

## Rule change application cover sheet

### Summary of proposed rule changes (or list proposed new, or revised rules which are the subject of this application)

The Council for Licensed Conveyancers is proposing the following additions to the CLC's Minimum Terms and Conditions (MTCs) for Professional Indemnity Insurance (PII):

- i. Add definitions for 'Computer Network', 'Computer System', and 'Data'.
- ii. Add new General Condition 8.13 *Cyber-Related Losses Affirmation* to clarify the extent of existing cover for cyber-related losses under the MTCs.

Rule change application checklist	(tick)	Section
Contact details for individual submitting application	✓	A
Details of proposed alteration	✓	B
Tracked version of changes included	✓	Appendix A
Nature and effect of proposed alteration (explain existing arrangements, current arrangements and why proposed change is being made)	✓	C
Explain impact on the regulatory objectives	✓	D
Explain how the proposed changes align with Better Regulation principles	✓	E
Explain desired outcome of the proposed alteration and plans to monitor and assess whether it has been achieved (include timeframe)	✓	F
Does the proposed alteration affect areas regulated by other approved regulators? If so, have you consulted them?	✓	G
Include intended implementation date of proposed alteration	✓	F
Full details of the consultation process (including responses and how you have addressed them)	✓	H; Appendix B
Accessibility checked	✓	-
Other relevant explanatory material	✓	-

**Application by the Council for Licensed Conveyancers to the Legal Services Board to amend its Professional Indemnity Insurance Minimum Terms and Conditions to clarify the extent of cover for cyber events**

**A. CONTACT DETAILS**

1. The following person should be contacted by the LSB in relation to this application:

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**B. DETAILS OF PROPOSED ALTERATION**

2. We are proposing the following additions to the CLC's Minimum Terms and Conditions (MTCs) for Professional Indemnity Insurance (PII):
  - Add definitions for 'Computer Network', 'Computer System', and 'Data' at new clauses 1.6A, 1.6B, and 1.6C.
  - Add new General Condition 8.13 *Cyber-Related Losses Affirmation* to clarify the extent of existing cover for cyber-related losses under the MTCs and meet the new requirements of the PRA and Lloyd's of London.
3. The alterations are set out in the proposed new MTCs at **Appendix A**.
4. Both Lloyd's of London (Lloyd's) and the Prudential Regulation Authority (PRA) have directed that the extent of cover for cyber-related losses in PII policies be clarified. The PRA expects all insurers to have action plans in place to [reduce silent cyber exposures](#), and Lloyd's requires that all policies must address cyber and exclude or provide affirmative cover for cyber risks.
5. The changes are being proposed to satisfy the requirements of Lloyd's of London and the PRA. Legal regulators were given an extended deadline of 1 October 2021 to meet the new requirements. Clarifying the extent of cover for cyber losses in PII will increase transparency and certainty and benefit the CLC's regulated population and consumers.
6. The proposed amendments were developed in collaboration and consultation with the International Underwriters' Association, regulators (Solicitors Regulation Authority, CILEx Regulation, ICAEW, Bar Standards Board), CLC insurers and brokers and Lloyd's of London. The CLC then took advice from specialist insurance lawyers who drafted the proposed amendments.
7. The CLC Council approved the approach set out at its meetings in April and July 2021 (before and following formal consultation and analysis of responses – see section H and **Appendix B** for consultation details).

### C. NATURE AND EFFECT OF PROPOSED ALTERATIONS

8. Clause 9 of the CLC's Professional Indemnity Insurance Code<sup>1</sup> requires anyone providing CLC-regulated services to have PII in place that complies with the CLC's PII policy wording (MTCs).
9. The proposed amendments to the MTCs aim to protect what are clearly professional indemnity protections for consumers while achieving the clarification of cover for cyber risks required by the PRA and Lloyd's of London.
10. The proposed wording is intended to preserve the current scope of cover, and to expressly affirm or grant coverage for cyber-related losses to the extent that these are already covered in a non-affirmative manner by the MTCs.

