



Review of the CLC's Professional Indemnity Insurance Arrangements

Outcome of the Consultation and decisions by the Council of the CLC

INTRODUCTION

This paper sets out the findings of the [CLC's recent consultation](#) on PII arrangements, the CLC's commentary on those responses and the resulting changes the CLC intends to make to PII arrangements. Following approval by the governing Council of the CLC, a submission to the LSB for PII rule changes is being prepared, with a view to the new framework being in place in time for this year's PII renewal round (alongside further communications to the sector).

The CLC would like to thank all those who contributed to this consultation, both prior to publication, and during the formal response period. We will continue to engage with those that responded, and those that did not, to closely monitor and respond to this changing policy issue.

ENGAGEMENT

The CLC ran an extended period of evidence-gathering at a range of meetings with brokers and insurers starting in 2020 as well as discussing the issue of PII with individual practitioners and at industry events. We launched an open call for evidence during the PII renewal period in June 2021 in view of the challenges we saw then and it ran over the summer of 2021.

The insight from that engagement and the call for evidence as well as the outcomes of further meetings with brokers and insurers was considered by the Council of the CLC and shaped the topics that were part of the formal consultation that we are reporting on here.

The formal consultation ran for six weeks, up to 25th February 2022. The CLC emailed the consultation directly to the following and offered meetings to discuss its content with them:

- Brokers and Insurers in the CLC scheme. (We have also met with these frequently over the last 18 months)
- The Society of Licensed Conveyancers
- The Conveyancing Association
- UK Finance
- The Building Societies Association

- All individuals and organisations that also submitted responses to our 2021 Call for Evidence on PII
- The independent Legal Services Consumer Panel.

The CLC held online meetings with most of the brokers and insurers to the current scheme during the formal consultation period during (six weeks in January and February 2022). In addition, the CLC promoted the consultation heavily, securing high profile coverage in the legal and insurance press.

There were 12 responses to the formal consultation, as follows. They are set out at annex A and referred to in the commentary below.

Brokers/Insurers	Legal Practices	Representative Bodies	Consumer Organisation
Chubb Anonymous insurer Howden Marsh Miller	Enact Fidler and Pepper John M Lewis Muve	Conveyancing Association Society of Licensed Conveyancers	Legal Services Consumer Panel

Alongside the formal process above, the CLC also decided to gather input from a wider group. We designed and promoted a brief, simplified survey of opinion on the major consultation questions.

There was a total of 73 responses to that, all from respondents working in either CLC- or SRA-regulated practices. As well as asking responders to choose from alternatives, we also gave space for commentary. The responses are presented at Annex B.

These responses are very helpful in providing a general guide to overall views across the wider regulated community.

The key points are that respondents:

- Do not believe that a move away from integrated run-off cover would affect consumer protection if insurers were required to provide cover even if the premium is not paid (56%)
- Are very fairly divided on whether a separate premium for run-off would have an impact on the price of PII with 30% each thinking it would either reduce costs or make no difference and 20% thinking it would increase costs

- Believe that insurers and their clients should be free to agree their own approach to excesses (65%)
- Strongly support mandatory cyber insurance (72%).

SUMMARY OF FINAL PROPOSED CHANGES TO THE PII FRAMEWORK FOLLOWING CONSULTATION

Having considered the consultation responses, the Council of the CLC has agreed the following changes to PII arrangements. Numbers 1 to 6 were the subject of consultation questions.

Items 1v – vi, 4ii, and items 7i-iii emerged through the consultation process.

This is the summary of the final proposals. The rationale for those is set out below, taking into account the input from consultation.

Revised Minimum Terms and Conditions and a revised Participating Insurers Agreement will be submitted to the Legal Services Board for approval.

1 – 90-Day extension of PII cover in the event of involuntary non-renewal

- i. Automatic 90-day extension of cover must be provided by the last insurer in the event that a practice is unable to renew cover.
- ii. That cover will be in line with the standard minimum terms and conditions.
- iii. Cover will attract a pro rata premium based on the most recent annual premium.
- iv. Practice may not take on new work during the extended cover period.
- v. The extended cover period may be used by the practice to continue to seek cover for the full year. If that is secured, the new cover will incept on 1 July and the new insurer will provide cover from that date, not from the end of the extended cover period. No pro rata premium will be payable to the last insurer in respect of the extended cover period.
- vi. This provision will not be available to practices;
 - a. if their insurer has notified the practice *and* the CLC, no later than three months before the expiry of annual cover, that the insurer will not offer renewal of cover at the end of the year. As the insurance year ends on 31 June, this means that notice of non-renewal must be provided by the insurer no later than 31 March.
 - b. If the inability to renew cover is due to regulatory breaches that are subject to CLC action.

