

MARSH



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**Executive Summary of Report to the CLC on Professional
Indemnity and Compensation Fund Arrangements**

Introduction

Marsh have carefully considered the existing arrangements and consulted widely with insurers, member firms and CJ Coleman. The recent, significant change in the economic landscape has had a marked effect on our deliberations.

We have come to a number of general conclusions:

- The current combination of compulsory professional indemnity insurance and a Compensation Fund provides broad protection for consumers; though we have some concerns about the future size of the premium pool and the scheme's commercial viability.
- There is an overriding concern within the member firms about the lack of freedom of choice. Generally, smaller firms are satisfied with current arrangements, but the larger firms we interviewed feel that they would benefit from premium reductions under freedom of choice arrangements.
- There appears to be a lack of appreciation and understanding amongst member firms of the performance of the current scheme and the ability to alter excess levels.
- Special attention needs to be given to the provision of run-off cover.
- In pursuing the objective of bringing new member firms into the CLC structure, it will be necessary to reach an understanding with the SRA on how the transfer of cover will occur to prevent any gaps in cover and ensure consumers remain protected.

Based on those conclusions, we have made recommendations which are detailed further below but can be summarised as:

- Maintain the master policy approach, with coverage improvements, if possible, from the next renewal.
- Transfer run off cover to the insurers of the Master Policy scheme and away from the Compensation Fund.
- Carefully monitor the exposure of the Compensation Fund and its reliance on the insurance provided by the Master Policy insurers.
- Review the allocation of premium, giving greater weight to a firm's claims experience.
- Offer firms the opportunity to increase their excesses under the Master Policy.
- Introduce procedures to deal with partial or non-payment of premium, and the insolvency of firms.

- Publicise the scheme - its benefits, options and procedures, including the commission and the profit sharing commission arrangements, more widely and effectively.

Key Findings

We set out some further detail on the key areas we reviewed below.

Master Policy

1. The current Master Policy approach means that every regulated firm must be covered under the arrangements made by the CLC. We consider that this is the most appropriate option for the profession as a whole for the time being. The largest firms are the ones who would be most likely to benefit from freedom of choice. Smaller firms (the bulk of the profession) would be vulnerable to the vagaries of the insurance market place were the Master Policy scheme abandoned. This is particularly so given that professional indemnity insurers are looking to increase premiums for other professions and are being more selective about the firms they insure (generally avoiding smaller firms).

We attach as Appendix A to this summary a copy of our comparison of master policy approaches with freedom of choice arrangements.

Ongoing viability of Master Policy

2. We have some concerns about the commercial viability of the current scheme beyond 2010. The current premium pool of approximately £2,460,000 (excluding Compensation Fund contributions) will continue to be eroded by:
 - reduced premiums in the 2009 - 2010 insurance period due to a reduction in fees, upon which premiums are based. The general view was that firms' revenues would decline by at least 50% or more over the next year, with a smaller reduction for firms predominately involved in re-mortgaging work;
 - a possible reduction in the number of firms as practitioners leave the profession because of voluntary retirement or bankruptcy; and
 - larger firms taking increased excesses.

In theory whilst these events should reduce insurers' exposure to claims, there will come a point at which there is real risk that the scheme's commercial viability will be tested.

The other potential risk is that deterioration in the claims experience will mean that insurers need to earn a higher premium in order to make a profit in 2010 -2011. Any requirement to pay higher premiums would place a significant financial burden on the profession at what is already a difficult time financially.

Future premium

3. Based on the information provided to us we consider that CJ Coleman carried out a professional exercise in remarketing the scheme in 2007, supported by the CLC.

We have not performed any financial modelling of the programme; however, in our view the overall premium charged for the entire profession appears equitable, in light of the 2007 remarketing and insurers' desire for the scheme to be profitable. In reaching this conclusion we are mindful that the historic profitability of the professional indemnity insurance programme has facilitated placement of insurance for the Compensation Fund.

