intended to be high, and firms would therefore be prudent to seek quotations from qualifying insurers outside the ARP before the start of an indemnity period.

An ARP policy can be cancelled if it is replaced by a policy with a qualifying insurer. A return premium may be payable to a firm which cancels an ARP policy in these circumstances -

refer to Appendix 2 for the basis on which the ARP premium and any return premium is calculated.

Firms should also be aware of the other consequences of being insured through the ARP set out in this part of the Rules, including the need to comply with any special measures under Rule 10, and the limitations on eligibility set out in the definition of “eligible firm”.

10.2 A *firm* must not start carrying on a *practice* without having obtained *qualifying insurance* outside the *ARP*.

Commentary:

Any firm wishing to start up a new practice must obtain qualifying insurance with a qualifying insurer other than the ARP, before starting practice. For the avoidance of doubt, a firm which has not previously been regulated by the SRA or a non-SRA firm that elects (and is accepted) for regulation by the SRA must also arrange qualifying insurance outside the ARP in order to commence carrying on a practice. Subject to this requirement, a new firm may start practice at any time during an indemnity period.

10.3 By applying to enter the *ARP*, the *firm* and any person who is a *principal* of that *firm* agrees to, and (if the *firm* is admitted to the *ARP*) the *firm* and any person who is a *principal* of that *firm* shall be jointly and severally liable to:

- (a) pay the *ARP premium* in accordance with these Rules, together with any other sums due to the *ARP manager* under the *ARP policy*; and
- (b) submit to such investigation and monitoring and to pay the *Society's* costs and expenses as referred to in Rule 11.2; and
- (c) pay any costs and expenses incurred by the *Society* or the *ARP manager* incurred as a result of any failure or delay by the *firm* in complying with these Rules;

and shall be required to implement at the expense of the *firm* any *special measures*.

10.4 Any material misrepresentation made in an application for admission to the *ARP* shall, subject to any waiver under Rule 19.1, render the *firm* a *firm in default* for the purposes of Part 4 of these Rules. The provisions of that Part shall apply to the *firm* as if that *firm* had not been admitted to the *ARP* but neither the *firm* nor any *principal* of the *firm* shall be entitled to the refund of any *ARP premium* paid to the *ARP manager*. Any amount so paid shall be credited against any sums payable under Part 4 of these Rules.

Commentary:

Although an ARP policy, once issued, cannot be cancelled (unless and until a replacement policy with a qualifying insurer is issued to that firm), a firm which makes a material misrepresentation in its application to be admitted to the ARP will be nevertheless treated in the same way as a firm in default.

- 10.5 The application for admission to the *ARP* must be made to the *ARP manager* on the proposal form provided by the *ARP manager*.
- 10.6 The applicant must state on the proposal form the date from which cover is sought. This date must not be earlier than the date on which the application is made for admission to the *ARP*. The applicant must also provide such other information as the *ARP manager* requires for the purposes of setting a premium.
- 10.7 If the applicant is a *firm in default* it must state on the proposal form that it is a *firm in default* and give the date of the start of the *period of default* from which retrospective cover is sought.

Commentary:

The ARP premium is calculated in accordance with a formula set out in Appendix 2, and is linked to the gross fees of the firm concerned. It is important to note that, under Rule 15, any material misrepresentation in an application will result in the firm being treated in the same way as a firm in default, including being liable to pay the ARP default premium.

- 10.8 The *firm*, together with each *principal* of the *firm*, must ensure that the *firm's* application has been made and must provide the *ARP manager* with all information it reasonably requires to process the application.

Commentary:

It is in the interests of the firm and each of the principals of that firm to verify that the application to enter the ARP has been received and that the firm is insured. An application should be made before the start of an indemnity period. Failure to comply with the requirements of this Rule and Rules 13 to 15 will result in the firm becoming a firm in default.

- 10.9 If a *firm* has not received a written acknowledgement of its application from the *ARP manager* 30 days after making the application, or within such other period as is stated on the proposal form, the *firm* and any person who is a *principal* of the *firm* must seek written confirmation that the *firm's* application has been received by the *ARP manager*. If that written confirmation is not obtained within seven days after the end of the 30 days, or within seven days after such other period specified on the proposal form, the application shall be deemed not to have been made.
- 10.10 An applicant whose first application is deemed under Rule 10.9 not to have been made must, within seven days of the day when under Rule 10.9 the first application is deemed not to have been made, make a fresh application. The *firm* and any person who is a *principal* of the *firm* must ensure that the *firm* is in a position to prove to the reasonable satisfaction of the *Society* that the *firm's* fresh application was delivered within those seven days to the *ARP manager* at the address specified on the proposal form. Provided the *firm's* fresh application was so delivered, the application shall be treated as having been made at the date when the *firm's* first application was made. A *firm* that is not in a position to prove to the reasonable satisfaction of the *Society* that its fresh application was so delivered shall be deemed not to have made any application.

10.11 Provided that an application or, if necessary, a fresh application, has been made in accordance with Rules 10.5 to 10.10, a *firm* which is an *eligible firm* will be covered in the terms of the *ARP policy* to be issued to it from the start of the relevant *indemnity period* or, in the case of a *firm* to which Rule 10.2 applies, the date specified in the application, being the date specified in accordance with Rule 10.6, until whichever is the earlier of:

- (a) the end of the relevant *indemnity period*; or
- (b) the date on which the *firm* obtains *qualifying insurance* outside the *ARP*; or
- (c) the date when the *firm* ceases to be an *eligible firm*.

Commentary:

An eligible firm which should have applied to the ARP before the start of an indemnity period but fails to do so will have breached these Rules by failing to take out a policy from the start of that indemnity period. It may make a later application, but will be liable to pay the ARP default premium for the indemnity period in question. Each principal in an eligible firm which fails to make an application in time commits a disciplinary offence.

10.12 Any *firm* in the *ARP*, and any person who is a *principal* of that *firm*, is liable to pay to the *ARP manager* the *ARP premium* in respect of that *firm* within thirty days of such premium being notified to it by the *ARP manager*.