2 – Integrated run-off cover will be retained

Insurers have said that they should not provide run-off cover without a premium. The CLC agrees and has clarified that insurers are expected, as part of the premiums they collect annually, to price-in the risk of needing to provide run-off cover.

The CLC's integrated run-off was never intended to be 'free' but rather not to require a separate premium at the point of inception.

The CLC cannot accept the risk to consumers and the insurance scheme of a requirement for a separate premium when we know that non-payment is common elsewhere in the legal sector.

3 – Participating Insurers Agreement (PIA) to be enhanced

PIA to be retained, with some minor amendments.

4. Insurers and insureds to be given more flexibility in agreeing excesses

There have been very limited cases in the past where some flexibility in excesses was permitted. Now the CLC proposes a clear process for insurers and insureds to make a case for agreeing excesses above the standard thresholds.

- i. Allow higher excesses in very limited circumstances with CLC approval on the basis of a joint submission from the insurer and practice.
- ii. Set a further band of maximum excesses for the largest practices, of 1% on fees above £1,000,001.

5. No mandatory cyber cover at this point

The CLC recommends that practices should have cover to fund recovery from a cyber incident but does not propose making that mandatory at this stage. The CLC will continue to explore how consumers can be better protected against cyber risks through insurance and regulatory requirements. Part of this will include further dialogue and consultation with other regulators and the insurance sector. We will continue work to explore whether and how cyber cover could become mandatory.

6. Insurance Act Compliance

Amended wording as set out in the consultation document to be incorporated into the minimum terms and conditions.

7. Other changes arising from consultation responses

- i. A new requirement on practices to have submitted a PII proposal to at least one of the approved CLC scheme no later than 1st May each year.
- ii. A new requirement on insurers to issue quotes to practices no later than 1st June each year where the proposal has been submitted by 1st May. (Further proposals may be submitted by practices and quotes issued by insurers during June.)
- iii. A new Participating Insurers Agreement requirement that insurers should issue claims history within 5 working days of receiving a request from the practice.

8. Other actions

- i. CLC Licensing Framework to be amended at the next opportunity to make explicit that CLC-regulated lawyers who have been managers in a practice that has not paid any required PII premiums will have this taken into account if and when they seek managerial positions in different practices. This is a codification of current practice intended to provide reassurance to insurers.
- ii. CLC to continue to work with brokers and insurers to improve the availability of cover for start-up and transferring firms.

COMMENTARY ON CONSULTATION RESPONSES AND FINAL PROPOSALS

1. Automatic extension of PII cover

Length and purpose of extension period

A 60-day extension period, as originally consulted on, was a widely supported proposal. Only three respondents did not support the idea (Chubb, Miller and Muve).

One other (the CA) supported it but asked about its application in a particular scenario. They asked whether there is scenario in which it would be unsafe for a firm to be able to continue trading in this way. (For example, if they cannot get cover because of their behaviour being in breach of regulation - as opposed to the cost of cover). While we felt this is an important

point, we believe that in such a case likely the CLC would be taking disciplinary action against the firm or perhaps even intervening into it. Pending the outcome of the regulatory action, it would be fair to allow the firm to attempt to seek cover elsewhere, although of course in the event of an intervention the need would fall away.

If the obstacle to obtaining cover is not due to regulatory breaches but commercial decisions by insurers, the extension should be available for consumer protection and to allow a practice to seek alternative cover.

The SLC pointed out that the SRA scheme allows an Extended Policy Period of three months, and that there should be a level playing field for CLC practices. After looking at the impacts of a longer period we concur that this would lead to wider clarity, a more stable market, and assist consumers. We believe this measure is also particularly relevant at a time of increasing economic uncertainty.

The CLC believes that it would be unreasonable not to allow a practice to continue to seek renewal of PII cover while it is in the extended cover period.

However, our clear expectation is that during that phase the practice will also be preparing for closure by completing work in progress or making arrangements for its completion by other regulated legal services providers. This proposal favours insurers, to a degree, but has the benefit of providing the practice and CLC with early clarity about the steps that will need to be taken to secure renewal - and also help begin to prepare for the eventuality that it might not be obtainable at all.

Therefore we are now proposing a 90-day extended cover period for those insured practices that are unable to secure cover for the following year. It will not be available to practices choosing to close voluntarily. We believe these changes will make the framework more effective and pragmatic.

Premium payable

Collegiate made the reasonable point that a pro-rata premium for the extension period should be charged. The CLC accepts this.