Freedom of choice

4. It is our considered view that a move to arrangements similar to those for solicitors in England & Wales, where firms are permitted freedom of choice when arranging their compulsory professional indemnity insurance, would be too risky at present. Such a move would expose the smaller licensed conveyancing firms, and therefore the bulk of the profession, to the risk of either being declined cover or being unable to purchase cover at an affordable price. While we would expect most licensed conveyancing firms to be able to secure cover in an open market, this would be at an increased cost at a time when they can least afford it. Small firms would face the risk of either being declined cover or being unable to purchase cover at an affordable price.

Any exemption from the current arrangements for the larger firms would significantly reduce the premium pool, without necessarily a corresponding reduction in the cost to insure the remainder of the profession. Again this would expose the smaller firms to premium increases which could drive them out of business. This does not mean that it is equitable for the large firms to subsidise the scheme or smaller firms.

Flexibility on excesses

5. We believe that an alternative option to a move to freedom of choice, or permitting exemptions from the current arrangements, would be to allow firms greater flexibility in terms of the size of the excess they assume.

This appears to be a move which has already been accepted by the CLC, but the option is not well publicised and making firms aware of this option may address the concerns some have regarding their lack of choice. The danger of this course is that a firm may take a substantial excess and ultimately be unable to meet this obligation. The arrangements for solicitors in England & Wales remove this risk by making insurers responsible for the excess if it remains unpaid by the firm.

Financial performance of the Master Policy

6. In our view, it would be desirable for there to be greater transparency regarding the financial performance of the scheme so that member firms understand the correlation between premiums and claims.

Communication and efficiency

7. Our dialogue with member firms raised the following issues which we recommend that the CLC consider:
- a) Transparency around the distribution of the profit commission payable under the insurance arrangements. We understand that the CLC intends to, in the future, make some information available to firms regarding the return profit commission.
 - b) Possible over-servicing of claims by the appointed loss adjusters and solicitors. This was particularly felt by firms in relation to the notification of circumstances (as distinct from actual claims by clients). If this is taking place it significantly erodes the premium available to meet claims. In the 16 years since 1993, £5.92M has been spent on defence and supervisory costs, with paid and outstanding claims totalling £9.63M. This means that costs represent 62% of the overall claims. We appreciate that in some circumstances it is necessary to incur such costs to mitigate circumstances which would otherwise develop into claims under the scheme. However costs are generally an area worthy of some scrutiny to see if there is scope for possible reductions.

On the whole, member firms were complimentary about claims handling arrangements, although on a number of occasions firms with claims (as opposed to circumstance notifications) had a feeling that greater attention could be given to settlement negotiations, rather than prolonged litigation or drawn out negotiations by the lawyers. The inference was that unnecessary costs were being incurred which are inevitably passed on to the profession in the form of higher premiums. This is a common complaint among insureds in all professions.

- c) Wider communication of choices available to firms in making their insurance arrangements - in particular the ability to vary the excess. Flexibility on excesses enables firms to reduce their costs and to better utilise their capacity to settle smaller claims from their own resources. Higher excesses also allow firms to avoid premium loadings based on their claims experience.

We recommend the CLC consider: - the impact of allowing firms to choose significant excesses; those firms' ability to meet the excess when a claim occurs; and the Compensation Fund's exposure if they do not.

- d) The level of running costs associated with the Compensation Fund and whether all of the allocated expenses had a direct correlation with minimising or dealing with claims under the fund.

There was recognition among member firms that the running costs were appropriate to operating the CLC but it was felt that there should be a proper allocation of costs to ensure that the Compensation Fund itself was not subsidising other CLC regulatory activities.

