

Insurance Minimum Terms – Annex 1

SRA Minimum Terms and Conditions of Professional Indemnity Insurance

1. Scope of cover

1.1 Civil liability

Subject to the limits in clause 2, the insurance must indemnify each insured against civil liability to the extent that it arises from private legal practice in connection with the insured firm's practice, (including its prior practice and (unless run-off cover is provided in accordance with clause 5.3) any successor 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; 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 SRA and/or the Tribunal) during or after the period of insurance arising from any claim referred to in clause 1.1 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 Award by regulatory authority

The insurance must indemnify each insured against any amount paid or payable in accordance with the recommendation of 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 activities regulated by the SRA in accordance with the terms of the body's licence) at least £3 million, and in all other cases, at least £2 million.

2.2 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 to 2.3 (inclusive).

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 to 2.3 (inclusive):

- (a) all claims against any one or more insured arising from:
 - (i) one act or omission;
 - (ii) one series of related acts or omissions;
 - (iii) the same act or omission, in a series of related matters or transactions;
 - (iv) similar acts or omissions, in a series of related matters or transactions, and
- (b) all claims against one or more insured arising from one matter or transaction will be regarded as one claim.

2.6 Multiple underwriters

2.6.1 The insurance may be underwritten by more than one insurer, each of which must be a participating insurer, provided that the insurance is fully underwritten.

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

- (a) must state which participating insurer shall be the lead insurer;
- (b) may provide that each insurer shall be severally liable only for its respective proportion of liability in accordance with the terms of the insurance; and
- (c) (in addition to any proportionate limit on defence costs in accordance with clause 2.3), 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.

2.6.3 The insurer stated to be the lead insurer shall act as such including without limitation being responsible for the conduct of claims, advancing defence costs (subject to clause 2.6.2(c)) and compromising and arranging the payment of claims. The liability of any insurer shall not be increased by virtue only of the fact that it is acting as lead insurer.

3. Excesses

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

3.3 The excess must not apply to defence costs.

3.4 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 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 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, any breach of the duty to make a fair presentation of the risk, or any misrepresentation, in each case 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 MTC in effect at its commencement, commences, in which case cancellation shall have effect no earlier than the date on which such replacement insurance commences; or

(c) it subsequently transpires that the insured firm is not required under the SRA Indemnity Insurance Rules to effect a policy of qualifying insurance, in which case cancellation shall have effect from the later of (a) the start of the relevant policy period and (b) the date on which the insured firm ceased to be required to effect a policy of qualifying insurance, or such later date as the insured firm and the insurer may agree.

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

4.4 No set off

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

4.5 No 'other insurance' provision

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

4.6 No retroactive date

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

4.7 Successor practice - 'double insurance'

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

4.8 Resolution of disputes as to insurer of successor practice

The insurance must provide that, if there is a dispute as to whether a practice is a successor practice for the purposes of clauses 1.1 or 5.5, 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.

4.8A 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 SRA, conduct any claim, advance defence costs and, if appropriate, compromise and pay the claim. If the SRA is satisfied that:

(a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies;

(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.

4.9 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.

4.10 Variation of insurance terms

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

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

(b) on each date falling in 18-month intervals from the commencement of the policy period where no variation has occurred by reason of clause 4.10(a) within the immediately preceding 18-month period.

save that no variation shall be required under clause 4.10(b) where the date on which variation would have been required is a date within the extended policy period or the cessation period.

4.11 MTC to prevail

The insurance must provide that:

(a) the insurance is to be construed or rectified so as to comply with the requirements of these MTC (including any amendment pursuant to clause 4.10); and

(b) any provision which is inconsistent with these MTC (including any amendment pursuant to clause 4.10) is to be severed or rectified to comply.

5. Extended policy period and run-off cover

5.1 Extended policy period

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

5.2 Cessation period

The insurance must provide cover complying with the MTC for the duration of the cessation period where an insured firm has not, prior to the expiration of the extended policy period, obtained

insurance complying with the MTC and incepting on and with effect from the day immediately following the expiration of the policy period.

