



CLC Professional Indemnity Insurance Code and Guidance

CLC Professional Indemnity Framework

CLC Consultation Paper

May 2016

Deadline for receipt of responses: Friday, 20 May 2016

Summary

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

Questions

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

Responding to this Consultation

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

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

Or to DX36603 FINSBURY

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

Introduction

Statutory Framework

4. The CLC was established by the Administration of Justice Act 1985 (AJA) and is an Approved Regulator under the Legal Services Act 2007, subject to the oversight regulation of the Legal Services Board. It licenses and regulates licensed conveyancers and CLC Practices in the provision of reserved legal activities, currently conveyancing and probate services and other non-reserved legal activities (including will writing). It is also a Licensing Authority authorised to license and regulate Alternative Business Structures (ABS). It has no representative function.
5. As an approved regulator the CLC 'must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives'.¹

CLC's Approach to Regulation

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

¹ S.28(2) LSA 2007

CLC Professional Indemnity Insurance (PII) Requirements

Generally

- Professional Indemnity Insurance policies are written on a 'claims made' basis rather than the 'losses occurring' basis used in general insurance². The insurer responsible for paying a claim is the insurer of the practice at the time the claim arises or is first notified, rather than the insurer at the time the alleged negligent act which results in a claim. The purpose of run off cover at the point of closure of a firm is to protect the firm, its owners and employees against any future claims. The CLC only requires cover for six years after a practice has closed, although in some rare instances it is possible for claims to be made up to fifteen years after an event which could lead to a claim.

CLC's PII Arrangements

- The CLC makes rules for indemnifying CLC practices against losses arising from claims in respect of any description of civil liability incurred by them, or their employees in connection with their practices as licensed conveyancers.
- Since its inception the CLC has had a Master Policy in place through which CLC practices have been required to take out professional indemnity insurance as a condition of being licensed by the CLC. The terms of the Master Policy have been largely unchanged over a number of years³:

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

- In 2011 as part of its review of regulatory arrangements, the CLC amended its PII requirements. Since October 2011 CLC practices have been able to take out PII other than through the Master Policy if they are able to satisfy the CLC that any PII policy obtained 'is in all its conditions and extent at least equivalent to the cover provided under the CLC Master Policy'⁵. Over the period 2011-2014 four practices sourced their PII other than through the Master Policy.

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

² See also paragraph 8 SRA Consultation 'Removing barriers to switching regulators' at <https://www.sra.org.uk/sra/consultations/removing-barriers-switching-regulators.page>

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

⁴ See definition at paragraph 1.3 CLC PII Policy Wording at Annex 3

⁵ Paragraph 9 of the CLC Professional Indemnity Insurance Code and Guidance at <http://www.clc-uk.org/CLCSite/media/PDFs/Professional-Indemnity-Insurance-Code.pdf>

Objectives of the CLC's new PII Arrangements

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

Run Off

18. The only significant difference between the PII terms currently in force and the CLC's new PII Arrangements relate to Run Off Cover.
19. Any claim in negligence made against a practice which has closed is primarily the liability of that practice and for any former principal of that practice. If neither the practice nor the former principal is able to meet a claim, the claim will ultimately be treated as an application for a grant out of the CLC's Compensation Fund. The challenge for the CLC has been to be able to find an affordable arrangement to manage and meet the needs of former clients of who have claims in negligence against practices which have closed.
20. Up until 2008 the CLC arranged run off cover for all closed practices through its Run Off Block Policy which was combined with the CLC's Compensation Fund Policy. By then, the number of practices in the Run Off Block Policy were approaching as many as the number of practices then licensed by the CLC. The premium paid increased year on year. The CLC was concerned that the cost of the Run Off Block Policy, mitigated as it was by an increase in the excess payable, was becoming a disproportionate burden on the profession, and would ultimately become unaffordable.
21. Insurers were willing to provide run off cover for practices on an individual basis provided a one off premium of up to three times the annual premium was paid when the policy was taken out. From 1 July 2008 the CLC closed the Run Off Block

Policy to any further practices which closed and provided financial incentives (which progressively reduced over a four year period and came to an end in 2012) to encourage them to take out their own run off cover.