This is a difficult issue. From our experience with other organisations it is often debateable what activity and expense is (or is not) in the ultimate interests of a fund

The Council for Licensed Conveyancers –
Marsh's summary of report on professional indemnity and
compensation fund arrangements dated 14 January 2009

- e) There is a feeling among firms that insurers were becoming more aggressive in demanding early and timely reporting of claims. There did not appear to be any evidence at this stage that insurers are threatening to decline cover because insureds have (arguably) failed to report claims on time.
- f) The eternal question as to whether the good firms are subsidising the bad. Publicising the methodology underpinning distribution of the premium pool among firms and the impact of the claims experience upon premium should assist with this.

The challenge in any master policy scheme is to ensure that the premium pool is divided up among the profession in an equitable manner. The inability to achieve a fair distribution of premium was a factor in the demise of the Solicitors Indemnity Fund in England and Wales.

It is difficult to avoid some form of subsidisation across firms, but we recommend a thorough review of the premium pool distribution to ensure that the appropriate loadings are imposed based on claims experience.

- g) Small firms were concerned about the work involved in obtaining their own insurance if freedom of choice was introduced.
- h) Member firms were generally very complimentary about the proactive regulation by the CLC and clearly this view is shared by insurers. The CLC regulation provides insurers with confidence to provide cover to a profession which is viewed, in some underwriting quarters with scepticism (particularly in the current trading environment).

Insurers' views

- 8. Insurers (both current and former) expressed the following general views:
 - a) They have confidence in the claim handling and reserving systems;
 - b) They are comforted by the CLC regulation of firms, its interaction with insurers and its knowledge of member firms;
 - c) CJ Coleman has given significant input into the placing and renewal process;
 - d) Licensed conveyancers are considered a better risk than solicitors carrying out conveyancing;
 - e) More claims have been reported this year than last year (but this was anticipated);
 - f) The current pricing of the scheme allows insurers marginal profitability;
 - g) There is an expectation that claim notifications will increase in the next 12-24 months;

- h) The CLC is better able to regulate smaller rather than large firms, and this may be a concern if the Master Policy scheme is opened up to solicitor law firms;
- i) 50% of claims arise from second charges and planning consent issues and failures; and
- j) There are no coverage disputes with member firms.

The Compensation Fund

9. We make the following observations in relation to the Compensation Fund:
- a) The fund is not something insurers would normally cover; but it is seen as part of the overall package;
 - b) There may be problems for the future if the level of the fund's exposure increases, for example to fill gaps in consumer protection such as run off cover. Any increases in exposure must be funded by an increased contribution from firms which are already struggling to meet premiums and Compensation Fund contributions;
 - c) Rather than being retained in the fund, some risk should be completely transferred to professional indemnity insurers (for example, run-off cover);
 - d) Some firms have queried both the allocation of costs to the fund and also the method of assessing contributions.

Change of regulator

10. A significant development for 2009 will be the introduction of choice of regulator and the opportunity for some law firms currently regulated by the Solicitors Regulation Authority (SRA) to become part of the CLC's arrangements.

The regulators will need to be very careful to ensure that there are no gaps in relation to the professional indemnity insurance and compensation fund arrangements for firms who transfer regulator. The Master Policy scheme's professional indemnity insurers are alert to these changes but await guidance and dialogue with other regulators. If firms were to transfer regulator, it would be necessary to reach an understanding on cover for claims arising from acts which occurred during the period when a firm operated under the SRA's regulation. An agreement might be reached that upon transfer, the law firm's policy would go into run-off. The run-off premium is usually 3 times the last annual premium, but insurers are on risk regardless of whether the run-off premium is paid. We expect that firms considering transfer would also be mindful of their increased contribution to the Compensation Fund if they moved to the CLC, though they may at the same time enjoy a reduction in their professional indemnity insurance premiums. Some of these factors may operate to discourage firms from changing regulator.

Coverage issues

11. We commented in our report on some coverage issues and terms of the Master Policy scheme which the CLC may wish to consider and investigate further. We attach as Appendix B to this summary, a copy of our comparison of the professional indemnity arrangements for solicitors and licensed conveyancers.

Recommendations

Our recommendations regarding the insurance arrangements are set out below.

