



The CLC's Participating Insurers Agreement and Minimum Terms and Conditions

Call For Evidence

Professional Indemnity Insurance is mandatory for regulated providers of legal services and is a vital element in the range of consumer protections that we have in place. These protections also include before- during- and after-the-event regulation, and a profession-funded Compensation Fund.

The CLC introduced its Participating Insurers Agreement (PIA) in 2016. Since then, the market for insurance has changed and the delivery of legal services, perhaps especially conveyancing and probate, has been evolving rapidly.

The existing scheme replaced a master policy and has achieved its principal aim of introducing competition into the market.

It also integrates run-off cover for closing firms so that no premium is payable at the point of closure. This feature was introduced to protect consumers from the risk that a firm would close and not purchase run-off cover. The CLC had no means of enforcing its regulatory requirement for run-off cover on a firm that had ceased to be regulated by the CLC. This has not led to the transfer of practices into CLC regulation simply to close with the benefit of integrated run-off cover as some had feared. The CLC has rigorous assessment and approval processes for new and existing practices looking to be regulated by the CLC. Integrated run-off provides certainty for all concerned – insurers, practices, and their clients – by guaranteeing that run-off cover will be in place should the practice close.

However, we must recognise that the market has been hardening in all sectors, and this has placed strain onto the entire system. Over recent years we have seen examples of firms being refused cover because of work carried out in the past even if any notified circumstances do not proceed or they no longer undertake that type of work. In such instances, insurers seem happier to shoulder the risk in run-off rather than continue to work with an ongoing business.

We expect that these difficulties will pass and that the market will return to a more stable and sustainable level to the benefit of the public and consumer interest.

We have also seen that new and transferring firms have found it difficult to secure quotes in a timely way from participating insurers. This has even been the case when firms moving between regulators are not changing the services they provide, nor their personnel or business model. This could be stifling innovation and diversity of provision and so reducing consumer choice. It adds a quasi-regulatory barrier to market entry and participation that is not guided by the regulatory framework intended to promote the public and consumer interest.

Because PII is mandatory, it is vital that aspects of its terms or pricing do not act as unreasonable barriers to market entry or participation. Regulators make careful decisions about the right to practice law, informed by the legislative framework and under the oversight of the Legal Services Board. Those decisions must consider the public policy objectives set by Parliament that seek to

foster a competitive, inclusive, and thriving legal sector with diverse models of delivery that protect the interests of the public and consumers. At the moment, firms transferring between regulators to facilitate changed business models as well as new start-ups bringing innovation to the delivery of conveyancing and probate are finding it difficult to secure quotes from insurers.

This call for evidence

The CLC is now asking insurers, regulated practices, entrepreneurs seeking to establish new conveyancing and probate practices as well as consumers and their representatives for views on the operation of the PIA and Minimum Terms and Conditions to ensure that they are fit for purpose for the next five years.

The CLC is seeking evidence on the need for change or potential for improvement in relation to any aspect of the PII arrangements. This will pave the way for a formal consultation on proposed changes later in 2021 with a view to any new arrangements being in place in time for the next PII renewal deadline on 1 July 2022.

We are happy to receive evidence on any point but are especially interested in exploring views on the following questions.

- Since the current scheme was introduced in 2016, has this been a profitable market in which insurers wish to participate?
- How have insurers priced the risk of run-off into policies?
- Are there alternatives to integrated run-off cover that offer the same certainty around consumer protection?
- Have insurers priced the risk of policies for practices who only undertake wills and probate work, separately to those practices who undertake conveyancing work?
- How could the regulator and insurers work more closely together to identify and manage down risk?
- Are there adjustments to the CLC's PII scheme that would make it easier for new practices to secure prompt quotations and agree cover?
- Is the £2million aggregate limit for run-off still appropriate?
- How could barriers to market entry and participation be lowered where the regulator is content with the proposal for a new practice or the continuation of an existing one?
- How can we facilitate a smoother process for transfer of practices from one regulator to another?
- Following clarification of cover of cyber-related losses, currently the subject of a separate consultation, should the CLC take additional steps to secure consumer protection as digitisation of legal services speeds up?

How to respond

Please send your evidence to Stephenw@clc-uk.org by 31st July 2021.