

# Solicitors' Indemnity Insurance Rules

## Successor practice definition

### Consultation paper

19 November 2009

## 1. Introduction

- 1.1 The SRA's Financial Protection Committee ("the Committee") is currently conducting a fundamental review of the Assigned Risks Pool ("ARP") with a view to effecting any changes for the 2010/11 renewal. This is the subject of a parallel consultation document. One of the issues highlighted by that review is the anecdotal evidence that some solicitors who want to retire are unable to sell their Firms as no Firm is prepared to run the risk of being classed as a "successor practice" for professional indemnity insurance purposes. This means that the goodwill of the ceasing Firm may have little or no value. If a Firm ceases without successor practice then the principals of the Firm are liable to pay an additional one off premium for the compulsory 6 year run-off cover. This can cost typically between 2 and 3 times the annual premium. Firms that cannot afford to pay such a premium may well be forced to continue in practice and may end up in the ARP.
- 1.2 In order to make it easier for practices to cease in an orderly fashion it is proposed that the successor practice rules should be made more flexible whilst maintaining client financial protection.

## 2. Why have a successor practice rule?

- 2.1 To understand why it is necessary to have a definition of a "successor practice" it is first necessary to understand how professional indemnity insurance operates. In England and Wales, professional indemnity policies are generally written on a "claims made" basis rather than a "losses occurring" basis. This means that responsibility for paying a claim lies with the insurer at the time the claim is made, or circumstances which may give rise to a claim are notified, rather than with the insurer that was on cover when the alleged negligent act took place. This is a very important distinction between professional indemnity insurance and many other forms of insurance. It also means that, in order to maintain public protection, when a Firm ceases it is necessary for run-off cover to be in place to cover claims that are made after the Firm has closed.

- 2.2 Under the current arrangements if a firm closes without successor practice then the Qualifying Insurer (or ARP) on risk at the date of closure is required to provide cover for the balance of the indemnity year and for a further 6 years thereafter. Most, if not all, policies of Qualifying Insurance contain a clause that states that in the event that run-off cover is triggered an additional one off premium becomes payable based on a multiple of the annual premium.
- 2.3 If a firm closes due to a succession by a successor practice then any future claims arising from the ceased firm will be covered by the Qualifying Insurer (or ARP) on risk for the successor practice at the date the claim is made. This could affect future premiums payable by the successor practice. The successor practice runs the risk that, despite the carrying out of any due diligence exercise, claims may arise in the future relating to the ceased practice that could have a serious adverse impact on the successor's premium or even its ability to obtain Qualifying Insurance.
- 2.4 Having a successor practice is more attractive to insurers than a policy in run-off as in the event of a future claim the insurer on cover will have a point of contact and will be more likely to be able to locate the file which in turn will facilitate the claims handling process.
- 2.5 The current definition of "successor practice" is contained in clause 8.2 of the Minimum Terms and Conditions (MTC) 2009 (which are attached as Appendix 1 to the Solicitors' Indemnity Insurance Rules 2009) as follows.
- 2.5 The current definition of "successor practice" is contained in clause 8.2 of the Minimum Terms and Conditions (MTC) 2009 (which are attached as Appendix 1 to the Solicitors' Indemnity Insurance Rules 2009) as follows.

*Successor Practice means a Practice identified in this definition as 'B', where:*

- (a) 'A' is the Practice to which B succeeds; and*
- (b) 'A's owner' is the owner of A immediately prior to transition; and*
- (c) 'B's owner' is the owner of B immediately following transition; and*
- (d) 'transition' means merger, acquisition, absorption or other transition which results in A no longer being carried on as a discrete legal Practice.*

*B is a Successor Practice to A where:*

- (i) B is or was held out, expressly or by implication, by B's owner as being the successor of A or as incorporating A, whether such holding out is contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or is contained in any statement or declaration by B's owner to any regulatory or taxation authority; and/or*
- (ii) (where A's owner was a Sole Practitioner and the transition occurred on or before 31 August 2000) - the Sole Practitioner is a Principal of B's owner; and/or*

- (iii) *(where A's owner was a Sole Practitioner and the transition occurred on or after 1 September 2000) - the Sole Practitioner is a Principal or Employee of B's owner; and/or*
- (iv) *(where A's owner was a Recognised Body) - that body is a Principal of B's owner; and/or*
- (v) *(where A's owner was a Partnership) - the majority of the Principals of A's owner have become Principals of B's owner; and/or*
- (vi) *(where A's owner was a Partnership and the majority of Principals of A's owner did not become Principals of the owner of another legal Practice as a result of the transition) - one or more of the Principals of A's owner have become Principals of B's owner and:*
  - (A) *B is carried on under the same name as A or a name which substantially incorporates the name of A (or a substantial part of the name of A); and/or*
  - (B) *B is carried on from the same premises as A; and/or*
  - (C) *the owner of B acquired the goodwill and/or assets of A; and/or*
  - (D) *the owner of B assumed the liabilities of A; and/or*
  - (E) *the majority of staff employed by A's owner became employees of B's owner.*

*Notwithstanding the foregoing, B is not a Successor Practice to A under paragraph (ii), (iii), (iv) (v) or (vi) if another Practice is or was held out by the owner of that other Practice as the successor of A or as incorporating A, provided that there is insurance complying with these minimum terms and conditions in relation to that other Practice.*

- 2.6 The effect of the successor practice rule is that a firm taking on any part of a former practice in any way, either becomes the successor practice or runs the risk of doing so. If it becomes the successor practice its insurance becomes responsible for future claims arising from the former practice.