Professional indemnity insurance

1. Allow the current policy to run to its present expiry at 1 July 2010 with coverage improvements, if possible. Members are likely to see premium reductions in 2009 - 2010, (as a consequence of declining fee income) and yet claims may increase over the foreseeable future, so the insurance outcome will be generally positive in terms of pricing and cover with an early renewal.
2. Try to achieve the following:
 - a) Improving the percentage of premium returned to the CLC if the claims experience is favourable (i.e. an improved profit commission formula);
 - b) Providing run-off cover for past, present and future firms within the professional indemnity insurance scheme, thereby doing away with the separate run-off arrangements and cost to the Compensation Fund;
3. Examine the way premiums are charged to individual firms to ensure that the arrangements are equitable and, so far as possible, that the firms with better claims records do not subsidise other firms.
4. Publish the financial results of the Master Policy scheme and how premiums are calculated for members to clearly see.
5. Having regard to the various rating factors, make the options available for increased excesses clear in renewal applications. This is subject to the CLC considering the implications of firms not paying excesses.
6. Set up a dialogue with the appropriate regulators on insurance and compensation fund arrangements to deal with the movement of firms from one regulator to another and to ensure that there are no gaps in cover.

APPENDIX A

Alternative approaches – master policies compared with freedom of choice arrangements

In order to ensure that consumer protection is achieved, regulators will usually consider the following options, either individually or in combination:

- An industry fund to compensate consumers, financed by levies on the provider of services or financial institutions;
- Compulsory professional indemnity insurance. This is the case for surveyors, solicitors, licensed conveyancers and certain sectors of the accountancy profession; or
- A fidelity or compensation fund to deal with those dishonest acts not covered by professional indemnity insurance. This is the case for licensed conveyancers and solicitors.

In some professions, such as engineering, there are no special arrangements in force to protect consumers. Consumers do have the right to sue a professional for loss, but there is no guarantee that the professional will have access to sufficient funds to cover the claim.

Where professional indemnity insurance is made compulsory, there are 2 options:

- (a) a single scheme covering the entire profession (“a master policy”); or
- (b) firms make their own arrangements for cover from their chosen insurers, provided it meets certain minimum requirements (“freedom of choice arrangements”).

Master policy schemes

The regulatory body arranges a single policy covering the entire profession. This approach has been pioneered by the solicitors’ profession, but is rarely adopted elsewhere. Master policy schemes have been adopted by, among others, The Law Society of Northern Ireland, The Isle of Man Law Society, and The Law Society of Scotland. The CLC scheme is the exception to this rule, although Marsh also arranges a master policy for a body of Australasian conveyancers.

The advantages of the master policy approach have been well documented by CJ Coleman in their previous reports. A master policy does provide significant protection for consumers and the firms themselves, although firms often feel frustrated given the lack of freedom to choose their insurers and terms.

Freedom of choice arrangements

A number of professions require their members to take out professional indemnity insurance. Freedom of choice arrangements tend to be either:

- A structure requiring firms to take out professional indemnity insurance for a specified amount. There is often however, little guidance on the precise form of the cover and there can be potential gaps where firms fail to buy insurance, and particularly when they cease business. At that point the regulator no longer has any ability to insist that the firm purchases run-off cover; or
- A highly regulated framework as in the case of the Law Society of England & Wales where the required cover is very broad and embraces many of the qualities of the master policy approach.

The principal challenges in freedom of choice arrangements are:

1. To have in place a structure to ensure that firms who find it difficult to purchase cover in the open market can do so, in order to meet regulatory requirements;
2. Ensuring there are arrangements to meet claims against those firms who do not take out cover (particularly where the regulator has failed to notice this);
3. Ensuring insurers automatically provide run-off cover;
4. Trying to ensure the insurance replicates the broad coverage provided by the traditional master policy schemes;
5. Giving a degree of flexibility to firms in terms of their excesses and retention of risk; and
6. Having appropriate contractual arrangements with insurers for the provision of cover.

