



## Smartcards: Implications for Master Policy cover

A number of solicitors have sought clarification regarding the liability implications of ownership and use of the Law Society of Scotland 'Smartcard'.

The following guidance seeks to address the most commonly asked questions.



### **Use of your Smartcard is covered by the Master Policy**

The Master Policy lead insurers (RSA) have confirmed that the use of Smartcards and the application of digital signatures fall within the scope of The Master Policy, as being aspects of business customarily carried out by Scottish solicitors. In principle, therefore, claims against individual solicitors and/or firms of solicitors arising out of

- (1) the terms of the indemnity and/or
- (2) use of a Smartcard

will be treated as being within the scope of The Master Policy cover.



### **Cover under the Master Policy would be triggered if the indemnity provisions of your Smartcard contract were triggered**

A condition of receiving your Smartcard is that you enter into a contract with the Law Society of Scotland (as Registration Authority) and Consejo General de la Abogacía Española (as Certification Authority).

The contract requires that: “the subscriber agrees to indemnify the certification authority and/or the registration authority for any damages or claims that may be caused by any fraudulent or negligent act or omission on its part, and also to assume any legal expenses that the certification authority or registration authority may incur as a result, including legal expenses and outlays on a solicitor-and-client basis.”

Under the terms of The Master Policy, insurers must “indemnify the Insured in respect of claims or alleged claims made against the Insured...in respect of any civil liability (including liability for claimant’s costs and expenses) incurred in connection with the Practice carried on by or on behalf of the Principal Insured”.

Accordingly, taking the terms of both documents into account, any claim against the subscriber/insured may be intimated to Lockton for notification to The Master Policy insurers.

Although the indemnity is by the subscriber, if the registration authority or certification authority were to make a claim against the firm in which the subscriber is employed or is a Principal, that would entitle the firm to intimate the claim to The Master Policy insurers - subject to any policy exclusions (see below)



## **Cover Exceptions**

Cover is provided under The Master Policy in accordance with the terms and conditions set out in the applicable Certificate of Insurance. The Master Policy provides very broad cover, however, in common with any insurance policy, it will not necessarily provide cover for all and every contractual liability.

Your Smartcard contract includes the following clause:

*“The SUBSCRIBER agrees to indemnify the CA and/or RA for any damages or claims that may be caused by any fraudulent or negligent act or omission on its part, and also to assume any legal expenses that the CA and/or RA may incur as a result, including legal expenses and outlays on a solicitor-and-client basis.”*

If a claim were to be made, pursuant to this clause, arising from a fraudulent act or omission on your part (as the subscriber) this would not be covered by the Master Policy, as, under the Master Policy wording (as at 2016) no indemnity will be given to ‘any individual committing or condoning any dishonest, fraudulent or criminal act or omission’.

Other cover exceptions could include:

- Agreements to pay penalties or liquidated damages
- Punitive or exemplary damages
- Trading losses

**If you have any queries or concerns regarding cover, please contact your team at Lockton and we will be happy to assist.**

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