22. Whilst there is a requirement under the CLC's Code of Conduct⁶ to purchase run off cover for a minimum of six years following closure of a practice, in a number of instances the former principals have not had the funds to do pay the premium. The CLC has been in discussions with insurers to investigate ways in which run off cover could be incorporated into CLC PII Provisions at no additional cost to CLC practices at point of closure.
23. These terms have now been agreed and are set out at paragraphs 8.10 and 8.11 of CLC's PII Policy Terms⁷ which require insurers to provide six year run off cover at no additional cost to CLC Practices at point of closure. In contrast with the terms of continuing PII cover which provide for cover of £2 million per claim plus defence costs, the run off cover is £2 million in aggregate inclusive of defence costs for the six years (ie the total sum payable in respect of claims including legal costs over the six year period of cover is £2 million). If the £2 million aggregate limit were to be exceeded for any practice in run off, an application could then be made for a grant out of the CLC's Compensation Fund.
24. Fraud and dishonesty are excluded from run off cover. Any such claims would be treated as applications for grants out of the CLC's Compensation Fund and determined in accordance with the CLC's Compensation Fund Operating Framework⁸. Fraud and dishonesty is already excluded under the current PII terms, though an indemnity is currently provided to managers who can demonstrate that they are not implicated in such fraud and dishonesty.
25. Insurers report that since 2011 the aggregate claims paid per practice in run off have not exceeded £100,000, well within £2 million aggregate limit, or £200,000 in any one year. The CLC has received one application for a grant out of the Compensation Fund (albeit in respect of a practice which closed before 2011) which is expected to result in total payment not exceeding £250,000.
26. Since 2011 41 CLC practices have closed which may be analysed as follows:

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

* transfer to another legal regulator

⁶ Principle 3(o) Code of Conduct <http://www.clc-uk.org/CLCSite/media/PDFs/Code-of-Conduct-Code.pdf>

⁷ At Annex 3

⁸ In particular paragraph 10 http://www.clc-uk.org/CLCSite/media/PDFs/1_Comp_Fund_Operating_Framework1.pdf

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

Amendment to the CLC's Professional Indemnity Insurance Arrangements

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

Switching Regulators

31. The SRA's consultation paper 'Removing barriers to switching regulators'⁹ proposes to make a variation to the terms of their Participating Insurer's Agreement to allow the run-off cover requirement not to be activated when the practice is moving to another Approved Regulator. This would avoid the practice having to pay a one off premium for six years run off cover amounting (it is understood) in many instances to between two and a half and three times the last annual premium. Many practices have not been able to afford this cost and as the SRA consultation paper explains this has acted as a significant barrier to firms who wish to leave SRA regulation to be regulated by another Approved Regulator.
32. The CLC welcomes the SRA's proposal. Any insurer who has signed up to the Participating Insurers' Agreement will be able to provide PII for the practice which has moved to CLC regulation, provided it meets the CLC's criteria set out in the CLC's Participating Insurers' Agreement and signs that agreement. This may be one of the current insurers of CLC practices. It may be the insurer who provided PII whilst the practice was under SRA regulation. It will be for the insurer to determine, having carried out its own due diligence, whether it is willing to provide PII to the transferring practice and if so on what terms.
33. As with any other application for a license, the CLC will carry out its own due diligence. It is aware of the risk that a practice might choose to transfer to CLC regulation because of the approach taken by the SRA to monitoring that practice. It may equally be the subject of disciplinary proceedings. The CLC is authorised to license and regulate conveyancing and probate services (as well as other related non-reserved legal activities). Any practice moving to CLC regulation will therefore

⁹ See note 2 above

have to take out run off cover in relation to any other legal services it provides or ensure there is a separate entity appropriately regulated to continue to provide those other services.

34. Arguably, there may be an immediate advantage to practices which transfer to CLC regulation in that the cost of PII cover may be less than equivalent PII cover obtained under SRA regulation. Immediate reduced cost of PII cover under CLC regulation may be attributable to the narrower scope of legal services provided by practices and increased specialisation, and the fact that their past liability remains with their SRA Participating Insurers. The CLC has been advised that this is not the case for the vast majority of CLC practices which have enjoyed lower rates than their SRA counterparts. This experience has been attributed to the smaller pool of firms under CLC regulation with their specialisation resulting in generally a better claims performance when compared to the issues faced historically by SRA regulated firms.