The freedom of choice approach is often attractive to firms because of the perceived flexibility and right to choose. It does however entail a greater administrative burden than the master policy approach for both firms and regulators.

A comparison of master policy and freedom of choice arrangements

The advantage of the master policy approach is the group purchasing power (which comes with negotiating on behalf of an entire profession) and the associated ability to negotiate broad terms and conditions of cover. This is reflected in the fact that, as we understand it, there have been no coverage disputes under the present Master Policy scheme, whereas professional indemnity policies often do give rise to disagreements due to their complexity. Through the Master Policy scheme, the CLC presently has the ability to assemble considerable amounts of valuable data to facilitate negotiations with insurers and this can be used to educate the profession on risk. Master policies present considerably less likelihood of a consumer going unprotected because of an uninsured firm.

The major disadvantage of a master policy is that a firm loses the ability to make its own arrangements and members of the profession will inevitably argue that certain groups are 'subsidising' other groups. We certainly heard this complaint in our interviews with members of the licensed conveyancing profession. In addition, if the scheme performs badly, and is unprofitable, then the impact is felt across the entire profession in the form of higher premiums.

As you are aware, in 2000 solicitors in England and Wales voted to discontinue their master policy scheme approach and to move to freedom of choice. Marsh was involved in setting up the infrastructure for this move and continues to monitor arrangements on behalf of the Solicitors Regulation Authority (SRA). Some comments and observations on the arrangements for solicitors are as follows:

1. The premium pool is still less than that collected by the Solicitors Indemnity Fund (SIF) in 2000, its last year of operation, notwithstanding the doubling, and in some cases the trebling, of the sums insured. There has also been a significant increase in the fee income of the profession over that time. The fee income of the legal profession doubles every 7 years. In our view, the single most important reason for this reduction in premium is the opening up of the insurance arrangements to competition among insurers. A key difference between solicitors and licensed conveyancers is that the premium pool is around £216,000,000 for solicitors compared to net premium of approximately £2,460,000 for licensed conveyancers.
2. The insurers' market for solicitors consists of approximately 20 qualifying insurers although the vast bulk of the business is shared among 6 key insurers:
 - Travelers Insurance Company;
 - Zurich;
 - RSA;
 - QBE;
 - Aviva; and Quinn Direct.
3. In the vast majority of cases, solicitor law firms have been able to purchase cover on favourable terms and with few significant claims disputes.
4. It has not been possible to collect data regarding the overall claims performance of the profession and there is a considerable amount of administrative effort required on the part of the SRA to administer the scheme generally.
5. On the whole there is insufficient competition among insurers for the business of the smaller firms and this has led to less competitive terms for those firms.

A similar freedom of choice structure exists in the Republic of Ireland for solicitors, with a premium pool of approximately €15,000,000. Similarly the accountants' scheme in England and Wales has approximately £40,000,000 in premiums.

It is our considered opinion that the premium pool for licensed conveyancers is insufficient to guarantee a successful move to freedom of choice and also provide the same level of consumer protection as that which currently exists. At present, professional indemnity insurers are generally looking to increase premiums across the board and it is smaller firms and those with a history of claims which will be hardest hit by this. Accordingly it is our view that many firms would suffer if a move to freedom of choice was attempted. This highlights the need for an equitable distribution of the premium pool under the present arrangements.

Conclusions on alternative approaches

It is our considered view that, at least for the present, the majority of firms would not benefit if the CLC chose to move to complete freedom of choice in the provision of professional indemnity insurance. Our reasoning is as follows:

1. The current premium pool, at approximately £2,460,000 (net of brokerage and insurance premium tax) is too small to attract the number of insurers needed to create a viable market and competition for the business. There is no doubt that some firms would benefit (probably the larger firms) but smaller ones may be vulnerable, depending upon the nature of arrangements in place to deal with those firms unable to obtain or afford insurance.
2. Many insurers are worried about underwriting risks where there is exposure to the declining property markets and the Master Policy insurers are already experiencing an increase in claim notifications. This is also the case for insurers writing cover for solicitors doing conveyancing work. This could result in higher premiums for many firms if there was a move away from the Master Policy.
3. Professional indemnity insurers are endeavouring to achieve increases in premiums for professions across the board and this has impacted mostly on small to medium sized firms and firms with claims.
4. In the last year of the CLC's Master Policy scheme (2009-2010) premiums are expected to reduce considerably due to anticipated significant declines in firms' revenues.