#### New definitions 1.6A, 1.6B, 1.6C

11. Three new defined terms have been added to the MTCs. These are *Computer Network*, *Computer System*, and *Data* (referring to electronic data). The definitions are taken and adapted from definitions in cyber-risks endorsements developed by the International Underwriters' Association.<sup>2</sup>

#### New General Conditions 8.13

12. To develop the new clause at 8.13 we took as our starting point a model endorsement drafted by the International Underwriters' Association<sup>3</sup> to address the issue of 'silent cyber' exposures. We then worked with specialist insurance lawyers and Counsel to draft the proposed new General Conditions.
13. New clause 8.13 begins by emphasising that the grant or affirmation of cover for cyber-related losses is always subject to the other terms, conditions, limitations, and exclusions of the MTCs. This point is reiterated at the end of the proposed new MTCs. Clause 8.13 is thus, expressly, not to be construed as providing coverage not otherwise provided under the MTCs. Instead, it is intended to clarify that - subject to the other terms of the MTCs - the cover granted under the MTCs includes losses caused by the range of cyber-related acts, events, and circumstances enumerated in the new General Condition.
14. New clause 8.13 includes a parenthetical reference to Exclusions 5.13, 5.14 and 5.15. These existing Exclusions in the MTCs are those which are most clearly cyber-related. Referring to them is in keeping with the objective of making cover and exclusions for cyber-related losses expressly affirmative.

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<sup>1</sup>CLC Professional Indemnity Insurance Code, <https://www.clc-uk.org/wp-content/uploads/2018/10/180626-Professional-Indemnity-Insurance-Code-CLEAN.pdf>

<sup>2</sup> 'Computer Network' is from IUA 09-081, with a minor amendment. 'Computer System' contains text which is common to several IUA endorsements: the definition above is primarily that taken from IUA 02-027, with 'application, process, code' programme, information technology' added from IUA 09-081, and the word 'device' added after the words 'input' and 'output' (where it was clearly missing). 'Data' is defined in both IUA 04-017 and in IUA 09-081: the version from IUA 04-017 was retained, and amended to refer information etc. in a form to be used etc. by a 'Computer Network' as well as by a 'Computer System'.

<sup>3</sup> IUA 02-027 (16.12.2020) Environmental Impairment Liability Cyber Affirmation Endorsement.

15. The proposed new clause then goes on to state that an indemnity afforded or other amount payable by Insurers under the MTCs (in respect of any Claim, Loss, or Defence Costs, being the defined terms used in the MTCs in respect of the indemnities it provides, or in respect of any ‘...loss, damage,... or any other amount’) (i) shall not be restricted, and (ii) shall remain payable, where it arises from (i.e. is caused by) any of the cyber-related acts, events or circumstances as set out in General Conditions 8.13.1 to 8.13.9. This is intended to serve as a clear and express grant or affirmation of cover, as required by the regulators (PRA and Lloyd’s).
16. Compliance with the PRA and Lloyd’s of London requirements is then pursued by specifying what is intended to be a comprehensive range of cyber-related acts, events and circumstances. Our intention is that any overlap in these clauses is justified in order to obtain comprehensive coverage for cyber-related losses.