Commentary:

It is a disciplinary offence for a firm and for any principal of that firm to fail to pay the ARP premium (including the ARP run-off premium) to the ARP manager within the required 30 day period. A firm may enter into arrangements with, for example, a premium funding company (whether offered by the ARP manager or arranged independently) to enable it to make payments by instalments, provided that the premium is received in full by the ARP manager from the premium funding company within the required 30 day period.

Rule 11: Special measures

11.1 An *eligible firm* that has applied to enter the *ARP* in accordance with the procedure set out in Rule 10 will be issued with an *ARP policy* by the *ARP manager*.

Commentary:

A copy of the standard-form ARP policy is available on the website of the SRA at www.sra.org.uk and is also available from the SRA. Contact details appear at the end of the introductory commentary.

11.2 A *firm* in the *ARP* must if and to the extent required by the *Council* submit to investigation and monitoring by the *Society* and/or its agents, including investigation and monitoring:

- (a) to determine the reasons why *qualifying insurance* outside the *ARP* was not obtained;

(b) to ascertain what *special measures* should be taken by the *firm*.

The *Society's* costs and expenses of the investigation and monitoring and the *Society's* costs and expenses of ascertaining what *special measures* should be taken and of monitoring them shall be met by the *firm* and by any person who is a *principal* of that *firm*. The amount of such costs and expenses shall be determined by the *Society* which shall not be required to give any detailed breakdown thereof.

Rule 12: Time in the ARP

- 12.1 Notwithstanding the provisions of any other Rule, no *firm* may remain in the *ARP* beyond 30 September 2013, regardless of the date on which the *firm* entered the *ARP*, except in respect of an *ARP policy* under which the period of run-off cover pursuant to clauses 5.1 and 5.2 of the *ARP policy* commences on or before 1 October 2013 or an *ARP run-off policy* which incepts on or before 30 September 2013.
- 12.2 A *firm* may leave the *ARP* at any time after it has satisfied the *ARP manager* that the *firm* has obtained *qualifying insurance* outside the *ARP* at least until the expiry of the relevant *indemnity period*.

Commentary:

Refer to Appendix 2 to determine whether any return premium will be payable on leaving the ARP.

- 12.3 Subject to Rule 12.7, a *firm* may only remain in the *ARP* so long as it is an *eligible firm*, or if it becomes a *run-off firm*.

Commentary:

A firm cannot remain insured through the ARP for more than 6 months in any four consecutive indemnity periods (unless it satisfies one of the exceptions to this requirement in the definition of "eligible firm"), and should therefore seek insurance in the open market with a qualifying insurer as soon as practicable. A firm which is no longer an eligible firm (because, for example, it has already been insured through the ARP for 24 months in the last four indemnity periods) must either obtain qualifying insurance on the open market or cease carrying on practice.

- 12.4 Subject to Rule 12.7(b), a *firm* in *policy default* at the end of an *indemnity period* shall be deemed to be a *firm in default* for the purposes of Part 4 of these Rules and shall not be an *eligible firm*. This Rule shall not apply in any case where the *Council* is satisfied that there exists a genuine dispute between the *firm* and a *qualifying insurer* or the *ARP manager* which makes it unreasonable for the *firm* to be deemed to be a *firm in default* pending the resolution of that dispute.

Commentary:

A firm in policy default must remedy that default before the start of an indemnity period if it wishes to obtain insurance through the ARP at any time during that indemnity period. Alternatively, it must either obtain qualifying insurance in the open market, or cease carrying

on practice. If a firm believes that there is a genuine dispute which justifies that firm not being deemed to be a firm in default, it should apply to the SRA as soon as possible before the start of the next indemnity period. Contact details appear at the end of the introductory commentary.

- 12.5 A *firm* that is no longer an *eligible firm* must either have *qualifying insurance* outside the *ARP* or forthwith cease carrying on *practice*.
- 12.6 The *Council* may in its absolute discretion treat a *successor firm* or *successor firms* (or any of them) and the *firm* from which such *successor firm* or *successor firms* were derived as being a single *firm* for the purposes of determining whether the *successor firm* or *successor firms* or any of them are or remain an *eligible firm*.

Commentary:

The purpose of this Rule is to ensure that the time limit on participation in the ARP cannot be avoided by a merger or reconstitution of that firm. A firm which was not previously eligible to join the ARP will not necessarily become an eligible firm by virtue of changes in the composition of a firm. Firms which are unsure about their eligibility following any such change should consult the SRA. Contact details appear at the end of the introductory commentary.

- 12.7 Subject to a *firm* not being admitted into, remaining in or re-entering the *ARP* in respect of any *indemnity period* commencing after 30 September 2013 (except to permit a *firm* with an *ARP policy* which, on or before 1 October 2013, enters the period of run-off cover stipulated by clauses 5.5(a) and 5.6 of the *MTC* or a *firm* with an *ARP run-off policy* as at 30 September 2013, in each case, to continue to receive the run-off cover provided by such *policy*), the *Council* shall have power in any particular case or cases:

- (a) to allow a *firm* to remain in or to re-enter the *ARP* after any date when the *firm* would otherwise cease to be an *eligible firm*; and
- (b) to permit a *firm* to be admitted into or remain in or to re-enter the *ARP* notwithstanding that the *firm* is in *policy default* on such terms and conditions as the *Council* may prescribe including the taking of steps by the *firm* by a specified date or dates to remedy the *policy default*;

and when such power is exercised the *firm* shall continue to be an *eligible firm* for so long as the *Council* may from time to time permit and provided that it complies with any such terms and conditions.

Commentary:

It is envisaged that these powers would be exercised only in exceptional circumstances. Any application seeking the exercise of this power should be made to the SRA at least three months before the firm in question would otherwise cease to be an eligible firm.