### 3. The proposed change

- 3.1 It is proposed that in future where there is a situation where Firm A is acquired by Firm B such that Firm B falls within the definition of a "Successor Practice", within a short period Firm A would have the option of electing to trigger run-off under its policy of Qualifying Insurance. All subsequent claims made against Firm A would then be dealt with under the run-off cover. The successor practice, and its insurer, would therefore not be liable for future claims.
- 3.2 Draft amendments to the MTC are attached as the **Annex**. For the election to be successful now clause 5.4 of the MTC states:

- the election must be notified to the SRA within the prescribed period e.g. 30 days;
  - the election must be notified to the run-off insurer, if required by the policy, within the prescribed period e.g. 30 days; and
  - any additional premium due under the terms of the policy must be paid in full within the prescribed period e.g. 30 days.
- 3.3 If the election fails then the existing definition applies and cover is provided under the Successor Practice's policy.
- 3.4 If the change is implemented then it will have a number of consequences. It will introduce a degree of flexibility into the definition of successor practice whilst maintaining continuity of the definition. It will require the SRA to be able to record details of any election and in so doing will bring more certainty in these cases. However, it will create uncertainty during the 30 day election period. Potentially it will increase the numbers of Firms in run-off. It will not have an adverse impact on client financial protection.

## 4. Equality and diversity impact

- 4.1 An initial equality impact assessment has been carried out on the proposed change. As the change proposed is permissive only and could be advantageous to any firm, there is no equality and diversity impact.

## 5. Questions

1. Do you believe that the definition of successor practice is causing significant problems for firms that wish to cease practice?
2. Are you in favour of introducing flexibility into the definition of "successor practice"? Please give reasons in support of your answer.
3. Are you in favour of the proposed amendment to the definition of successor practice?
4. Do you foresee that the proposed change will have any adverse equality and diversity impacts?

## 6. How to respond

To find out how to respond to this consultation, please visit our website.

- Go to [www.consultations.sra.org.uk](http://www.consultations.sra.org.uk).
- Select **Solicitors' Indemnity Insurance Rules – successor practice definition**.
- Click **How to respond**.

## Submission deadline

The deadline for the submission of responses is 12 February 2010.

## **Annex**

### **Minimum Terms and Conditions of Professional Indemnity Insurance for Solicitors and Registered European Lawyers in England and Wales**

#### **1 Scope of cover**

##### **1.1 Civil liability**

The insurance must indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with the Insured Firm's Practice, provided that a Claim in respect of such liability:

- (a) is first made against an Insured during the Period of Insurance; or
- (b) is made against an Insured during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

##### **1.2 Defence Costs**

The insurance must also indemnify the Insured against Defence Costs in relation to:

- (a) any Claim referred to in clause 1.1, 1.4 or 1.6; or
- (b) any Circumstances first notified to the Insurer during the Period of Insurance; or
- (c) any investigation, inquiry or disciplinary proceeding during or after the Period of Insurance arising from any Claim referred to in clause 1.1, 1.4 or 1.6 or from Circumstances first notified to the Insurer during the Period of Insurance.

##### **1.3 The Insured**

For the purposes of the cover contemplated by clause 1.1, the Insured must include:

- (a) the Insured Firm; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Insured Firm and/or the Principals of the Insured Firm; and
- (c) each Principal, each former Principal and each person who becomes a Principal during the Period of Insurance of the Insured Firm or a company referred to in paragraph (b); and
- (d) each Employee, each former Employee and each person who becomes during the Period of Insurance an Employee of the Insured Firm or a company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated person referred to in paragraph (c) or (d).

##### **1.4 Prior Practice**

The insurance must indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with a Prior Practice, provided that a Claim in respect of such liability is first made against an Insured:

- (a) during the Period of Insurance; or
- (b) during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

## 1.5 The Insured - Prior Practice

For the purposes of the cover contemplated by clause 1.4, the Insured must include:

- (a) each Partnership or Recognised Body which, or Sole Practitioner who, carried on the Prior Practice; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Partnership or Recognised Body which, or Sole Practitioner who, carried on the Prior Practice and/or the Principals of such Partnership or Recognised Body; and
- (c) each Principal and former Principal of each Partnership or Recognised Body referred to in paragraph (a) or company referred to in paragraph (b); and
- (d) each Employee and former Employee of the Partnership, Recognised Body or Sole Practitioner referred to in paragraph (a) or company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated Sole Practitioner referred to in paragraph (a) or person referred to in paragraph (c) or (d).