#### **D. IMPACT ON THE REGULATORY OBJECTIVES**

17. For the purposes of the assessment against the regulatory objectives the proposed new General Conditions at 8.13 will be taken to also include the proposed new definitions. We have assessed that the overall impact on the regulatory objectives is positive for the reasons set out below. The proposals do not impact negatively on any of the objectives.
18. *Protecting and promoting the public interest:* The clarification and express affirmation/grant of coverage for cyber-related losses has a positive impact on this regulatory objective as it is in the interest of the public and the regulated profession to have certainty over what types of losses are and are not covered by PII policies.
19. *Supporting the constitutional principle of the Rule of Law:* in clarifying the extent of cover for cyber-related losses the proposed alterations support the Rule of Law. They do this by making the MTCs (regulatory arrangements) more accessible, intelligible, clear, and predictable and by clarifying questions of legal right and liability in the application of the MTCs or in case of a dispute.
20. *Improving access to justice:* The proposed amendments have a neutral impact on this objective.
21. *Protecting and promoting the interests of consumers:* The interests of consumers are promoted and protected by clarifying the extent of cover for cyber-related losses in PII policies. The proposals mean consumers and policyholders can equally be more confident of their position as set out by the MTCs. There is no detriment to consumers because of the proposed changes, which only affirm the extent of existing cover in the MTCs.
22. *Promoting competition in the provision of services:* The proposed amendments have a neutral impact on this objective.
23. *Encouraging an independent, strong, diverse, and effective legal profession:* The proposed amendments have a neutral impact on this objective.
24. *Increasing public understanding of the citizen’s legal rights and duties:* Clarifying the extent of cover for cyber-related losses will have a positive impact on increasing public understanding of the citizen’s legal rights.

25. *Promoting and maintaining adherence to the professional principles:* The proposed changes have a neutral impact on this objective.

#### **E. ALIGNMENT WITH BETTER REGULATION PRINCIPLES**

26. The Better Regulation Principles are: transparent, accountable, proportionate, consistent and targeted.

27. The proposed alterations clarify the extent of existing cover for cyber-related losses, supporting the principles of transparency and accountability. As the proposed alterations aim only to expressly affirm existing cover and thus meet the requirements of the PRA and Lloyd's, we consider them to be proportionate and targeted.

#### **F. DESIRED OUTCOME; MONITORING AND ASSESSMENT**

28. The desired outcome is achieving the clarification of cover for cyber-risks required by the PRA and Lloyd's through new wording that expressly affirms or grants cover for cyber-related losses to the extent that these are already covered in a non-affirmative way by the MTCs.

29. Following the intended implementation date on 1 October 2021 we will monitor any stakeholder responses or feedback to the revised new MTCs as it is provided to us, and particularly during the 2022 PII renewal period. The CLC has a close working relationship with insurers and brokers and so will receive feedback on the operation of the new MTCs through those channels.

30. The CLC plans to undertake a review of regulatory arrangements relating to PII in the next year. Whether existing levels of cover for cyber-related losses as clarified by these proposals go far enough will be assessed as a part of that review. We will also use this future consultation / call for evidence to collect feedback and monitor whether the aims of these alterations have been achieved. We aim to complete the review by the end of Quarter 1, 2021.

#### **G. IMPACT ON OTHER REGULATORS**

31. In developing these proposals the CLC, SRA, BSB, ICAEW and CILEx Regulation met on multiple occasions to discuss various approaches being taken.

32. The proposals in this application will not affect areas regulated by other approved regulators as a practice/individual will only be regulated by one regulator (and meet that regulator's requirement for PII) for any reserved activity it undertakes.

#### **H. CONSULTATION**

33. We consulted with other regulators (Solicitors Regulation Authority, CILEx Regulation, ICAEW, Bar Standards Board), CLC insurers and brokers, the International Underwriters' Association, Lloyd's of London, and specialist insurance lawyers and Counsel as we developed the proposals. The proposals were presented to and approved by Council at their meetings in April and July.

34. We ran an informal, two-week pre-consultation with brokers and insurers, the CLC Professional Reference Group, and Lloyd's of London which closed on 30 April. This consultation did not result in any changes to the proposals that went out for formal consultation.