Assessment of the Changes Proposed

35. CLC PII Policy Wording

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

36. Run Off Cover

- a. For the first time for CLC Practices will be provided by insurers at no additional cost at the point of closure. This will remove a major disincentive for practices to close, although the CLC will continue to encourage practices to put in place and implement Business Continuity Plans with succession arrangements to seek to avoid closures.
- b. Many practices which close are not able to afford the substantial cost of the run off premium. The arrangements which the CLC has asked insurers to put in place will benefit the practices, former principals of those practices and their clients. This is the minimum cover. It will be possible for insured to increase the level of cover (e.g. to increase the aggregate limit above £2

million, to enable the policy to respond to each and every claim, to reduce the level of excess, to extend cover beyond six years from the point of closure).

- c. Subject to making suitable arrangements for payment of any excess, the former principals will not be at personal financial risk when a claim is made. It will enable former clients to submit claims which are then processed by insurers applying the same criteria as for continuing practices. The new requirement on insurers to provide run off at no additional cost at the point of closure may lead to an increase in premiums charged.
- d. There are a number of factors which make it difficult to gauge the extent of any increase. Premiums are generally determined taking account of turnover of a practice, its claims history, the organisational structure of the practice, the policies and procedures it has in place and the nature of the PII market at the point of renewal (of the conveyancing market in general and of CLC practices in particular). A change in the way the market is functioning and the arrival of new providers may at least in the short term lead to a downward pressure on premiums. The net effect may be to lessen or even neutralise any increase in premiums resulting from the introduction of run off cover.
- e. Whilst it is not possible to predict the profile of claims, the experience of insurers to date is that cover of £2 million in aggregate over a six year period is sufficient to deal with claims experience to date. In the event it is not sufficient, claims may be referred to the CLC as applications for grants out of the Compensation Fund.
- f. The information arrangements the CLC will put in place with insurers will enable claims experience for run off cover to be monitored. On any subsequent review, having regard to that it may be appropriate for the level of cover to be changed.

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

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

38. Summary

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

Impact of the proposed changes

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

Timetable for Introducing the proposed changes

44. The Timetable proposed is as follows:

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

45. Timing is necessarily tight (in particular the Consultation Period is scheduled to last two weeks). Proposal forms are being circulated to CLC practices with a request that they are returned by early May 2016. It will be open to practices

to contact other potential providers. Copies of the proposed revised wording will be circulated.

46. Given the CLC's experience in May and June 2015, it is likely that more CLC Practices will wish to approach more than one potential provider. The CLC has already received enquiries from a number of different providers. This makes more urgent adoption of the proposed scheme which also provides assurance about the financial standing of insurers offering PII terms.

Annex 1



Professional Indemnity Insurance Code & Guidance

Professional Indemnity Insurance Code

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

Outcomes-Focused

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

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

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

1. **Act in the best interests of your *Clients*. (*Overriding Principle 3*)**
2. **Deal with regulators and ombudsmen in an open and co-operative way. (*Overriding Principle 5*)**
3. You only accept instructions and act in relation to matters which are within your professional competence. (**CoC P3a**)
4. You only provide **Regulated Services** whilst you have **CLC**-approved **professional indemnity insurance** in force. (**CoC P3i**)
5. You ensure there are adequate indemnity **arrangements** in respect of **claims** made against you for work carried out by you before you ceased to practice by **purchasing taking out professional indemnity insurance** for a minimum period of 6 years from the expiry of the period of **professional indemnity insurance** stated in your evidence of insurance or policy document. (**CoC P3o**)

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

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

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

Professional Indemnity Insurance

9. When providing **CLC-regulated services** you must have **professional indemnity insurance** in place at all times, which complies with the minimum requirements of Article 3 IMD ~~and the **CLC's PII Policy Wording**, either through the **CLC's Master Policy** or with another **Authorised Insurer** (see requirement 11), provided the **CLC** is satisfied that in all its conditions and extent it is at least equivalent to the cover provided under the **CLC's Master Policy**.~~