## 1.6 Successor Practice

The insurance must indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with a Successor Practice to the Insured Firm's Practice (where succession is as a result of one or more separate mergers, acquisitions, absorptions or other transitions), provided that a Claim in respect of such liability is first made against an Insured:

- (a) during the Period of Insurance; or
- (b) during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

## 1.7 No Successor Practice if run-off cover applies

[The insurance must provide that the cover contemplated by clause 1.6 shall not apply where, in accordance with clause 5.3, the Insured Firm has made an election in accordance with clause 5.4.](#)

## 1.8 ~~1.7~~ The Insured - Successor Practice

For the purposes of the cover contemplated by clause 1.6, the Insured must include:

- (a) each Partnership or Recognised Body which, or Sole Practitioner who, carries on the Successor Practice during the Period of Insurance; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Partnership or Recognised Body which, or Sole Practitioner who, carries on the Successor Practice and/or the Principals of such Partnership or Recognised Body; and
- (c) each Principal, each former Principal and each person who becomes during the Period of Insurance a Principal of any Partnership or Recognised Body referred to in paragraph (a) or company referred to in paragraph (b); and
- (d) each Employee, each former Employee and each person who becomes during the Period of Insurance an Employee of the Partnership, Recognised Body or Sole Practitioner referred to in paragraph (a) or company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated Sole Practitioner referred to in paragraph (a) or person referred to in paragraph (c) or (d).

## **1.9 ~~1.8~~ Award by regulatory authority**

The insurance must indemnify each Insured against any amount paid or payable in accordance with the recommendation of the Legal Services Ombudsman, the Legal Complaints Service, the Office for Legal Complaints or any other regulatory authority to the same extent as it indemnifies the Insured against civil liability.

## **2 Limit of insurance cover**

### **2.1 Any one Claim**

The Sum Insured for any one Claim (exclusive of Defence Costs) must be, where the Insured Firm is a Relevant Recognised Body, at least £3 million, and in all other cases, at least £2 million.

### **2.2 No limit on Defence Costs**

There must be no monetary limit on the cover for Defence Costs.

### **2.3 Proportionate limit on Defence Costs**

Notwithstanding clauses 2.1 and 2.2, the insurance may provide that liability for Defence Costs in relation to a Claim which exceeds the Sum Insured is limited to the proportion that the Sum Insured bears to the total amount paid or payable to dispose of the Claim.

### **2.4 No other limit**

The insurance must not limit liability to any monetary amount (whether by way of an aggregate limit or otherwise) except as contemplated by clauses 2.1 and 2.3.

### **2.5 One Claim**

The insurance may provide that, when considering what may be regarded as one Claim for the purposes of the limits contemplated by clauses 2.1 and 2.3:

(a) all Claims against any one or more Insured arising from:

- (i) one act or omission;
  - (ii) one series of related acts or omissions;
  - (iii) the same act or omission in a series of related matters or transactions;
  - (iv) similar acts or omissions in a series of related matters or transactions
- and

(b) all Claims against one or more Insured arising from one matter or transaction

will be regarded as one Claim.

### **2.6 Multiple underwriters**

2.6.1 The insurance may be underwritten by more than one insurer, each of which must be a Qualifying Insurer, provided that the insurance may provide that the Insurer shall be severally liable only for its respective proportion of liability in accordance with the terms of the insurance.

2.6.2 Where the insurance is underwritten jointly by more than one insurer:

- (a) the insurance must state which Qualifying Insurer shall be the Lead Insurer; and



- (b) in addition to any proportionate limit on Defence Costs in accordance with clause 2.3, the insurance may provide that each Insurer's liability for Defence Costs is further limited to the extent or the proportion of that Insurer's liability (if any) in relation to the relevant Claim.

***[Note: under clause 2.6 of the Qualifying Insurer's Agreement, a Policy may be issued on an excess of loss basis only in the layers set out in that clause.]***

### **3 Excesses**

#### **3.1 The Excess**

The insurance may be subject to an Excess of such monetary amount and on such terms as the Insurer and the Insured Firm agree. Subject to clause 3.4, the Excess may be 'self-insured' or partly or wholly insured without regard to these minimum terms and conditions.

#### **3.2 No deductibles**

The insurance must provide that the Excess does not reduce the limit of liability contemplated by clause 2.1.

#### **3.3 Excess not to apply to Defence Costs**

The Excess must not apply to Defence Costs.

#### **3.4 Funding of the Excess**

The insurance must provide that, if an Insured fails to pay to a Claimant any amount which is within the Excess within 30 days of it becoming due for payment, the Claimant may give notice of the Insured's default to the Insurer, whereupon the Insurer is liable to remedy the default on the Insured's behalf. The insurance may provide that any amount paid by the Insurer to remedy such a default erodes the Sum Insured.

#### **3.5 One Claim**

The insurance may provide for multiple Claims to be treated as one Claim for the purposes of an Excess contemplated by clause 3.1 on such terms as the Insured Firm and the Insurer agree.