35. We then ran a formal six-week consultation that received four responses from CLC-regulated practices/lawyers. This consultation was promoted through social media channels, newsletters, and on the CLC website.
36. A summary of responses to the pre- and formal consultations and our analysis and response is at **Appendix B**.
37. No major objections or issues with the proposed new definitions or General Conditions were raised. One respondent to the formal consultation stated that the definition of 'Computer Network' should be amended so that it does not only cover systems that 'exchange' data but also transmit and/or transfer data (noting that servers do not exchange data but only transmit or transfer it). After consulting with the specialist insurance lawyers who assisted in the drafting of the definitions, we amended the relevant part of the definition from "...allowing the networked devices to exchange Data" to "...allowing the networked devices to exchange, transfer, or transmit Data."
38. The CLC does not consider that the proposed addition of the Cyber-Related Losses Affirmation would impact on insurers' willingness to provide affordable PII cover to practices. This is because the proposed amendments serve as a clarification rather than an amendment of terms, meaning there will be no negative effect or cost to insurers or consumers. It should also be noted that all CLC insurers are across the proposals and consultation, however only one raised issues.
39. The insurer that responded to the pre-consultation commented that:
- the approach outlined creates "more confusion than clarity" and that cyber cover under the PII policy is not extensive enough and does not respond appropriately in the event of a cyber event; and that
  - insureds will rely on the affirmation instead of putting a full cyber policy in place. The CLC should require a separate cyber policy that covers insureds for more than just third party loss.
40. As set out in our response to these observations at **Appendix B**:
- Whether or not cyber cover is extensive enough and responds appropriately to a cyber event will be considered as part of our review of PII, and not the current consultation which seeks only to clarify the extent of existing cover.
  - Whether or not the CLC should require insureds to take out a separate cyber policy covering more than just third party loss was beyond the scope of this consultation, which aims only to clarify the existing level of cyber cover pursuant to a new requirement of Lloyd's of London and the PRA. This may be something to consider as part of the wider review (for which a Call for Evidence is currently underway).

## **I. EQUALITY IMPACT ASSESSMENT**

41. The proposed amendments are a clarification of the extent of existing cover only and maintain the status quo. Therefore we consider the proposals have no equality impact.

## **Appendix A: The CLC's updated PII policy wording for approval by the Legal Services Board**

Proposed additions are highlighted in yellow at 1.6 and 8.13.

### **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.

### 1.6A Computer Network

*Computer Network means a group of Computer Systems and other electronic devices or network facilities connected via a form of communications technology, including the internet, intranet and virtual private networks (VPN), allowing the networked devices to exchange, transfer, or transmit Data.*

### 1.6B Computer System

*Computer System means any computer, hardware, software, application, process, code, programme, information technology, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input device, output device, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.*

### 1.6C Data

*Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System or Computer Network.*

## 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**

### **2.1 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.

### **2.2 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.

### **2.3 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).

**8.12** 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.

#### **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.

#### **8.13 Cyber-Related Losses Affirmation**

*Subject always to the other terms, conditions, limitations and exclusions of this Policy (including, but not limited to, Exclusions 5.13, 5.14 and 5.15), any indemnity afforded and any other amounts payable by Insurers under this Policy in respect of any Claim, Loss, Defence Costs, loss, damage, liability, claim, costs, expenses, fines, penalties, mitigation costs or any other amount shall not be restricted and shall remain payable where any such indemnity or other amount payable arises from:*

*8.13.1 the accessing, processing of, use or operation of any Computer System or Computer Network;*

*8.13.2 any partial or total inability or failure or series of related partial or total inability or failures to access, process, use or operate any Computer System or Computer Network;*

*8.13.3 the accessing, processing of, transmitting, storing or using of any Data;*

*8.13.4 any partial or total inability or failure to access, process, transmit, store or use any Data;*

*8.13.5 any error, omission or accident or series of related errors, omissions or accidents in respect of any Computer System, Computer Network or Data;*

*8.13.6 an unauthorised, malicious or criminal act or a series of related unauthorised, malicious or criminal acts, regardless of time and place, involving access to,*

*processing of, transmitting, storing, use of or operation of any Computer System, Computer Network or Data;*

*8.13.7 the receipt or transmission of malware, malicious code or similar;*

*8.13.8 failure or interruption of service provided by an internet service provider, telecommunications provider or cloud provider;*