Rule 13: Power to collect contribution from firms

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

Part 4: Firms in default

Rule 14: Eligibility of firms in default

- 14.1 At any time during the *period of default* a *firm in default* is entitled to be admitted to the *ARP* and to be issued with an *ARP policy* in accordance with Rule 14.2, subject to the provisions of this Rule 14.
- 14.2 A *firm in default* is entitled to be admitted to the *ARP* if:
- (a) it was an *eligible firm* at the start of the *period of default*;
 - (b) had it been admitted to the *ARP* at the start of the *period of default*, its admission at that time would not have rendered it ineligible to be admitted to the *ARP* for any part of any subsequent *indemnity period* in which it was in fact admitted to the *ARP*;
 - (c) it has applied to join the *ARP* in accordance with Rule 10;
 - (d) the *firm* discharges in full the *ARP default premium* calculated for the whole of the *indemnity period* or *indemnity periods* for which cover is sought within 30 days of such premium being notified to it by the *ARP manager* or such longer period as the *Council* may allow;
 - (e) the *firm* will be subject to and comply with Rules 10.3 (other than Rule 10.3(a)) and 11.2.

Commentary:

If a firm fails to make an application to the ARP at the start of an indemnity period, and does not have any other policy of qualifying insurance in force for that indemnity period, it may still be eligible to be issued with an ARP policy provided that it meets all of the requirements of Rule 14.2. However, each principal of the firm will have committed a disciplinary offence, and the firm and each principal of that firm will be liable to pay the ARP default premium under any ARP policy issued.

- 14.3 An **ARP policy** issued under this Rule may afford cover retrospectively from the start of the **period of default** until the earlier of:
- (a) the end of the then current **indemnity period**; or
 - (b) the date on which the **firm in default** would have ceased to be an **eligible firm**, ignoring for these purposes any failure to pay the **ARP premium** or the **ARP default premium**; or
 - (c) the date on which, had the **firm in default** been admitted to the **ARP** at the start of the **period of default**, its being covered by the **ARP** from that time would have first caused it to have been ineligible to be admitted to the **ARP** for any part of any subsequent **indemnity period** in which it was in fact admitted to the **ARP**.
- 14.4 A **run-off firm** shall be entitled at any time following the date on which it first becomes a **run-off firm** to be admitted to the **ARP** and to be issued with an **ARP run-off policy**, subject to the following conditions:
- (a) the **run-off firm** has made an application to join the **ARP** in manner provided by Rule 10.5 stating on the proposal form that it is a **run-off firm** and giving the date from which cover under an **ARP run-off policy** is sought;
 - (b) the **ARP run-off premium** is discharged in full within thirty days of such premium being notified by the **ARP manager** to the **firm** or such longer period as the **Council** may allow; and
 - (c) the **firm**, and any person who is a **principal** of that **firm**, will be subject to and comply with Rule 10.3(c).

Commentary:

A run-off firm will be eligible to be issued with an ARP policy if it meets all of the requirements of Rule 14.4. However, each principal of the firm will have committed a disciplinary offence for failing to make an application to the ARP for run-off cover in accordance with Rule 5.2, and the firm and each principal of the firm will be required to pay the ARP run-off premium under any ARP run-off policy issued.

- 14.5 An **ARP run-off policy** shall provide run-off cover to a **run-off firm** retrospectively from the date on which it became a **run-off firm** until the end of the day immediately prior to the sixth anniversary of:
- (a) the start of the **indemnity period** in which it became a **run-off firm**; or

- (b) if applicable, the start of the last *indemnity period*, prior to it becoming a *run-off firm*, in which it both ceased to be an *eligible firm* and was a *firm in default* and continued as such until the date on which it became a *run-off firm*,

whichever is the earlier.

Commentary:

Run-off firms which are issued with an ARP run-off policy obtain six years' run-off cover either from the start of the indemnity period in which their practice ceased, or the date on which they ceased to be eligible to apply for an ARP policy while practising uninsured.

- 14.6 Rule 12.6 shall apply so as to enable the *Council* to extend the period in Rule 14.3(b) for which a *firm in default* may be issued with an *ARP policy*.

Commentary:

It is envisaged that this power would be exercised only in exceptional circumstances.

- 14.7 Any *firm* that has been admitted to the *ARP* under Rule 14.1 shall for the purposes of computing its continuing eligibility to remain in the *ARP* be deemed to have been admitted to the *ARP* at start of the *period of default* and to have remained continuously in the *ARP* until the end of the *indemnity period* current at the date of its application.

Commentary:

If a firm is eligible to be issued with an ARP policy under Rule 14.1, or an ARP run-off policy under Rule 14.4 then, provided that it complies with the relevant requirements under Rule 14 and is issued with an ARP policy or an ARP run-off policy, the firm and the principals of that firm will be required to pay to the ARP manager only the relevant premium and the excess in the event of any claim.

Rule 15: Firms which fail to apply to the ARP

- 15.1 A *firm in default* which is entitled to be admitted to the *ARP* and to be issued with an *ARP policy* in accordance with Rule 14.1 but which does not make an application to join the *ARP* shall, notwithstanding, be liable, together with any person who is a *principal* of that *firm*, to pay to the *Society* an amount equivalent to the *ARP default premium* calculated for the whole of the *period of default*.
- 15.2 A *firm in default* which is entitled to be admitted to the *ARP* and to be issued with an *ARP run-off policy* in accordance with Rules 14.4 and 14.5 but which does not make an application to join the *ARP* shall, notwithstanding, be liable, together with any person who is a *principal* of that *firm*, to pay to the *Society* an amount equivalent to the *ARP run-off premium* calculated for the whole of the period equivalent to that which would be provided by an *ARP run-off policy* in accordance with Rule 14.5, or, if shorter and if it can be ascertained, the *period of default*.
- 15.3 Any amount payable in accordance with Rules 15.1 or 15.2 shall be determined by the *ARP manager* on the basis of such assumption as to the *firm's* gross fees and

other matters as the *ARP manager* shall in its absolute discretion determine, and may be reviewed from time to time by the *ARP manager* in its absolute discretion on the basis of any further information provided to it. The *ARP manager* may and is hereby authorised to recover all sums due under Rules 15.1 or 15.2 on behalf of the *Society*.

Commentary:

If a firm fails to make an application to the ARP, but carries on practice without having obtained qualifying insurance, each principal in that firm will have committed a disciplinary offence. The same is true if a run-off firm fails to apply to be issued with an ARP run-off policy. In each case, that firm, and each principal in that firm, will also be liable under these Rules to pay an amount to the Society equivalent to the ARP default premium calculated for the whole of the period of default.