10. You must:

- 10.1 Pay the applicable annual premium for ~~**professional indemnity insurance**~~**Master Policy** cover;

- 10.2 Comply with the ~~**professional indemnity**~~**insurance** terms as apply to you;

- 10.3 Comply with the Self Insured Excess policy (set out at 134) and such other policies as the **CLC** may issue;

- 10.4 Produce a current **Evidence of Insurance** when requested by the **CLC**;

- 10.5 Permit the ~~**Authorised Participating Insurers**~~ or the **Brokers** to notify the **CLC** should any

circumstances arise whereby the ~~**Participating Authorised Insurers**~~ or the **Brokers** consider that

the body has failed to comply with their responsibilities as a **CLC** body or when any **Evidence of Insurance** is avoided.

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

- ~~11. If on application:~~

- ~~11.1 you satisfy the **CLC** that any **Professional Indemnity Insurance** policy obtained other than through the **CLC's Master Policy** is in all its conditions and extent at least equivalent to the cover provided under the **CLC Master Policy** then you will be~~

exempted from the obligation to comply with requirement 10.1 whilst the **Professional Indemnity Insurance** policy (and any agreement with the cover provider) remains in force and is complied with; or

~~11.2~~ to the extent it is not in its conditions and extent at least equivalent to the cover provided under the **CLC Master Policy**, you obtain a **Supplemental Policy** from an **Authorised Insurer** so that the **CLC** is satisfied that the combined effect of the original and **supplemental policy** is in all its conditions and extent at least equivalent to the cover provided under the **CLC Master Policy** you will be exempted from complying with requirement 10.1 whilst the **Professional Indemnity Insurance** policy (and any agreement with the cover provider) and **supplemental policy** remain in force and is complied with.

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

~~1211.~~ If on application:

~~1211.1~~ you satisfy the **CLC** that the **EU body** (of which you are a **Manager**) has **EU Professional Cover** which complies with the **CLC's PII Policy Wording** equivalent to the **CLC Master Policy** in all its conditions and cover then the **EU body** will be exempted from obligation to comply with requirement 10.1 whilst the **EU Professional Cover** (and any agreement with the cover provider) remains in force and is complied with;

~~1211.2~~ you satisfy the **CLC** that the **EU body** (of which you are a **Manager**) has **Partial EU Professional Cover** then the **EU body** and its **Managers** shall be exempted from the obligation to comply with regulation 10.1 whilst the **Partial EU Professional Cover** (and any agreement with the cover provider) and a **Supplemental Policy** remain in force and is complied with.

Claims

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

Self Insured Excess

~~134.1~~ Should your self-insured Excess exceed:

(1) £3,500 or

(2) the sum of the following:

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

no more than £200,000; plus

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

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

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

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

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

Professional Indemnity Insurance Guidance

1. A **Licence** will not be issued to a **Manager** unless the applicable **Evidence of Insurance** for your **Body** has been produced to the **CLC**.
2. As a guide to the provisions under requirement 134 a body should be able to demonstrate it can fund the self insured excess for no less than two **claims** per year.

Examples of Limits on Self Insured Excess:

- Fees £250,000 Maximum Excess = £200,000 X 5% + £50,000 X 3% = £11,500
 - Fees £600,000 Maximum Excess = £200,000 X 5% + £300,000 X 3% + £100,000 X 2% = £21,000
 - Fees £900,000 Maximum Excess = £200,000 X 5% + £300,000 X 3% + £400,000 X 2% = £27,000
3. We would remind you of your responsibility under the [Provision Of Services Regulations 2009](#) to make the following 'available': contact details for the Professional Indemnity Insurance provider, and the geographic coverage of that PII. It is at your discretion as to how make this available e.g. given in writing to the client at the outset, hard copy at the firm's offices, on website, or in documents provided to the client during a transaction etc.'

Annex 2



CLC Professional Indemnity Insurance Operating Framework

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

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

1. DEFINITIONS

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

1.1 Associated Entities

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

1.2 Claim

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

1.3 Claims Series

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

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

1.3.1.1 one act or omission;

1.3.1.2 one series of related acts or omissions;

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

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

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

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

1.4 CLC

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

1.5 Circumstances

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

1.6 Code of Conduct

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

1.7 **Defence Costs**

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

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

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

1.8 **Documents**

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

1.9 **Employee**

Employee means any person other than a Principal:

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

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

1.10 **Estate Planning and Probate Services**

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

1.11 **Evidence of Insurance**

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

1.12 **Excess**

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

1.13 **Insured**

The Insured means:

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

Each of the foregoing are severally insured hereunder.