To seriously consider freedom of choice arrangements would require a 12-18 month period for review and negotiations.

We believe that the preferable alternative to a complete move to freedom of choice would be to implement variations to the Master Policy. The following variations could be made in order to provide firms with greater benefit:

1. Allow firms to increase their excesses, though it would be necessary to consider who would be responsible for the non-payment of excesses. There are signs of a move towards increased excesses, though the option has not been well publicised.
2. Permit firms to 'opt-out' of the Master Policy scheme, provided the alternative insurance purchased meets strict criteria.

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APPENDIX B

| KEY PROVISIONS | SOLICITORS (2008 Minimum Terms and Conditions of Professional Indemnity Insurance) | CONVEYANCERS (CLC 2008 Professional Indemnity Insurance Policy) | COMMENTARY |
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| Scope of insuring clause | 1.1 Indemnification for civil liability arising from private legal practice (provision of services as a solicitor/registered European lawyer), provided claim is first made in the policy period OR made during or after the policy period arising from circumstances first notified in the policy period. | 2.1 Indemnification for claims first made or intimated in the policy period re civil liability arising from Conveyancing Services provided by the insured (or person insured is responsible for) 6.2: If circumstance notified, claim arising (even if after policy expiry) deemed to be made when circumstance notified. 2.3 Indemnification for reasonable expenses necessarily incurred in mitigation of potential claim or loss (excluding salaries or office expenses) | Conveyancing wording only applies to conveyancing services which is naturally a narrower term than "private legal practice" in the solicitors wording. |
| Geographical scope of cover | 8.2 (definition of private legal practice) Covers private legal practice services provided in England, Wales or anywhere in the world | 5.10 No indemnity for loss in respect of practice conducted wholly or partly outside England & Wales | Solicitors' wording provides wider geographical cover. |
| Cover for costs? | 1.2: Yes, in relation to any claim (as set out in 1.1 above), circumstances notified in the policy period or investigation/inquiry/disciplinary proceeding during/after the policy period arising from a claim or circumstances first notified in the policy period. 3.3: Excess does not apply to defence costs. Costs paid in addition to the limit. | 4.2 Yes, in addition to the limit, but limited to proportion of sum insured to amount paid. 1.5: The excess does not apply to costs. | No substantial differences. |
| Loss of documents | Not required | 2.2 Cover for costs incurred by insured in replacing/restoring documents lost or destroyed in policy period | Only compulsory under conveyancers' wording |
| Limit required | £3M any one claim (see aggregation provisions) for bodies corporate and £2M for ordinary firms. No limit on defence costs (but if claim exceeds the limit, liability for costs can be proportionate to the total loss). | £2M any one claim, plus costs and expenses, any one firm | Solicitors' wording provides higher compulsory limits |