Part 5: Disciplinary offences and reporting

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

16.1 The provisions in Part 4 of the Rules are made without prejudice to the powers of the *Council* or the *Society* under the *SA*, the *AJA*, the Courts and Legal Services Act 1990, the European Communities (Lawyer's Practice) Regulations 2000 or the *LSA*, or rules made under any of them, to bring disciplinary proceedings or take disciplinary action against any *firm* that has failed to comply with these Rules or any person who is or was a *principal* in such a *firm* or to intervene in a *practice* carried on by such a *firm*.

Commentary:

Payment of the ARP default premium and/or the ARP run-off premium does not detract from the fact that the firm in question, and each principal of that firm, has committed a breach of these Rules as a result of the firm being a firm in default. If a firm in default is not an eligible firm, it must either obtain qualifying insurance in the open market, or cease carrying on practice and make an application to the ARP for run-off cover in accordance with Rule 5.2.

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

- (a) be in *policy default*,
- (b) fail to implement any *special measures* to the satisfaction of the *Society*; and
- (c) undertake any activities in connection with *private legal practice* in breach of Rule 5.3.

Commentary:

Policy default and special measures are defined in the Glossary. Note that a firm that is carrying on a practice while in policy default will also not be an eligible firm for the purpose of seeking further cover through the ARP.

Rule 17: Use of information

- 17.1 Any *qualifying insurer* (including the *ARP manager*) shall, in relation to any *firm* which applies to it for *qualifying insurance*, and in the case of the *ARP manager* any *run-off firm* or *firm in default*, whether or not that *firm* applies to enter the *ARP*, bring to the attention of the *Society* (including, in the case of the matters referred to in Rule 17.1(f), the Office for Legal Complaints (including the *Legal Ombudsman*)) at any time and without notice to the *firm* concerned:
- (a) any failure on the part of the *firm* or any person who is a *principal* of that *firm* to pay any sum, including an *ARP premium*, *ARP default premium* or *ARP run-off premium*, on or before the date specified in these Rules or to reimburse any amount falling within a *policy* excess which has been paid out by a *qualifying insurer* to a *claimant*;
 - (b) a material inaccuracy in any proposal form submitted by or on behalf of the *firm*;
 - (c) the fact that the *firm* has become or is believed to have become a *run-off firm*;
 - (d) any matter or circumstances that would entitle the *firm's qualifying insurer* to avoid or repudiate a *policy* but for the provisions of clause 4.1 of the *MTC* (and/or the corresponding of the *policy*);
 - (e) any dishonesty or fraud suspected by a *qualifying insurer* on the part of any *insured*; and
 - (f) any *claim* of inadequate professional services made against the *firm* or any *insured* of that *firm* of which it becomes aware.

Commentary:

All firms, whether they obtain their qualifying insurance on the open market or through the ARP, or whether, having failed to obtain qualifying insurance, they are subject to the provisions of Part 4 of these Rules, are deemed to have consented to their qualifying insurer or the ARP manager bringing to the attention of the SRA any of the matters referred to Rule 17.1 that may be applicable to the firm. Any such information is subject to the confidentiality provisions of Rule 17.3.

- 17.2 The *Council* may require any *qualifying insurer* or the *ARP manager* to bring to the attention of the *Society* any of the matters referred to in Rule 17.1 where it reasonably believes there are matters which ought to be brought to the attention of the *Society* in accordance with Rule 17.1.
- 17.3 Each *firm* shall notify the *Society* (or such *person* as the *Society* may notify to the *firm* from time to time) and its *qualifying insurer* in writing as soon as reasonably

practicable and in no event later than five (5) business days after the date on which cover under a *policy* is extended in respect of:

- (a) the *extended indemnity period*; and
- (b) the *cessation period*,

in circumstances where the *firm* does not have an alternative *policy* of *qualifying insurance* in force at the commencement of each such period.

17.4 In respect of any information that may be brought to the attention of the *Society* in accordance with Rules 17.1, 17.2 and 17.3:

- (a) the *Society* shall keep all such information confidential;
- (b) the *Society* shall not (except where and to the extent required by law or in the proper performance by the *Society* of its regulatory functions) at any time reveal any such information to any person other than a duly authorised employee of the *Society* or any of its subsidiaries; and
- (c) any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the *Society* or otherwise.

17.5 The provisions of Rule 17.4 shall not prevent the *Society* from:

- (a) making use of any information referred to in that Rule for the purpose of bringing disciplinary proceedings against any person; or
- (b) in relation to information about a *firm's policy* under Rule 18, disclosing that information, where and to the extent that the *Society* in its absolute discretion considers it appropriate, to any person entitled to such information, and to any other department or office of the *Society*, including without limitation to the Office for Legal Complaints (including the *Legal Ombudsman*).

17.6 The *Society* may, without limitation and in its absolute discretion, disclose and make available for public inspection the identity of a *firm's qualifying insurer*. Nothing in these Rules shall act to prohibit the *Society* from making such a disclosure nor give rise to any liability of the *Society*, for breach of any obligations of confidentiality or otherwise.

Rule 18: Details of qualifying insurer

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

- (a) the name of the *qualifying insurer(s)* who issued the *policy*; and
- (b) the *policy* number; and
- (c) the address and contact details of the *qualifying insurer(s)* for the purpose of making a *claim* under the *policy*;

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

Commentary:

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

Part 6: General powers of the Council

Rule 19: Waiver powers

- 19.1 The *Council* shall have power on such terms and conditions as it shall think fit to waive any Rule or part of any Rule in a particular case or cases including extending the time, either prospectively or retrospectively, for the doing of any act under any Rule.
- (a) Any application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2001 to 2010 or SRA Indemnity Insurance Rules 2011 or 2012 must be made in writing to the *Society* as soon as reasonably practicable.
 - (b) No application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 may be considered unless it was made in writing to the *Society* as soon as reasonably practicable and in any event no later than 28 February 2002.
 - (c) Any appeal against any decision made by the *Society* in respect of any application for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 or 2012 must be made in writing to the *Society* within 21 days from the date of the decision.
 - (d) An application for a waiver as contemplated by this Rule 19.1 or the making of an appeal against any decision made by the *Society* in respect of such application shall not relieve any person from any obligation under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 or 2012 pending the determination of any such application or appeal.