1.14 **Insurers**

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

1.15 **Licensed Body**

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

1.16 **Loss**

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

1.17 **Penalty Excess**

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

- 1.17.1 the Insured's failure when acting in the purchase of a property to obtain an appropriate undertaking in relation to the redemption/removal of all existing charges or restrictions and/or other encumbrances contained within either the proprietorship or charges register of the title(s) maintained under the Land Registration Act 2002 and relating to the property;

- 1.17.2 the Insured's failure when acting on behalf of the purchaser following completion but before registration to maintain priority with the Land Registry so that a charge, charging order or restriction and/or other entry relating to the seller is entered on the register maintained under the Land Registration Act 2002 by a third party and which enjoys priority over those entries intended to be made by the purchaser and his or her lender;
- 1.17.3 the Insured's failure when acting in relation to the sale of a property to retain sufficient funds when accounting to the vendor to redeem a charge or release a restriction having given an undertaking to do so and which the Insured is obliged to comply with despite the funds have been released to the client;
- 1.17.4 the Insured's failure when acting in relation to a re-mortgage of a property to retain sufficient funds when accounting to the borrower to redeem any pre-existing charge or release a restriction on completion or following completion but before registration to maintain priority with the Land Registry so that a charge, charging order or restriction and/or other entry is entered on the register maintained under the Land Registration Act 2002 in priority to that of the lender instructing the Insured;
- 1.17.5 the application of the provisions of Exclusions 5.12.

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

The Penalty Excess shall not apply to Defence Costs.

1.18 Period of Insurance

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

1.19 Practice

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

1.20 Predecessor

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

1.21 Principal

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

1.22 Professional Business

Professional Business means, unless otherwise excluded by this Insurance, any advice given or services performed including professional services carried

out by or on behalf of the Insured Practice or an Insured or any person or entity for whom the Insured Practice is legally responsible provided always:

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

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

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

1.23 Recognised Body

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

1.25 Successor Practice

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

1.25 Terrorism

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

2. INSURING CLAUSES

21 Civil Liability

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

22 Loss of Documents

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

23 Regulatory Indemnity

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

3. PREMIUM

3.1 Payment of Premium

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

4. SUM INSURED

4.1 Sum Insured

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

4.2 Defence Costs

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

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

5. EXCLUSIONS

5.1 Any business controlled by any Principal

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

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

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

- 5.1.4 without that Principal (or any person providing the service on his behalf) knowing that the service provided was or was likely to be undertaken for the persons or entities described in Exclusions 5.1.1 to 5.1.3 above;

5.1.5 with the full knowledge and agreement of any other party involved in the same transaction and for whom the Practice also acted in connection with that transaction.

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

5.2 Excess or Penalty Excess

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

5.3 Bodily injury or physical damage

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

5.4 Wrongful dismissal/termination

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

5.4.1 arising from wrongful dismissal or any other alleged breach or any other relief in respect of any contract of employment by the Insured; and/or

5.4.2 for wrongful termination or any other alleged breach or any other relief in respect of any contract for supply to or use by the Insured of services and/or materials and/or equipment and/or other goods.

5.5 Payment of a trading debt

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

5.6 Circumstances notified to other insurance

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

5.7 Radioactive contamination

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

5.8 Sonic Boom

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

5.9 War, terrorism, asbestos and toxic mould

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

- 5.9.1 Terrorism, war or other hostilities; and/or
- 5.9.2 asbestos, or any actual or alleged asbestos-related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos; or
- 5.9.3 the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind.

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

5.10 Practice outside England or Wales

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

- 5.10.1 a Practice conducted wholly or partly outside England or Wales;
- 5.10.2 work in connection with contracts performed outside England or Wales.