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| <p>Cancellation</p> | <p>4.3: Cancellation not permitted (except where a firm merges into a successor practice with insurance complying with the minimum terms OR where there is replacement insurance so complying)</p> <p>5.1: If firms ceases practice, insurance must provide run-off cover for 6 additional years (but no run-off if there is a successor practice)</p> | <p>Provision of run off cover under the Professional Indemnity Run Off Insurance policy for pre and post 1 July 2007 retirees. 6 years cover provided. If premium is not paid within 31 days of inception for post 1 July 2007 retirees, cover cancelled from 1 August 2008 with no charge.</p> | <p>Solicitors' wording provides express protection against cancellation.</p> |
| <p>Notification of claims</p> | <p>No specific requirement.</p> <p>But</p> <p>6.1: insurer doesn't have to cover a claim where the insured is entitled to be covered by an earlier insurer (i.e. because the claim first arises in an earlier policy period or arises from a circumstance notified in an earlier policy period).</p> | <p>NOTE: notification clause is a condition precedent (insurers can refuse to cover a claim if the clause is breached)</p> <p>6.1.1 Notice required "as soon as possible" of any claim or loss incurred.</p> <p>6.1.2 Notification of "letter of claim" within 7 working days</p> <p>6.1.3 Notification of circumstances (including receipt of notice of an intention to make a claim; discovery or reasonable cause for suspicion of dishonesty or fraud; any letter of complaint) "as soon as possible".</p> | <p>Solicitors' wording has no prescribed form for notification and just applies on a claims made basis.</p> <p>Conveyancers' wording is very restrictive and includes a condition precedent.</p> |
| <p>Defence & settlement of claims</p> | <p>4.8: Insurer must meet defence costs as and when incurred</p> | <p>6.3 Insured not to admit liability for claim/incur expenses without written consent.</p> <p>Insurer entitled to take over and defend claim in insured's name.</p> <p>Neither Insured nor Insurer required to contest proceedings unless QC advises they should.</p> <p>6.4 Insurers shall not settle any claim without the consent of the Insured.</p> | <p>Solicitors' wording gives less control to insurers.</p> |
| <p>Avoidance, repudiation & rescission</p> | <p>4.1: Insurer cannot avoid or repudiate the insurance on any grounds including non-disclosure or misrep (including fraudulent misrep)</p> | <p>8.1 Insurers will not avoid for non-disclosure or misrepresentation PROVIDED free of fraudulent intent (insured to prove).</p> <p>8.3 If Insured's breach of condition results in prejudice to Insurer, indemnity reduced to sum as would have been payable in the absence of prejudice.</p> | <p>Solicitors' wording provides widest cover which can't be avoided.</p> <p>Conveyancers' wording can be avoided on a range of grounds including non-compliance with CLC rules.</p> |

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| | | <p>8.6 If Insured makes false or fraudulent claim, the cover becomes void and all claims thereunder forfeited.</p> <p>8.2: If insured had knowledge of circumstance and should have notified it in previous policy, insurers can reduce indemnity to cover available under previous insurance.</p> <p>9.4: If conveyancer has failed to comply with CLC Rules, and doesn't remedy non-compliance as soon as possible, or breaches the claims notification provisions (6.1.1) insurance ceases from the date of non-compliance and all future claims are forfeited.</p> | |
| Run-Off | 5.2: If firm's practice ceases, 6 years run-off cover must be provided | Provision of run off cover under the Professional Indemnity Run Off Insurance policy for pre and post 1 July 2007 retirees. 6 years cover provided. If premium is not paid within 31 days of inception for post 1 July 2007 retirees, cover cancelled from 1 August 2008 with no charge. | Both wordings provide run off cover for 6 years. |
| Fraud | <p>6.8: Insurers can avoid covering the particular fraudulent individual but must cover other innocent insureds and no imputation of an individual's dishonesty to a body corporate unless it was committed or condoned by all members/directors.</p> <p>4.1 Insurers can't avoid or repudiate the insurance for fraud.</p> | <p>8.1 Insurer can avoid for fraudulent non-disclosure or misrepresentation.</p> <p>8.6 Insurance void and claims thereunder forfeited for false or fraudulent claim.</p> <p>5.13 Dishonest or fraudulent act or omission of an Insured not to be imputed to any other Insured.</p> | Solicitors' wording only excludes cover for the fraudster him/herself and guarantees cover for innocent partners whereas conveyancers' wording appears to allow the insurer to avoid payment for the claim entirely. |
| Exclusions | <p>6: Insurers can only exclude liability where it arises from:-</p> <p>6.1: Claims where insured is entitled to be covered by a prior insurers;</p> <p>6.2 Death or bodily injury;</p> <p>6.3 Property damage;</p> <p>6.4 Partnership disputes;</p> <p>6.5 Employment breaches and discrimination</p> | <p>No indemnity for:</p> <p>5.1 claims or losses for any business controlled by any principal</p> <p>5.2 for excess or penalty excess</p> <p>5.3 bodily injury/death/physical loss or damage to property (other than in care, custody and control in connection with the practice)</p> <p>5.4 wrongful dismissal/termination of contract for supply</p> <p>5.5 payment of a trading debt incurred by Insured</p> | Conveyancers' wording contains slightly wider exclusions – inc for practice outside England and Wales, for probate work, and for internet caused losses |