Commentary:

It is envisaged that Rules will be waived only in exceptional circumstances. Anyone who wishes to apply for a waiver, or to appeal against an initial decision, must do so in accordance with the time limits set out in this Rule. Contact details appear at the end of the introductory commentary. The Panel of Adjudicators Sub Committee has adopted a waiver policy, which is available on request. Unless and until any waiver is granted, the person concerned must comply with the requirements of these Rules in full. A waiver may be granted subject to conditions, and may be revoked without notice.

- 19.2 The **Council** shall have power to treat any **firm** as complying with any Rule or Rules for the purposes of the **SA** notwithstanding that the **firm** has failed to comply with a Rule or Rules where such non-compliance is regarded by the **Council** in a particular case or cases as being insignificant.
- 19.3 For the purposes of the **SA** (including without limitation section 10 of that Act), any person who is in breach of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 or 2012 shall be deemed, for so long as he remains in breach, not to be complying with these Rules.

Commentary:

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

Part 7: Other obligations

Rule 20: Accountants' reports

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

Commentary:

Firms are required to provide evidence to their accountants that a policy of qualifying insurance is in place. Each qualifying insurer is required under the qualifying insurer's agreement to provide a certificate of qualifying insurance to each firm within 20 working days

of the start of the period covered by the policy. Producing the relevant certificate(s) to the reporting accountant will satisfy the requirement of this Rule.

Appendix 1

SRA Minimum Terms and Conditions of Professional Indemnity Insurance

1 Scope of cover

1.1 Civil liability

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

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

1.2 Defence costs

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

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

1.3 The insured

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

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

1.4 Prior practice

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

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

1.5 The insured - prior practice

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

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

1.6 Successor practice

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

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

unless run-off cover is provided in accordance with clause 5.3.

1.7 The insured - successor practice

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

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

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

1.8 Award by regulatory authority

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

2 Limit of insurance cover

2.1 Any one claim

The *sum insured* for any one *claim* (exclusive of *defence costs*) must be, where the *insured firm* is a *relevant recognised body* or a *relevant licensed body* (in respect of its *regulated activities*), at least £3 million, and in all other cases, at least £2 million.

2.2 No limit on defence costs

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

2.3 Proportionate limit on defence costs

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

2.4 No other limit

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

2.5 One claim

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

- (a) all *claims* against any one or more *insured* arising from:

- (i) one act or omission;
- (ii) one series of related acts or omissions;
- (iii) the same act or omission in a series of related matters or transactions;
- (iv) similar acts or omissions in a series of related matters or transactions

and

- (b) all *claims* against one or more *insured* arising from one matter or transaction

will be regarded as one *claim*.

2.6 Multiple underwriters

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

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

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

(b) in addition to any proportionate limit on *defence costs* in accordance with clause 2.3, the insurance may provide that each *insurer's* liability for *defence costs* is further limited to the extent or the proportion of that *insurer's* liability (if any) in relation to the relevant *claim*.

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

3 Excesses

3.1 The excess

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

3.2 No deductibles

The insurance must provide that the excess does not reduce the limit of liability contemplated by clause 2.1.

3.3 Excess not to apply to defence costs

The excess must not apply to *defence costs*.

3.4 Funding of the excess

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

3.5 One claim

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

3.6 Excess layers

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

4 Special conditions

4.1 No avoidance or repudiation

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

4.2 No adjustment or denial

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

4.3 No cancellation

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

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

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

4.4 No set-off

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

4.5 No 'other insurance' provision

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than as contemplated by clause 6.1. For the avoidance of doubt, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other insurer which is also liable to indemnify any *insured*.

4.6 No retroactive date

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

4.7 Successor practice - 'double insurance'

The insurance may provide that, if the *insured firm's practice* is succeeded during the *period of insurance* and, as a result, a situation of 'double insurance' exists between two or more insurers of

the *successor practice*, contribution between insurers is to be determined in accordance with the relative numbers of *principals* of the owners of the constituent *practices* immediately prior to succession.

4.8 Advancement of defence costs

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

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

4.9 Resolution of disputes

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.3, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer.

4.10 Conduct of a claim pending dispute resolution

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

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

it may in its absolute discretion make such a direction.

4.11 Minimum terms and conditions to prevail

The insurance must provide that:

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

4.12 Period of insurance

The *period of insurance* must not expire prior to 30 September 2013.

5 Extended indemnity period and run-off cover

5.1 Extended indemnity period

The insurance must provide cover for the duration of the *extended indemnity period* where an *insured firm* has not, prior to the expiration of the last *indemnity period* to which the *policy* relates or during the *extended indemnity period*, obtained insurance complying with the *MTC* for the *indemnity period* or the remainder of the *indemnity period* (as the case may be) which immediately follows the *indemnity period* to which the *policy* relates.

5.2 Cessation period

The insurance must provide cover for the duration of the *cessation period* where an *insured firm* has not, prior to the expiration of the *extended indemnity period*, obtained insurance complying with the *MTCs* for the *indemnity period* or the remainder of the *indemnity period* (as the case may be) which immediately follows the last *indemnity period* to which the *policy* relates.

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

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

5.4 Run-off cover

The insurance must provide run-off cover:

- (a) subject to clause 5.4(b), in the event of a *cessation*. For these purposes, an *insured firm's practice* shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the *insured firm* becomes a *non-SRA firm*; and
- (b) with effect from the commencement of the *extended indemnity period* in the event that the *insured firm* has not, on or before the expiration of the *cessation period* referred to in clause 5.2, obtained insurance complying with the *MTC* and incepting with effect on and from the commencement of the *extended indemnity period*.

5.5 Scope of run-off cover

The run-off cover referred to in clause 5.4 must indemnify each *insured* in accordance with clauses 1.1 to 1.8 (but may be subject to the limits, exclusions and conditions of the insurance which are in accordance with the *MTC*) 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).