5.11 Claims made in the USA or Canada

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

5.12 Dishonest or fraudulent act or omission

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

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

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

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

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

5.13 Documents stored on magnetic or electronic media

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

5.14 Data Corruption

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

5.15 Fraudulent use of electronic signature or external email

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

6. CLAIMS

6.1 Notice of Claim

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

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

- 6.1.2.1 the receipt of notice, whether written or oral, from any person of an intention to make a Claim against the Insured;
 - 6.1.2.2 the discovery or reasonable cause for suspicion of dishonesty or fraud on the part of a past or present partner or director or employee or consultant or locum of the Practice whether giving rise to a Claim or Loss under this Policy or not;
 - 6.1.2.3 any letter of complaint expressing dissatisfaction with the Insured's work and/or indicating an intention to make a Claim against the Insured;
 - 6.1.2.4 the discovery of any matters which may give rise to a Claim, Circumstances or claim by the Insured for indemnity under Insuring Clauses 2.3 of this Policy arising from an investigation or disciplinary proceedings by the CLC or any other regulator.
- 6.1.3 The Insured shall at all times and at their own expense give to Insurers or their duly appointed representatives all such information, cooperation, assistance, signed statements or depositions as may properly be required to facilitate compliance with the Civil Procedure Rules, Practice Directions and Pre-Action Protocols approved by the Head of Civil Justice.
- The Insured must allow the Participants or their duly appointed representatives to develop and deploy the best possible defence of a Claim within the applicable time limits. The Insured must have adequate internal systems in place to allow ready access to material information.
- In addition, the Insured shall, at their own expense, continue to keep the Insurers informed of all material developments with respect to any other matter in relation to any Claim, Loss or Circumstance.
- 6.1.4 The Insured shall pay the Excess or Penalty Excess on demand by Insurers or their duly appointed representatives.

6.2 Notice of Circumstances

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

6.3 Claims control

- 6.3.1 The Insured shall not admit liability for or settle any Claim or any costs in connection therewith without the prior written consent of the Insurers, who shall be entitled at their own expense at any time to take over and conduct in the name of the Insured the defence or settlement of any such claim.
- 6.3.2 Nevertheless, neither the Insured nor the Insurers shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Insurers and in default of agreement to be nominated by the Chief Executive of CLC) shall

advise that proceedings could be contested with a reasonable prospect of success. The costs of instructing Queen's Counsel and his fees shall be paid by Insurers.

6.4 Claim settlement

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

7. NOTICES

7.1 Claims Notices

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

{Name of Insurer or Intermediary}

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

7.2 All other Notices

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

{Name of Insurer or Intermediary}

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

8. GENERAL CONDITIONS

8.1 Innocent Non-Disclosure

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

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

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

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

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

or after discovery by Insurers of the non-disclosure, misrepresentation or untrue statement;

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

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

8.1.5.1 take or procure to be taken at Insurers' expense all reasonable steps to obtain reimbursement of the benefit of this Policy from any Principal or former Principal of the Insured concerned in or making such fraudulent non-disclosure, misrepresentation or untrue statement (or from the personal representatives of that Principal); and

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

8.2 **Previous Knowledge of Circumstances**

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

8.2.1 they had previous knowledge of the Circumstances which could give rise to such Claim or Loss; and

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

8.3 **Breach of or Non-Compliance with Conditions**

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

8.4 **Rights of Third Parties**

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

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

8.5 **Governing Law and Jurisdiction**

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

8.6 **False or Fraudulent Claims**

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

8.7 **Resolution of Dispute**

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

In the event of any such dispute or difference between the Insurers and Insured arising under this Policy, other than with regard to the contesting of legal

proceedings, the dispute or difference will be referred to a mutually agreed Queen's Counsel for resolution.

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

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

8.8 Costs Payable as Incurred

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

8.9 Payment to Claimant

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

8.10 Run-off Cover

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

8.11 Scope of run-off cover

This Insurance will provide run-off cover at no additional cost in the circumstances set out in General Conditions 8.10 above and in accordance with the Insuring Clauses (but subject to the limits, exclusions and conditions of this Policy) on the basis that the Period of Insurance extends for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement it would have ended).

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

8.12 Sanctions Limitation

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any Claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such Claim or provision of such benefit

would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the Commonwealth of Australia, European Union, United Kingdom or United States of America.