#### **3.6 Excess layers**

In the case of insurance written on an excess of loss basis, there shall be no Excess except in relation to the primary layer.

### **4 Special conditions**

#### **4.1 No avoidance or repudiation**

The insurance must provide that the Insurer is not entitled to avoid or repudiate the insurance on any grounds whatsoever including, without limitation, non-disclosure or misrepresentation, whether fraudulent or not.

#### **4.2 No adjustment or denial**

The insurance must provide that the Insurer is not entitled to reduce or deny its liability under the insurance on any grounds whatsoever including, without limitation, any breach of any term or condition of the insurance, except to the extent that one of the exclusions contemplated by clause 6 applies.

#### **4.3 No cancellation**

The insurance must provide that it cannot be cancelled except (in the case of (a), (b) or (c) below) by the agreement of both the Insured Firm and the Insurer, and in any event only in circumstances where:

- (a) the Insured Firm's Practice is merged into a Successor Practice, provided that there is insurance complying with these minimum terms and conditions in relation to that Successor Practice, in which case cancellation shall have effect no earlier than the date of such merger; or
- (b) replacement insurance complying with these minimum terms and conditions commences, but only where, in the case of insurance not provided wholly or partly by the Assigned Risks Pool, the replacement insurance is not provided wholly or partly by the Assigned Risks Pool, in which case cancellation shall have effect no earlier than the date on which such replacement insurance commences; or
- (c) it subsequently transpires that the Insured Firm is not required under the Solicitors Indemnity Insurance Rules 2009 to effect a policy of Qualifying Insurance, in which case cancellation shall have effect from the later of (a) the start of the relevant Indemnity Period and (b) the date on which the Insured Firm ceased to be required to effect a policy of Qualifying Insurance, or such later date as the Insured Firm and the Insurer may agree; or
- (d) in the case of an ARP Policy, it subsequently transpires that the Insured Firm was not or has ceased to be an Eligible Firm, in which case cancellation shall have effect from the date on which it ceased to be an Eligible Firm.

Cancellation must not affect the rights and obligations of the parties accrued under the insurance prior to the date from which cancellation has effect.

#### **4.4 No set-off**

The insurance must provide that any amount payable by the Insurer to indemnify an Insured against civil liability to a Claimant will be paid only to the Claimant, or at the Claimant's direction, and that the Insurer is not entitled to set-off against any such amount any payment due to it by any Insured including, without limitation, any payment of premium or to reimburse the Insurer.

#### **4.5 No 'other insurance' provision**

The insurance must not provide that the liability of the Insurer is reduced or excluded by reason of the existence or availability of any other insurance other than as contemplated by clause 6.1. For the avoidance of doubt, this requirement is not intended to affect any right of the Insurer to claim contribution from any other insurer which is also liable to indemnify any Insured.

#### **4.6 No retroactive date**

The insurance must not exclude or limit the liability of the Insurer in respect of Claims arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to a specified date.

#### **4.7 Successor Practice - 'double insurance'**

The insurance may provide that, if the Insured Firm's Practice is succeeded during the Period of Insurance and, as a result, a situation of 'double insurance' exists between two or more insurers of the Successor Practice, contribution between insurers is to be determined in accordance with the relative numbers of Principals of the owners of the constituent Practices immediately prior to succession.

#### **4.8 Advancement of Defence Costs**

The insurance must provide that the Insurer will meet Defence Costs as and when they are incurred, including Defence Costs incurred on behalf of an Insured who is alleged to have

committed or condoned dishonesty or a fraudulent act or omission, provided that the Insurer is not liable for Defence Costs incurred on behalf of that Insured after the earlier of:

- (a) that Insured admitting to the Insurer the commission or condoning of such dishonesty, act or omission; or
- (b) a court or other judicial body finding that that Insured was in fact guilty of such dishonesty, act or omission.

#### **4.9 Resolution of disputes**

The insurance must provide that, if there is a dispute as to whether a Practice is a Successor Practice for the purposes of clauses 1.4, 1.6 or 5.3, the Insured and the Insurer will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these minimum terms and conditions and that party's insurer.

#### **4.10 Conduct of a Claim pending dispute resolution**

The insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer will, if so directed by the Society, conduct any Claim, advance Defence Costs and, if appropriate, compromise and pay the Claim. If the Society is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies; and
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour; and
- (c) it is fair and equitable in all the circumstances for such direction to be given;

it may in its absolute discretion make such a direction.

#### **4.11 Minimum terms and conditions to prevail**

The insurance must provide that:

- (a) the insurance is to be construed or rectified so as to comply with the requirements of these minimum terms and conditions; and
- (b) any provision which is inconsistent with these minimum terms and conditions is to be severed or rectified to comply.

#### **4.12 Period of Insurance**

The Period of Insurance must not expire prior to 30 September 2010.