5.6 Succession

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

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

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

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

5.7 Suspended practices

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

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

6 Exclusions

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

6.1 Prior cover

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

6.2 Death or bodily injury

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

6.3 Property damage

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

6.4 Partnership disputes

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

6.5 Employment breaches, discrimination, etc.

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

6.6 Debts and trading liabilities

Any:

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

6.7 Fines, penalties, etc

Any:

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

6.8 Fraud or dishonesty

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

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

6.9 Directors' or officers' liability

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

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

6.10 War and terrorism, and asbestos

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

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

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

7 General conditions

7.1 As agreed

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

7.2 Reimbursement

The insurance may provide that each *insured* who:

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

will reimburse the *insurer* to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by such non-disclosure, misrepresentation, breach, dishonesty, act or omission, provided that no *insured* shall be required to make any such reimbursement to the

extent that any such breach of the terms or conditions of the insurance was in order to comply with any applicable rules or codes laid down from time to time by the *Society*, or in the *Society* publication *Your Clients - Your Business*, as amended from time to time.

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

7.3 Reimbursement of defence costs

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

7.4 Reimbursement of the excess

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

7.5 Reimbursement of moneys paid pending dispute resolution

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

7.6 Withholding assets or entitlements

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

7.7 Premium

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

7.8 Co-operation and assistance

The insurance (except in the case of an *ARP policy*) must provide that, if the *ARP manager* is appointed to conduct any *claim*, each *insured* will give the *ARP manager* and any investigators or solicitors appointed by it all information and documents they reasonably require, and full co-operation and assistance in the investigation, defence, settlement, avoidance or reduction of any actual or possible *claim* or any related proceeding.

8 Definitions and interpretation

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

- (a) all italicised terms shall be defined in accordance with the Glossary;

SRA Indemnity Insurance Rules 2012 - Appendix 1

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

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

APPENDIX 2

Rating schedule for 2012/2013

1 Method for calculation of the ARP premium

1.1 The annual *ARP premium* is calculated by identifying the fee band appropriate to the Gross Fees (as defined below) of the *insured firm*. For a £2 million primary policy (£3 million in the case of *relevant recognised bodies* and *relevant licensed bodies* (in respect of their *regulated activities*)), where the Gross Fees are £500,000 or less, the annual *ARP premium* is calculated at a rate of 27½% of the fees declared (30% in the case of *relevant recognised bodies* and *relevant licensed bodies* (in respect of their *regulated activities*)). Where the Gross Fees of the *insured firm* are £500,001 or more, the annual *ARP premium* is the sum of:

- the maximum premium for the previous fee band; plus
- the marginal rate on Fees applied to the amount of fees that exceed the ceiling of the previous fee band.

There is a minimum premium of £1,500 irrespective of the level of Gross Fees, or the period of time spent in the *ARP* during an *indemnity period*.

1.2 Firms other than relevant recognised bodies and relevant licensed bodies (£2 million indemnity limit)

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	27.5%	$27.5\% \times £500,000 = £137,500$	£137,500	27.50%
2 £500,001 to £1,500,000 <i>e.g. if fees £1,000,000</i>	22%	£137,500 (maximum premium for fee band 1) plus $22\% \times £1,000,000 = £220,000 = £357,000$ <i>£137,500 plus (22% x £500,000 = £110,000) = £247,500</i>	£357,000	23.826%
3 £1,500,001 to £3,000,000 <i>e.g. if fees £2,250,000</i>	16.5%	$16.5\% \times £1,500,000 = £247,500$ plus £357,000 (maximum premium for fee band 2) = £605,000 <i>£357,000 plus (16.5% x £750,000 = £123,750) = £481,250</i>	£605,000	20.163%
4 £3,000,001 to £5,000,000 <i>e.g. if fees £4,000,000</i>	13.2%	$13.2\% \times £2,000,000 = £264,000$ plus £605,000 (maximum premium for fee band 3) = £869,000 <i>£605,000 plus (13.2% x £1,000,000 = £132,000) = £737,000</i>	£869,000	17.38%
5 £5,000,001 to £20,000,000 <i>e.g. if fees £10,000,000</i>	11%	$11\% \times £15,000,000 = £1,650,000$ plus £869,000 (maximum premium for fee band 4) = £2,519,000 <i>£869,000 plus (11% x £5,000,000 = £550,000) = £1,419,000</i>	£2,519,000	12.595%
6 £20,000,001 + <i>e.g. if fees £30,000,000</i> <i>or if fees £50,000,000</i>	5.5%	$5.5\% \times (\text{actual fees} - £20,000,000)$ plus £2,519,000 (maximum premium for fee band 5) = (annual premium) <i>£2,519,000 plus (5.5% x £10,000,000) = £550,000 = £3,069,000</i> <i>£2,519,000 plus (5.5% x £30,000,000 = £1,650,000) = £4,169,000</i>	—	—

1.3 Relevant recognised bodies and relevant licensed bodies (£3 million indemnity limit)

SRA Indemnity Insurance Rules 2012 - Appendix 2

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (<i>Calculation of example premium</i>)	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	30%	$30\% \times £500,000 = £150,000$	£150,000	30.00%
2 £500,001 to £1,500,000 <i>e.g. if fees £1,000,000</i>	24%	£150,000 (maximum premium for fee band 1) plus $24\% \times £1,000,000 = £200,000 = £390,000$ <i>£150,000 plus (24% x £500,000 = £120,000) = £270,000</i>	£390,000	25.992%
3 £1,500,001 to £3,000,000 <i>e.g. if fees £2,250,000</i>	18%	$18\% \times £1,500,000 = £270,000$ plus £390,000 (maximum premium for fee band 2) = £660,000 <i>£390,000 plus (18% x £750,000 = £135,000) = £525,000</i>	£660,000	24.196%
4 £3,000,001 to £5,000,000 <i>e.g. if fees £4,000,000</i>	14.4%	$14.4\% \times £2,000,000 = £288,000$ plus £660,000 (maximum premium for fee band 3) = £948,000 <i>£660,000 plus (14.4% x £1,000,000 = £144,000) = £804,000</i>	£948,000	18.96%
5 £5,000,001 to £20,000,000 <i>e.g. if fees £10,000,000</i>	12%	$12\% \times £15,000,000 = £1,800,000$ plus £948,000 (maximum premium for fee band 4) = £2,748,000 <i>£948,000 plus (12% x £5,000,000 = £600,000) = £1,548,000</i>	£2,748,000	13.74%
6 £20,000,001 + <i>e.g. if fees £30,000,000</i> <i>or if fees £50,000,000</i>	6%	$6\% \times (\text{actual fees} - £20,000,000)$ plus £2,748,000 (maximum premium for fee band 5) = (annual premium) <i>£2,748,000 plus (6% x £10,000,000) = £600,000 = £3,348,000</i> <i>£2,748,000 plus (6% x £30,000,000 = £1,800,000) = £4,548,000</i>	—	—