5.3 Run-off cover

Subject to clause 5.7 the insurance must provide run-off cover:

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

and for the purposes of this clause 5.3 and clause 5.7, an insured firm's practice shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the insured firm becomes a non-SRA firm.

5.4 Scope of run-off cover

The run-off cover referred to in clause 5.3 must:

- (a) indemnify each insured in accordance with clauses 1.1 to 1.4;
- (b) provide a minimum level of insurance cover in accordance with clauses 2.1 and 2.3;
- (c) be subject to the exclusions and conditions of the insurance applicable in accordance with the MTC; and
- (d) extend the period of insurance for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement, it would have ended, and for the avoidance of doubt, including the extended policy period and cessation period,) save that in respect of run-off cover provided under clause 5.3(c), such run-off cover shall not operate to indemnify any regulated insured for civil liability arising from acts or omissions of such insured occurring after the expiration of the cessation period.

5.5 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 5.3(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 5.5(b) above shall apply.

5.6 Suspended practices

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

- (a) there is insurance complying with these MTC in relation to that insured firm in force on the date of cancellation;
- (b) the participating insurer providing such insurance confirms in writing to the insured firm and the insurer (if different) that:

(i) it is providing insurance complying with these MTC in relation to that insured firm for the then current indemnity period; and

(ii) it is doing so on the basis that the insured firm's practice is regarded as being a continuation of the insured firm's practice prior to cessation and that accordingly it is liable for claims against the insured firm arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to cessation.

5.7 Transfer to another approved regulator

Clause 5.3 above does not apply where the insured firm becomes an authorised non-SRA firm provided that the approved regulator, with which the authorised non-SRA firm is authorised, is a signatory to a protocol on terms agreed by the SRA which relates to switching between approved regulators.

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 under a professional indemnity insurance contract for a period earlier than the period of insurance, whether by reason of notification of circumstances 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, trading liabilities and funding arrangements

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 member of an LLP or director or officer of a body corporate (other than a recognised body, licensed body (in relation to the activities regulated by the SRA in accordance with the terms of the body's licence) or a service, administration, trustee or nominee company referred to in clause 1.3(b) except that:

(a) the insurance must nonetheless cover any liability of that person which arises from a breach of duty in the performance of (or failure to perform) legal work; and

(b) the insurance must nonetheless cover each other insured against any vicarious or joint liability.

6.10 War and terrorism, and asbestos

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

(a) terrorism, war or other hostilities; and/or

(b) asbestos, or any actual or alleged asbestos-related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos,

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

6.11 International trade sanctions

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

6.12 Cyber, infrastructure and Data Protection Law

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

(a) a cyber-act

(b) a partial or total failure of any computer system

(c) the receipt or transmission of malware, malicious code or similar by the insured or any other party acting on behalf of the insured

(d) the failure or interruption of services relating to core infrastructure

(e) a breach of Data Protection Law

provided that any such exclusion or endorsement does not exclude or limit any liability of the insurer to indemnify any insured against:

(a) civil liability referred to in clause 1.1 (including the obligation to remedy a breach of the SRA Accounts Rules as described in the definition of claim)

(b) defence costs referred to in clause 1.2 that would have been covered under the insurance even absent an event at 6(a) to 6(e) detailed above

(c) any award by a regulatory authority referred to in clause 1.4

In addition, any such exclusion or endorsement should not exclude or limit any liability of the insurer to indemnify any insured against matters referred to at (i) (ii) and (iii) above in circumstances where automated technology has been utilised.

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) any breach of the duty to make a fair presentation of the risk, 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 failure to make a fair presentation of the risk, 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 regulatory arrangements of the SRA .

The insurance must provide that no failure to make a fair presentation of the risk, 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 clause 1.3(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 failure to make a fair presentation of the risk, misrepresentation, breach, dishonesty, act or omission.

7.3 Reimbursement of defence costs

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

7.4 Reimbursement of the excess

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

7.5 Reimbursement of moneys paid pending dispute resolution

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

7.6 Withholding assets or entitlements

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

7.7 Premium

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

8. Law and Jurisdiction

These MTC and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and subject to the jurisdiction of the courts of England and Wales.