### **5 Run-off cover**

#### **5.1 Cessation of the Insured Firm's Practice**

The insurance must provide that, if the Insured Firm's Practice ceases during or on expiry of the Period of Insurance and the Insured Firm has not obtained succeeding insurance in compliance with these minimum terms and conditions (a **Cessation**), the insurance will provide run-off cover. For these purposes, an Insured Firm's Practice shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the Insured Firm becomes a Non-SRA Firm.

#### **5.2 Scope of run-off cover**

The run-off cover referred to in clause 5.1 must indemnify each Insured in accordance with clauses 1.1 to ~~4.8~~1.9 (but subject to the limits, exclusions and conditions of the insurance which are in

accordance with these minimum terms and conditions) 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).

### 5.3 Succession

The insurance must provide that ~~run-off cover is not activated~~ if there is a Successor Practice to the ceased Practice, ~~provided that~~ and there is insurance complying with these minimum terms and conditions in relation to that Successor Practice, ~~run-off cover is not activated~~ except where the Insured Firm has made an election in accordance with clause 5.4.

### 5.4 Election in relation to succession

- (a) The insurance must provide that for an election referred to in clause 5.3 to be effective, it must, not later than [30 days] following the Cessation, be notified to the [Head of Professional Indemnity and Client Protection Policy], Solicitors Regulation Authority at Ipsley Court, Berrington Close, Redditch, Worcestershire B98 0TD, in such form (if any) as the Solicitors Regulation Authority may from time to time require.
- (b) The insurance may in addition require that, for the election to be effective, not later than [30 days] following the Cessation:
  - (i) it must be notified to the Insurer in such form (if any) as the Insurer may reasonably require; and
  - (ii) any additional premium due to the Insurer as a result of the Cessation is paid in full to the Insurer not later than [30 days] following the Cessation.

### 5.5 5.4 Suspended Practices

The insurance must provide that, where run-off cover has been activated in accordance with this clause 5, but where the Insured Firm's Practice restarts, the Insurer may (but shall not be obliged to) cancel such run-off cover, on such terms as may be agreed, provided that:

- (a) there is insurance complying with these minimum terms and conditions in relation to that Insured Firm in force on the date of cancellation;
- (b) the Qualifying Insurer providing such insurance confirms in writing to the Insured Firm and the Insurer (if different) that:
  - (i) it is providing insurance complying with these minimum terms and conditions in relation to that Insured Firm for the then current Indemnity Period; and
  - (ii) it is doing so on the basis that the Insured Firm's Practice is regarded as being a continuation of the Insured Firm's Practice prior to Cessation and that accordingly it is liable for Claims against the Insured Firm arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to Cessation.

## 6 Exclusions

The insurance must not exclude or limit the liability of the Insurer except to the extent that any Claim or related Defence Costs arise from the matters set out in this clause 6.

### 6.1 Prior cover

Any Claim in respect of which the Insured is entitled to be indemnified by the Solicitors Indemnity Fund (SIF) or under a professional indemnity insurance contract for a period earlier than the Period of Insurance, whether by reason of notification of Circumstances to SIF or under the earlier contract or otherwise.

## **6.2 Death or bodily injury**

Any liability of any Insured for causing or contributing to death or bodily injury, except that the insurance must nonetheless cover liability for psychological injury or emotional distress which arises from a breach of duty in the performance of (or failure to perform) legal work.

## **6.3 Property damage**

Any liability of any Insured for causing or contributing to damage to, or destruction or physical loss of, any property (other than property in the care, custody or control of any Insured in connection with the Insured Firm's Practice and not occupied or used in the course of the Insured Firm's Practice), except that the insurance must nonetheless cover liability for such damage, destruction or loss which arises from breach of duty in the performance of (or failure to perform) legal work.

## **6.4 Partnership disputes**

Any actual or alleged breach of the Insured Firm's Partnership or shareholder agreement or arrangements, including any equivalent agreement or arrangement where the Insured Firm is a Limited Liability Partnership or a company without a share capital.

## **6.5 Employment breaches, discrimination, etc.**

Wrongful dismissal, repudiation or breach of an employment contract or arrangement, termination of a training contract, harassment, discrimination or like conduct in relation to any Partnership or shareholder agreement or arrangement or the equivalent where the Insured Firm is a Limited Liability Partnership or a company without a share capital, or in relation to any employment or training agreement or arrangement.

## **6.6 Debts and trading liabilities**

Any:

- (a) trading or personal debt of any Insured; or
- (b) breach by any Insured of the terms of any contract or arrangement for the supply to, or use by, any Insured of goods or services in the course of the Insured Firm's Practice; or
- (c) guarantee, indemnity or undertaking by any particular Insured in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that Insured.

## **6.7 Fines, penalties, etc**

Any:

- (a) fine or penalty; or
- (b) award of punitive, exemplary or like damages under the law of the United States of America or Canada, other than in respect of defamation; or
- (c) order or agreement to pay the costs of a complainant, regulator, investigator or prosecutor of any professional conduct complaint against, or investigation into the professional conduct of, any Insured.