1.4 Primary layer rates

Where an *ARP policy* is written as a primary layer of £1 million, with excess layer(s) provided by a *qualifying insurer*, the annual premium due to the *ARP* in respect of that policy shall be an amount calculated in accordance with the table below:

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (<i>Calculation of example premium</i>)	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	25%	$25\% \times £500,000 = £125,000$	£125,000	25.00%
2 £500,001 to £1,500,000 <i>e.g. if fees £1,000,000</i>	20%	£125,000 (maximum premium for fee band 1) plus $20\% \times £1,000,000 = £200,000 = £325,000$ <i>£125,000 plus (20% x £500,000 = £100,000) = £225,000</i>	£325,000	21.66%
3 £1,500,001 to £3,000,000 <i>e.g. if fees £2,250,000</i>	15%	$15\% \times £1,500,000 = £225,000$ plus £325,000 (maximum premium for fee band 2) = £550,000 <i>£325,000 plus (15% x £750,000 = £112,500) = £437,500</i>	£550,000	18.33%
4 £3,000,001 to £5,000,000 <i>e.g. if fees £4,000,000</i>	12%	$12\% \times £2,000,000 = £240,000$ plus £550,000 (maximum premium for fee band 3) = £790,000 <i>£550,000 plus (12% x £1,000,000 = £120,000) = £670,000</i>	£790,000	15.80%
5 £5,000,001 to £20,000,000 <i>e.g. if fees £10,000,000</i>	10%	$10\% \times £15,000,000 = £1,500,000$ plus £790,000 (maximum premium for fee band 4) = £2,290,000 <i>£790,000 plus (10% x £5,000,000 = £500,000) = £1,290,000</i>	£2,290,000	11.45%

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (<i>Calculation of example premium</i>)	Maximum premium for fee band	Minimum rate on fee for fee band
6 £20,000,001 +	5%	5% x (actual fees – £20,000,000) plus £2,290,000 (maximum premium for fee band 5) = (annual premium)	—	—
<i>e.g. if fees £30,000,000</i>		<i>£2,290,000 plus (5% x £10,000,000) = £500,000 = £2,790,000</i>		
<i>or if fees £50,000,000</i>		<i>£2,290,000 plus (5% x £30,000,000 = £1,500,000) = £3,790,000</i>		

1.5 Excess layer rates

Where an *ARP policy* is written as an excess layer and the primary layer is provided by a *qualifying insurer*, the annual premium due to the *ARP* in respect of that policy shall be an amount equal to the percentage set out below of the primary layer rate calculated in accordance with the table above:

Excess layer	Percentage of primary layer rate
£1 million excess of £1 million (or any part thereof)	10%
£2 million excess of £1 million (or any part thereof)	20%
£1 million excess of £2 million (or any part thereof)	10%

1.6 Co-insurance

Where an *ARP policy* is written as co-insurance, on the basis that one or more other *qualifying insurers* are liable in respect of a proportion only of the *sum insured*, the premium due to the *ARP* in respect of that policy shall be an amount equal to **T x P**, where:

T = the total annual premium (including any default charge in accordance with Part 2) that would have been due to the *ARP* in relation to that policy if the *ARP* was the only insurer multiplied by the short period *ARP* premium scale determined in accordance with paragraph 1.7 (if applicable)

P = the proportion, expressed as a percentage, in respect of which the *ARP* is liable in relation to that policy

1.7 Short Period *ARP* premium and *ARP* default premium

Subject to paragraph 1.10, in the case of a *firm* which:

- obtains a *policy of qualifying insurance* from the *ARP* for any period other than twelve months commencing on the first day of an *indemnity period*; or
- has a *policy of qualifying insurance* from the *ARP* which ceases before the end of the *indemnity period* including where the *firm* ceases to be an *eligible firm* or because it cancels the *ARP policy* before the end of the *indemnity period* because it has obtained a *policy of qualifying insurance* outside the *ARP*,

the *ARP premium* or *ARP default premium* payable in accordance with Part 1 of this Appendix shall, in respect of paragraph (a), be calculated or, in respect of paragraph (b), be re-calculated in proportion to the part of the *indemnity period* for which the *firm* obtains cover from the *ARP* on the basis of the formula:

$$P \times \frac{N}{Y}$$

where:

P is the annual *ARP premium* or *ARP default premium* (as the case may be) calculated for the whole of the *indemnity period*;

N is the number of days during the *policy period* (inclusive of the first and last day of the *policy period*); and

Y is 365.

Subject to paragraph 1.10, in the case of a *firm* to which paragraph 1.7(b) is applicable, a return premium shall be due to the *firm* concerned where the recalculated *ARP premium* or *ARP default premium* in respect of that *firm* is less than the *ARP premium* or *ARP default premium* paid by the *firm*, and the return premium shall be equal to the amount of that excess (if any). The *ARP manager* shall rebate the amount of the return premium to the *firm*.

However, there shall be no return premium due to the *insured firm* in the event that any claims, or circumstances that may give rise to claims, have been notified to the *ARP manager* during the *policy period* concerned. Furthermore, in the event that the *ARP* insurers are called upon to deal with a claim that was first made against the *insured firm* during the *policy period* concerned, but which claim the *insured firm* failed to notify to the *ARP manager*, the amount of the return premium shall be repaid to the *ARP manager*. The *ARP manager* may set off any return premium due to the *insured firm* against any part of the *ARP premium* which is due in respect of that *insured firm* but which remains unpaid.