*8.13.9 any threat of or any hoax relating to General Conditions 8.13.1 to 8.13.8 above.*

*General Conditions 8.13 is not intended and shall not be construed as providing coverage not otherwise provided under this Policy.*



**Appendix B: Summary of consultation responses - Clarifying cover for cyber-related losses in CLC PII Minimum Terms and Conditions**

We received four responses to the consultation from CLC-regulated practices or lawyers:

	<b>Do you think the proposed additions adequately clarify the extent of cover for cyber-related losses?</b>	<b>Do you foresee any detriment or benefit to consumer protections as a result of the proposed changes?</b>	<b>Would you suggest an alternative approach to clarifying the extent of cyber cover in the MTCs that would maintain or improve consumer protections?</b>	<b>Any other comments</b>
1	Yes	No	No	-
2	Yes – but 1.6A should not only cover systems that ‘exchange’ data but also transmit data. Servers do not exchange data but only transmit or transfer data.	No – the proposed changes will be of significant benefit to consumers and provide certainty.	No	-
3	Yes	No – doubt any consumers ever look at PI cover unless need arises	No	Happy to note that changes will be universal and applicable to all potential insurers.
4	Yes	-	No	This is not a controversial extension to the wording.

Analysis of formal consultation responses

No respondent identified any major issue with the proposed amended PII MTCs. One response suggested that the wording in 1.6A should be extended to cover systems that not only exchange data but also those that transmit data. We will refer to counsel’s advice to determine whether this change in wording is necessary.





Full responses are saved here: <S:\Regulatory Standards\P11 2021\Cyber\Public consultation May 2021\Consultation responses and analysis>

#### Pre-consultation with insurers, brokers, and Professional Reference Group

Before the formal consultation and consultation questions were published, the proposed amended MTCs and a covering note were circulated to the insurers, brokers, Lloyd's, and the Professional Reference Group for comment. One insurer, and two members of the Professional Reference Group responded to the pre-consultation.

**An insurer** said that:

- This approach creates more confusion than clarity. Cyber cover under the PI policy is not extensive enough and does not respond appropriately in the event of a cyber issue.
- Insureds will rely on this instead of putting a full cyber policy in place and that will be detrimental to the members. The CLC should have a requirement for a separate cyber policy that covers [members] for more than just 3<sup>rd</sup> party loss.

**A respondent from the Professional Reference Group** said that:

- The amended MTCs are clearly written, serves its purpose, and conforms to the new requirements.
- It is imperative that the same level of clarity exists within the MTCs of all legal regulators, to ensure there is no perceived differentiation in mandatory cover for firms.

**A respondent from the Professional Reference Group** said that:

- My concerns are not the proposed changes but the existing limitations in clauses 5.13-5.15 as the amendments are subject to the existing clauses. The degree and extent of these limitations should be considered and whether they are still appropriate as a minimum term or strictly limited to the Lloyd's and PRA requirements. Appreciate it is a trade-off and the CLC may have accepted limited coverage at the outset to avoid potentially excessive premiums... that would result in consumer detriment due to resultant limited pool of conveyancers.

#### Analysis of and response to pre-consultation responses

- Whether or not cyber cover is extensive enough and responds appropriately in the event of a cyber issue is something for consideration as part of a wider review of P11, and not the current consultation which seeks only to clarify the extent of existing cover.



- Whether or not the CLC should require insureds to take out a separate cyber policy covering more than just 3<sup>rd</sup> party loss is beyond the scope of this consultation which only aims to clarify the existing level of cyber cover pursuant to a new requirement of Lloyd's and the PRA. This may be something to consider as part of a full review of PII (call for evidence is currently underway).
- The legal regulators, including ICAEW, have taken different approaches to clarifying the extent of cyber cover but have been working closely throughout the process and are aware of the need to provide similar levels of clarity.
- We consider that the appropriateness of limitations in 5.13-5.15 of the MTCs should be considered as part of the wider review of PII.