## **6.8 Fraud or dishonesty**

The insurance may exclude liability of the Insurer to indemnify any particular person to the extent that any civil liability or related Defence Costs arise from dishonesty or a fraudulent act or omission committed or condoned by that person, except that:

- (a) the insurance must nonetheless cover each other Insured; and

- (b) the insurance must provide that no dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or, in the case of a Limited Liability Partnership, all members of that Limited Liability Partnership.

## **6.9 Directors' or officers' liability**

The insurance may exclude liability of the Insurer to indemnify any natural person in their capacity as a director or officer of a body corporate (other than a Recognised Body or a service, administration, trustee or nominee company referred to in clauses 1.3(b), 1.5(b) or ~~1.7~~1.8(b)) except that:

- (a) the insurance must nonetheless cover any liability of that person which arises from a breach of duty in the performance of (or failure to perform) legal work; and
- (b) the insurance must nonetheless cover each other Insured against any vicarious or joint liability.

## **6.10 War and Terrorism, and Asbestos**

The Insurance may exclude, by way of an exclusion or endorsement, liability of the Insurer to indemnify any Insured in respect of, or in any way in connection with:

- (a) terrorism, war or other hostilities; and/or
- (b) 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,

provided that any such exclusion or endorsement does not exclude or limit any liability of the Insurer to indemnify any Insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) legal work or failure to discharge or fulfil any duty incidental to the Insured Firm's Practice or to the conduct of Private Legal Practice.

## **7 General conditions**

### **7.1 As agreed**

The insurance may contain such general conditions as are agreed between the Insurer and the Insured Firm, but the insurance must provide that the special conditions required by clause 4 prevail to the extent of any inconsistency.

### **7.2 Reimbursement**

The insurance may provide that each Insured who:

- (a) committed; or
- (b) condoned (whether knowingly or recklessly):
  - (i) non-disclosure or misrepresentation; or
  - (ii) any breach of the terms or conditions of the insurance; or
  - (iii) dishonesty or any fraudulent act or omission,

will reimburse the Insurer to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by such non-disclosure, misrepresentation, breach, dishonesty, act or omission, provided that no Insured shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of the insurance was in order to comply with

any applicable rules or codes laid down from time to time by the Society, or in the Society publication *Your Clients - Your Business*, as amended from time to time.

The insurance must provide that no non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or, in the case of a Limited Liability Partnership, all members of that Limited Liability Partnership. The insurance must provide further that any right of reimbursement contemplated by this clause 7.2 against any person referred to in clauses 1.3(d), 1.5(d) or 1.7.1.8(d) (or against the estate or legal personal representative of any such person if they die or become legally incapacitated) is limited to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by that person having committed or condoned (whether knowingly or recklessly) dishonesty or any fraudulent act or omission.

### **7.3 Reimbursement of Defence Costs**

The insurance may provide that each Insured will reimburse the Insurer for Defence Costs advanced on that Insured's behalf which the Insurer is not ultimately liable to pay.

### **7.4 Reimbursement of the Excess**

The insurance may provide for those persons who are at any time during the Period of Insurance Principals of the Insured Firm, together with, in relation to a Sole Practitioner, any person held out as a Partner of that practitioner, to reimburse the Insurer for any Excess paid by the Insurer on an Insured's behalf. The Sum Insured must be reinstated to the extent of reimbursement of any amount which eroded it as contemplated by clause 3.4.

### **7.5 Reimbursement of moneys paid pending dispute resolution**

The insurance may provide that each Insured will reimburse the Insurer following resolution of any coverage dispute for any amount paid by the Insurer on that Insured's behalf which, on the basis of the resolution of the dispute, the Insurer is not ultimately liable to pay.

### **7.6 Withholding assets or entitlements**

The insurance may require the Insured Firm to account to the Insurer for any asset or entitlement of any person who committed or condoned any dishonesty or fraudulent act or omission, provided that the Insured Firm is legally entitled to withhold that asset or entitlement from that person.

### **7.7 Premium**

The premium may be calculated on such basis as the Insurer determines and the Insured Firm accepts including, without limitation, a basis which recognises Claims history, categories of work performed by the Insured Firm, numbers of Principals and Employees, revenue derived from the Insured Firm's Practice and other risk factors determined by the Insurer.

### **7.8 Co-operation and assistance**

The insurance (except in the case of an ARP Policy) must provide that, if the ARP Manager is appointed to conduct any Claim, each Insured will give the ARP Manager and any investigators or solicitors appointed by it all information and documents they reasonably require, and full co-operation and assistance in the investigation, defence, settlement, avoidance or reduction of any actual or possible Claim or any related proceeding.