1.8 Definition of Gross Fees

For the purposes of the *ARP* rating, Gross Fees means all professional fees of the *insured firm* for the latest complete financial year including remuneration, retained commission, and income of any sort whatsoever of the *insured firm* and notarial fees where a solicitor notary operates a notarial *practice* in conjunction with a solicitor's *practice*, but excluding only:

- (a) interest;
- (b) the reimbursement of disbursements;
- (c) any amount charged in respect of value added tax;
- (d) remuneration derived from any office excluded from the definition of *private practice* by these Rules;
- (e) dividends;
- (f) rents received by the *insured firm*;
- (g) income and capital profits from reserved funds established or other investments made by the *insured firm*.

Where the *insured firm* has been in existence for less than 12 months, the Gross Fees for *ARP* rating purposes shall be the *insured firm's* best estimate of the Gross Fees likely to be received during its first 12 months of trading. However, where the expiry date of the *indemnity period* precedes the completion date of the first 12 months of trading, the Gross Fees for *ARP* rating purposes shall be the *insured firm's* best estimate of the Gross Fees likely to be received during the period commencing with the starting date of the *practice* and ending with the expiry date of the *indemnity period*.

In the event that the estimated amount of Gross Fees differs from the actual amount of Gross Fees for the relevant period, the *ARP premium* shall be adjusted by reference to the actual amount of Gross Fees.

1.9 Premium payment

The *ARP premium* shall be paid to the *ARP manager* within 30 days of such premium being notified to the *insured firm* by the *ARP manager*.

1.10 Run-off premium

If an *insured firm* ceases to carry on a *practice* during the course of any *indemnity period* in circumstances where the *ARP* is required to provide run-off cover in respect of that *insured firm* under the terms of an *ARP policy* issued to that *insured firm*, no return premium shall be payable to that *insured firm* in respect of that *ARP policy*.

In addition, in such circumstances the *insured firm* and every *principal* of that *insured firm* (including, for these purposes, every person held out as a partner of a *sole practitioner*) shall be required to pay to the *ARP* an additional premium equal to:

- 12/13 of the full annual *ARP premium* (or, if applicable, the full annual *ARP default premium*) (and, for the avoidance of doubt, prior to any reduction applied under paragraph 1.7 above) payable in respect of that *insured firm* in relation to the last *indemnity period* for which such premium was payable, where such *indemnity period* was the period from 1 September 2003 to 30 September 2004; or
- 100 per cent of the full annual *ARP premium* (or, if applicable, the full annual *ARP default premium*) (and, for the avoidance of doubt, prior to any reduction applied under paragraph 1.7 above) payable in respect of that *insured firm* in relation to the last *indemnity period* for which such premium was payable or would have been payable had the *insured firm* participated in the *ARP* for the whole of that *indemnity period*, in the case of any other *indemnity period*.

Such additional premium shall be payable to the *ARP manager* within 30 days of such premium being notified to the *insured firm* by the *ARP manager*.

1.11 Suspended Practices

If:

- an *insured firm* ceases to carry on a *practice* during the course of any *indemnity period* in circumstances where the *ARP* is required to provide run-off cover in respect of that *insured firm* under the terms of an *ARP policy* issued to that *insured firm*; and
- that *insured firm's practice* subsequently restarts; and
- the *ARP manager* agrees to cancel such run-off cover

the *insured firm* shall be entitled to such reimbursement of premium (if any), as the *ARP manager* considers appropriate.

If, in addition, the *ARP manager* agrees to provide continuing cover in accordance with paragraph 5.7(b)(ii) of the *MTC*, the *insured firm* and every *principal* of that *insured firm* (including, for these purposes, every person held out as a partner of a *sole practitioner*) shall be liable to pay such additional premium (if any) as the *ARP manager* considers appropriate.

1.12 Self-Insured excesses for 2012/2013

The self-insured excess for each and every claim shall be calculated by multiplying the relevant number of *principals* by £4,500, subject to a maximum of £225,000 each claim. The relevant number of *principals* is the number of *principals* (including, for these purposes, every person held out as a partner of a *sole practitioner*) as at the inception date of the *policy*.

2 Method for calculation of the ARP default premium

The *ARP default premium* shall be an amount equal to the *ARP premium* calculated in accordance with Part 1 above, plus an additional default charge of 20% of the amount concerned.

3 Method for calculation of the ARP run-off premium

The *ARP run-off premium* shall be an amount equal to **A + B – C**, where:

A = The amount that would have been payable as the *ARP default premium* calculated in accordance with Part 2 above in relation to each *indemnity period* in which the *firm* has failed (whether for the whole of any part thereof) to obtain *qualifying insurance* prior to it becoming a *run-off firm* (including the *indemnity period* in which it ceased to practise)

B = A further amount equal to that which would have been payable as the *ARP default premium* calculated in accordance with Part 2 above (excluding any reduction under Part 1 paragraph 1.7) in relation to the *indemnity period* during which the *firm* ceased to practise

C = Any sum due under Rule 15.2.

Commentary: In respect of A, the *ARP default premium* is calculated for the actual period during which the *firm* has practised whilst uninsured. The calculation shall be undertaken on an annual basis for each *indemnity period* in which the *firm* failed to obtain *qualifying insurance* subject to a *pro rata* reduction (pursuant to Part 1 paragraph 1.7) for any part of each such *indemnity period* for which the *firm* obtained *qualifying insurance*.

In respect of B, the *ARP default premium* is calculated on an annual basis for the whole of the *indemnity period* in which the *firm* ceased practise irrespective of whether the *firm* obtained *qualifying insurance* for any part of that *indemnity period*.

Appendix 3

Special provisions for RELs

1 If:

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

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

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

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

4.5 No 'other insurance' provision

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

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

4.9 Resolution of disputes

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.4, 1.6 or 5.3, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer, and in conjunction with the provider of the Partial Home State Cover.

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

4.10 Conduct of a claim pending dispute resolution

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

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

it may in its absolute discretion make such a direction.

- (d) Clause 4.12 shall be added:

4.12 Period of insurance

The *period of insurance* must not expire prior to the earlier of:

- (a) 30 September 2013; or
- (b) the date with effect on which the Partial Home State Cover expires or is avoided.

- (e) The following clause shall be added:

6.11 Partial Home State Cover

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

and in these Rules the following definition shall be added:

Partial Home State Cover has the meaning given in Appendix 3 to the SRA Indemnity Insurance Rules 2012.

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