Early notice of non-renewal by the insurer

Howden also noted that it is always desirable for an insured to receive as much notice as possible if an insurer does not intend to renew their PII policy. This ensures there is

adequate time to determine whether another insurer will provide cover, or to conduct an orderly closure by the policy end date, if no alternatives are available.

We agree with this point and therefore propose that where an insurer has given an insured practice notice of non-renewal three months in advance of their policy expiring, that insurer should not be obliged to provide the additional 90 days of cover after the renewal deadline.

The CLC believes that it would be unreasonable not to allow a practice to continue to seek renewal of PII cover while it is in the extended cover period.

As above, our clear expectation is that during that phase the practice will also be preparing for closure by completing work in progress or making arrangements for its completion by other regulated legal services providers. This proposal favours insurers, to a degree, but has the benefit of providing the practice and CLC with early clarity about the steps that will need to be taken to secure renewal - and also help begin to prepare for the increasing eventuality that it might not be obtainable at all.

Final proposal following consultation

I. Automatic 90-day extension of cover must be provided by the last insurer in the event that a practice is unable to renew cover.

- ii. That cover will be in line with the standard minimum terms and conditions.
- iii. Cover will attract a pro rata premium based on the most recent annual premium.
- iv. The practice may not take on new work during the extended cover period.
- v. The extended cover period may be used by the practice to continue to seek cover for the full year. If that is secured, the new cover will incept on 1 July and the new insurer will provide cover from that date, not from the end of the extended cover period. No pro rata premium will be payable to the last insurer in respect of the extended cover period.
- vi. This provision will **not** be available to practices;
 - a. if their insurer has notified the practice *and* the CLC, no later than three months before the expiry of annual cover, that the insurer will not offer renewal of cover at the end of the year. As the insurance year ends on 31 June, this means that notice of non-renewal must be provided by the insurer no later than 31 March.
 - b. If the inability to renew cover is due to regulatory breaches that are subject to CLC action.

2. Run-off cover

The CLC's current PII arrangements are for integrated run-off cover, which is at no additional cost to insureds at the time their practice closes. However, insurers are expected to take account of the risk of run-off cover being needed in setting annual premiums.

Following representations from insurers, the CLC consulted on a move to what might be described as guaranteed run-off cover. That would require insureds to pay a separate premium for run-off cover at the point of closure of a practice. However, it would also require insurers to provide run-off cover if the premium was not paid.

A number of insurers made strong representations that they should not be required to provide cover in the absence of payment for it. Their preferred approach is that a separate run-off premium should be payable in all cases, and that there should be no cover if it is not paid. The CLC considers that this would present an unacceptable risk to the client, particularly the most vulnerable ones, and the wider public interest.

Insurers themselves report that non-payment of premiums under a guaranteed run-off scheme in the legal sector is very high. One also reported that there had been no effort to recover unpaid premiums.

Therefore the CLC remains of the view that integrated run-off cover gives insurers greater certainty about the basis for pricing PI premiums as it is clear that annual premiums should take account of the risk to the insurer of the provision of run-off cover being required in that year. There is no risk of non-payment as there would be under the alternative approach.

While some insurers have been clear that they have not priced the risk of run-off provision into the annual premium there have been no representations that to do so would not be possible.

Two insurers exited the market in 2021 citing integrated run-off as the cause. Other insurers also raise the issue with other regulators about their schemes. Some insurers have raised the prospect that a decision not to allow them to charge a separate run-off premium at the point a practice closes and to refuse cover without premium payment will lead to further departures from the insurance market. We will continue to monitor this issue very closely, and if that happens the CLC may need to make alternative arrangements to ensure that PII cover is available to its regulated community.

Following responses we propose no change to the requirement for integrated run-off cover in PII policies of CLC-regulated entities. However, we urge insurers to take steps to ensure that run-off exposure is funded through annual premiums for ongoing businesses.

Final proposal following consultation

Integrated run-off to be retained.

3. Removal of the Participating Insurers Agreement (PIA)

There was clear and unambiguous feedback in the consultation that PIA was a necessary part of the PII arrangements. Accordingly, it will be retained with some additions, as set out below.

Final proposal following consultation

PIA will be retained and there will be some additions to it.

4. Insurers and insureds to be given more flexibility in agreeing excesses

Opinions were broadly in favour, though there were nuances within sectors. For example, two respondents from the insurance sector were against the proposals, but three in favour. Meanwhile, one legal firm was generally supportive but had concerns that no excess limit (or a very high one) could have an impact on the availability of PII for higher risk firms.