## **8 Definitions and interpretation**

### **8.1 General**

8.1.1 In these minimum terms and conditions, unless the context otherwise requires:

- (a) the singular includes the plural, and vice versa;
- (b) the male gender includes the female and neuter genders;



- (c) a reference to a person includes a body corporate, partnerships, and other unincorporated associations or bodies of persons;
- (d) a reference to any statute, statutory provision, code or regulation includes:
  - (i) any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it; and
  - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, or at or after the date of these minimum terms and conditions;
- (e) references to the Society include the Solicitors Regulation Authority and the Legal Complaints Service, and any body or person which succeeds in whole or in part to the functions of the Society, the Solicitors Regulation Authority or the Legal Complaints Service, and any delegate of the Society, the Solicitors Regulation Authority, the Legal Complaints Service or any such body or person;
- (f) headings are for ease of reference only and shall not affect the interpretation of these minimum terms and conditions;
- (g) explanatory notes and commentary shall be ignored in interpreting these minimum terms and conditions;
- (h) a reference to a director includes a member of a Limited Liability Partnership;
- (i) words and expressions which begin with a capital letter in these minimum terms and conditions have the meaning set out in this paragraph 8; and
- (j) words and expressions in these minimum terms and conditions are to be construed consistently with the same or similar words or expressions in the Solicitors' Indemnity Insurance Rules 2009.

8.1.2 These minimum terms and conditions shall be, and the insurance shall be expressed to be, governed by and interpreted in accordance with English law.

## 8.2 Defined terms

In these minimum terms and conditions:

**Circumstances** means an incident, occurrence, fact, matter, act or omission which may give rise to a Claim in respect of civil liability

**Claim** means a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For these purposes, an obligation on an Insured Firm and/or any Insured to remedy a breach of the Solicitors' Accounts Rules 1998 (as amended from time to time), or any rules which replace the Solicitors' Accounts Rules 1998 in whole or in part, shall be treated as a Claim, and the obligation to remedy such breach shall be treated as a civil liability for the purposes of clause 1, whether or not any person makes a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages as a result of such breach, except where any such obligation may arise as a result of the insolvency of a bank (as defined in section 87 of the Solicitors Act 1974) or a building society (within the meaning of the Building Societies Act 1986) which holds client money in a client account of the Insured Firm or the failure of such bank or building society generally to repay monies on demand.

**Claimant** means a person or entity which has made or may make a Claim including a Claim for contribution or indemnity.

**Defence Costs** means legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the Insurer in:



- (a) defending any proceedings relating to a Claim; or
- (b) conducting any proceedings for indemnity, contribution or recovery relating to a Claim; or
- (c) investigating, reducing, avoiding or compromising any actual or potential Claim; or
- (d) acting for any Insured in connection with any investigation, inquiry or disciplinary proceeding.

Defence Costs do not include any internal or overhead expenses of the Insured Firm or the Insurer or the cost of any Insured's time.

**Employee** means any person other than a Principal:

- (a) employed or otherwise engaged in the Insured Firm's Practice (including under a contract for services) including, without limitation, as a solicitor, lawyer, trainee solicitor or lawyer, consultant, associate, locum tenens, agent, appointed person (as defined in the Solicitors' Indemnity Insurance Rules 2009), office or clerical staff member or otherwise;
- (b) seconded to work in the Insured Firm's Practice; or
- (c) seconded by the Insured Firm to work elsewhere.

Employee does not include any person who is engaged by the Insured Firm under a contract for services in respect of any work where that person is required, whether under the Solicitors' Indemnity Insurance Rules 2009 or 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.

**Excess** means the first amount of a Claim which is not covered by the insurance.

**Insured** means each person and entity named or described as a person to whom the insurance extends and includes, without limitation, those referred to in clause 1.3 and, in relation to Prior and Successor Practices respectively, those referred to in clauses 1.5 and ~~4.7-1.8~~.

**Insured Firm** means the Firm (as defined for the purposes of the Solicitors Indemnity Insurance Rules 2008) which contracted with the Insurer to provide the insurance.

**Insured Firm's Practice** means:

- (a) the legal Practice carried on by the Insured Firm as at the commencement of the Period of Insurance; and
- (b) the continuous legal Practice preceding and succeeding the Practice referred to in paragraph (a) (irrespective of changes in ownership of the Practice or in the composition of any Partnership which owns or owned the Practice).

**Insurer** means the underwriter(s) of the insurance.

**Lead Insurer** means the insurer named as such in the contract of insurance, or, if no Lead Insurer is named as such, the first-named insurer on the relevant certificate of insurance.

**Limited Liability Partnership** means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000.

**Partnership** means an unincorporated Insured Firm in which persons are or are held out as partners and does not include an Insured Firm incorporated as a Limited Liability Partnership, and **Partner** means a person who is or is held out to be a partner in a Partnership.

**Period of Insurance** means the period for which the insurance operates.

**Principal** means:

- (a) where the Insured Firm is or was:
  - (i) a sole practitioner - that practitioner;
  - (ii) a Partnership - each Partner;
  - (iii) a company with a share capital - each director of that company and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who:
    - (A) is held out as a director; or
    - (B) beneficially owns the whole or any part of a share in the company; or
    - (C) is the ultimate beneficial owner of the whole or any part of a share in the company.
  - (iv) a company without a share capital – each director of that company and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who:
    - (A) is held out as a director; or
    - (B) is a member of the company; or
    - (C) is the ultimate owner of the whole or any part of a body corporate or other legal person which is a member of the company;
  - (v) a Limited Liability Partnership – each member of that Limited Liability Partnership, and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who is the ultimate owner of the whole or any part of a body corporate or other legal person which is member of the Limited Liability Partnership.
- (b) where a body corporate or other legal person is a Partner in the Insured Firm, all solicitors, Registered European Lawyers or Registered Foreign Lawyers who are within paragraph (a)(iii) of this definition (including sub paragraphs (A) and (C) thereof), paragraph (a)(iv) of this definition (including sub paragraphs (A) and (C) thereof), or paragraph a(v) of this definition.