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| | <p>6.6 Debts and trading liability</p> <p>6.7 Fines, penalties, punitive or exemplary damages in the US (except for defamation) and costs of regulator or investigator of professional conduct;</p> <p>6.8: Fraud or dishonesty) but must cover innocent insureds);</p> <p>6.9 Directors or officers' liability;</p> <p>6.10: War, terrorism and asbestos</p> | <p>5.6 losses arising out of circumstance notified under prior insurance covers</p> <p>5.7 – 5.9 radioactive contamination; sonic boom war and civil war</p> <p>5.10 arising out of practice conducted or contracts performed outside England & Wales</p> <p>5.11 arising from advice given and services performed as estate planning or administration consultants incl. probate</p> <p>5.12 judgment, claim, loss or allegation made in Court or jurisdiction of USA or Canada</p> <p>5.13 dishonest or fraudulent act or omission of an Insured (but not to be imputed to any other Insured) Insurer can elect at its sole discretion to:</p> <p>(a) (5.13.2.1) continue cover save claims arising out of the above; but afford cover to Insured not involved in the above</p> <p>(b) (5.13.2.2) terminate cover for dishonest individual and refuse indemnity to other Insureds arising out of the dishonest individual's activity</p> <p>5.14 physical loss of or damage to documents stored on magnetic or electronic media unless duplicated and such duplicates capable of being used as the basis for restoring the documents</p> <p>5.15 terrorism</p> <p>5.16 asbestos and toxic mould</p> <p>9.2: No cover for services transacted via internet unless liability would have arisen in the absence of the use of the internet.</p> <p>9.3: Data corruption/virus exclusion</p> | |
| Aggregation | 2.5: Insurance may provide for aggregation of all claims (into one claim) arising from | Definitions – 1.1 Claims series 1.1.1 all claims or losses resulting from | Conveyancers' wording provides for the widest possible type of aggregation – that arising from the |

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| | <ul style="list-style-type: none"> (a) one act or omission (b) one series of related acts or omissions (c) the same act or omission in a series of related matters or transactions (d) similar acts or omissions in a series of related matters or transactions (e) all claims against one or more insured arising from one matter or transaction | <ul style="list-style-type: none"> - a series of acts (or failures) - attributable to one source or original cause or - - - one and the same act (or failure) <p>to be deemed to constitute a single claim or loss</p> <p>1.1.2 all claims or losses stemming from the dishonest of one person or persons acting in collusion to constitute a single claim or loss</p> | same originating cause or the same source (held by the courts to be the widest words of aggregation) |
| Mitigation costs | 8.2 Definition of defence costs includes costs incurred in investigating, reducing, avoiding or compromising any actual or potential claim. | Yes – see under 2.3: Scope of Insuring Clause | Solicitors’ and conveyancers’ wording both provide cover. |
| Rights of Third Parties | Not expressly mentioned | Notwithstanding provisions of the Contracts (Rights of Third Parties) Act 1999, this insurance <ul style="list-style-type: none"> - does not confer rights upon any third party - parties to this insurance entitled to rescind or vary such without consent of third party - any defence or set off available to Insurers against third party as would have been available against Insured | Third party rights excluded under conveyancers’ wording. |