A range of practices, their representative bodies and brokers/insurers have all argued for the freedom to agree excesses appropriate to their particular circumstances. Removing all controls does not seem prudent, given the risk to the financial stability of insured practices, and especially given the attempts by one insurer in 2021 to set extremely high excess levels, and possible attempts by others to discuss doing so, without further action at that stage.

Insurers have told the CLC that higher excesses are unlikely to reduce premiums significantly, but could make it easier for cover to be provided. That is a desirable outcome, but the level of excess must remain within viable limits. That is in the interest of the insurer as much as the insured and its clients.

One legal respondent recommended a percentage charge at higher bands for those larger firms affected, to reflect the falling percentage of additional excess when moving up the fee bands. On reflection we feel this approach is a reasonable step and have modified our proposals to reflect that.

Final proposal following consultation

- i. Allow higher excesses in very limited circumstances when the CLC has approved that following a joint submission from the insurer and practice.
- ii. Set a further band of maximum excesses for the largest practices, of a further 1% on fees above £1,000,001.

5. Cyber cover

There was significant support for mandatory cyber cover across all respondents. Though also some concerns about the current cost of that cover, and the wide variations in what is currently provided by different policies.

There were three objections to the proposals (with one legal firm and two from the insurance sector raising issues).

Conversely, there was also a call to strengthen cover from Muve, following the issues with Simplify, even if premiums rose. While we understand the drivers for that, we believe there is a balance of risk to be assessed. As ever, the CLC will need to ensure that the response to risks from cyber incidents is proportionate to the risk, and flexible enough to adapt.

The SLC echoed part of this approach by noting the issue is likely to become more complex, and that there is a benefit with compulsory cyber cover as long as any agreed terms are not too prescriptive and can adapt quickly. They believed the CLC should mandate practices to have cyber cover but not set the terms for this. It is not clear to the CLC that mandating cyber cover without stipulating minimum terms would achieve improved consumer protection in a way that is proportionate.

The CLC is not currently in a position to define MTC for cyber-cover and so more work needs to be done to define an approach, which may become clearer as the market in cyber cover matures.

In the meantime the CLC will review its guidance on best practice in cyber security and ensure that practices have taken steps to ensure that they have adequate security measures in place to protect themselves and their clients. Due to the challenge and evolving risk in this field we believe discussions need to be carried on between all the participants to identify and define an agreed approach. This may also benefit from more clarity as the wider market in cyber cover matures, and there is increased government guidance on this issue.

Our approach was reflected in part of Enact's response, where they suggested that all legal sector regulators should review their respective codes to align them on cyber risks, and not take the view that insurance is a single answer to the problem without working on the underlying issue.

Final proposal following consultation

Cyber cover will not become mandatory now. The CLC will continue to update its guidance to support best practice and monitor the evolution of cyber insurance.

6. Insurance Act Compliance

No respondent objected to the wording as set out in the consultation document being incorporated into the MTC.

Final proposal following consultation

Wording to be incorporated as set out in the consultation document.

7. Other changes

Comments and suggestions received on issues outside the consultation questions were generally from outside the insurance sector. A broad theme was around the smooth running of the PII renewal process, which we believe are pragmatic and helpful. The provisions below have emerged from consultation responses and have been reviewed. They are intended to make the renewal process smoother than it has been. This in turn should allow practices time to seek alternative cover if necessary and to plan for closure more effectively.

For example, one insurer has noted that delays by current insurers providing claims data have held up the issuing of quotes from alternative insurers. One provision below is aimed at addressing that. and making the annual process of comparing quotes operate with greater efficiency.

In terms of other areas covered, the LSB CP commented that more data on existing claims would assist responses, but stated that CLC has carefully considered consumer protection issues in its proposal.

Final proposal following consultation

- i. A new requirement on practices to have submitted a PII proposal to at least one of the approved CLC scheme no later than 1st May each year.
- ii. A new requirement on insurers to issue quotes to practices no later than 1st June each year where the proposal has been submitted by 1st May. (Further proposals may be submitted by practices and quotes issued by insurers during June.)
- iii. A new PIA requirement that insurers should issue claims history within 5 working days of receiving a request from the practice.

8. Other actions

Insurers asked that failures by licence holders to meet obligations should be taken into account when licensing decisions are made. This is current practice and codification is intended to provide insurers with greater confidence.

- i. CLC Licensing Framework is to be amended to make explicit that CLC-regulated lawyers who have been managers in a practice that has not paid any required PII premiums will have this taken into account if and when they seek managerial positions in different practices.
- ii. CLC to continue to work with brokers and insurers to improve the availability of cover for start-up and transferring firms.