**Prior Practice** means each Practice to which the Insured Firm's Practice is ultimately a Successor Practice by way of one or more mergers, acquisitions, absorptions or other transitions, but does not include any such Practice which, in accordance with clause 5.3, has made an election in accordance with clause 5.4.

**Private Legal Practice** means the provision of services in private Practice as a solicitor or Registered European Lawyer including, without limitation:

- (a) providing such services in England, Wales or anywhere in the world, whether alone or with other lawyers in a Partnership permitted to practise in England and Wales by rule 12 of the Solicitors' Code of Conduct 2007; and
- (b) the provision of such services as a secondee of the Insured Firm; and
- (c) any Insured acting as a personal representative, trustee, attorney, notary, insolvency practitioner or in any other role in conjunction with a Practice; and
- (d) the provision of such services by any Employee; and
- (e) the provision of such services pro bono publico.

Private Legal Practice does not include:

- (i) practising as an Employee of an employer other than a solicitor, a registered European lawyer, a Partnership permitted to practise in England and Wales by rule 12 of the Solicitors' Code of Conduct 2007, or a Recognised Body; or
- (ii) discharging the functions of any of the following offices or appointments:
  - (A) judicial office;
  - (B) Under Sheriffs;
  - (C) members and clerks of such tribunals, committees, panels and boards as the Council may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;
  - (D) Justices' Clerks; or
  - (E) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria.

**Recognised Body** means a body for the time being recognised by the Solicitors Regulation Authority under Section 9 of the Administration of Justice Act 1985 and the SRA Recognised Bodies Regulations 2009.

**Relevant Recognised Body** means a Recognised Body other than:

- (a) an unlimited company, or an overseas company whose members' liability for the company's debts is not limited by its constitution or by the law of its country of incorporation; or
- (b) a nominee company only, holding assets for clients of another Practice; and
  - (i) it can act only as agent for the other Practice; and
  - (ii) all the individuals who are Principals of the Recognised Body are also Principals of the other Practice; and
  - (iii) any fee or other income arising out of the Recognised Body accrues to the benefit of the other Practice or
- (c) a partnership in which none of the partners is a limited company, a Limited Liability Partnership or a legal person whose members have limited liability.

**Sole Practitioner** means a solicitor or registered European lawyer who is a sole practitioner, and includes a Recognised Sole Practitioner.

**Successor Practice** means a Practice identified in this definition as 'B', where:

- (a) 'A' is the Practice to which B succeeds; and
- (b) 'A's owner' is the owner of A immediately prior to transition; and
- (c) 'B's owner' is the owner of B immediately following transition; and
- (d) 'transition' means merger, acquisition, absorption or other transition which results in A no longer being carried on as a discrete legal Practice.

B is a Successor Practice to A where:

- (i) B is or was held out, expressly or by implication, by B's owner as being the successor of A or as incorporating A, whether such holding out is contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or is contained in any statement or declaration by B's owner to any regulatory or taxation authority; and/or
- (ii) (where A's owner was a Sole Practitioner and the transition occurred on or before 31 August 2000) - the Sole Practitioner is a Principal of B's owner; and/or
- (iii) (where A's owner was a Sole Practitioner and the transition occurred on or after 1 September 2000) - the Sole Practitioner is a Principal or Employee of B's owner; and/or
- (iv) (where A's owner was a Recognised Body) - that body is a Principal of B's owner; and/or
- (v) (where A's owner was a Partnership) - the majority of the Principals of A's owner have become Principals of B's owner; and/or
- (vi) (where A's owner was a Partnership and the majority of Principals of A's owner did not become Principals of the owner of another legal Practice as a result of the transition) - one or more of the Principals of A's owner have become Principals of B's owner and:
  - (A) B is carried on under the same name as A or a name which substantially incorporates the name of A (or a substantial part of the name of A); and/or
  - (B) B is carried on from the same premises as A; and/or
  - (C) the owner of B acquired the goodwill and/or assets of A; and/or
  - (D) the owner of B assumed the liabilities of A; and/or
  - (E) the majority of staff employed by A's owner became employees of B's owner.

Notwithstanding the foregoing, B is not a Successor Practice to A under paragraph (ii), (iii), (iv) (v) or (vi) if another Practice is or was held out by the owner of that other Practice as the successor of A or as incorporating A, provided that there is insurance complying with these minimum terms and conditions in relation to that other Practice.

**Sum Insured** means the aggregate limit of liability of each Insurer under the insurance.