

## **The Master Policy for Professional Indemnity Insurance**

### **Master Policy Information**

A Handbook describing all aspects of the operation of the Master Policy is issued to each firm by the Society's Brokers. Additional copies are available from the Brokers on request.

The following synopsis is for general guidance only on certain aspects of the Master Policy. It is not intended that it should be relied on as an authoritative statement of the position in relation to any matter or any procedure. Specific advice should be sought in relation to specific queries.

### **Cover**

The Master Policy provides cover for all practice units for the mandatory limit of indemnity - £2m. All claims attributable to the same act, error or omission or series of acts, errors or omissions consequent upon or attributable to the same original cause or source will be regarded as one claim. In the event of cover being required in excess of the mandatory limit of indemnity, additional Excess Layer ("top-up") cover requires to be arranged which may be taken under the facility provided by the Society's Brokers.

The cover is wide and provides indemnity in respect of claims or alleged claims in respect of "any civil liability (including liability for claimant's costs and expenses) incurred in connection with the Practice...". The definition of "the Practice" refers to "all manner of business... which is customarily (but not necessarily exclusively) carried on or transacted by Solicitors in Scotland".

Solicitors' activities continue to expand into new, and in some cases, novel areas of practice. Any query regarding the scope of cover under the Master Policy should be referred to Paul Mosson at the Society or the Brokers.

The Master Policy also provides cover for dishonest, fraudulent, criminal or malicious acts or omissions involving clients funds on the part of a partner or member of the firm's staff. This cover in respect of clients funds does not apply if the act or omission was committed or condoned by a sole practitioner or by all principals of a partnership.

### **Self-Insured Amount**

The level of the Self-Insured Amount (or Excess or Deductible) applicable to each different category of claim is detailed in the Schedule of Insurance issued to each practice annually. There are certain types of claim ("classic" letter of obligation claims, for instance) where the Self-Insured Amount is nil and certain types of claim (fraud/dishonesty claims and "Risk Management Deductible" matters) where the Self-Insured Amount is double the standard amount.

The level of the Self-Insured Amount is determined at the time of intimation but is only payable if/when the claim is actually settled.

### **Renewal Procedure**

Rule 5 of the Solicitors' (Scotland) Practising Certificate Rules 1988 requires all solicitors to provide to the Society, along with their applications for a Practising Certificate, either evidence that a certificate of insurance has been issued to the practice unit of which they are a principal in terms of the Master Policy or, a declaration that they are not a principal.

The Master Policy has a common renewal date - 1st November and renewal papers are issued to the nominated person in each practice four or five weeks prior to renewal date. The Brokers will advise on all aspects of the renewal procedure when issuing renewal papers.

For practice units commencing at other times in the year, a Proposal Form can be obtained separately from the Brokers to the Master Policy, Lockton, 40 Torphichen Street, Edinburgh, EH3 8JB. The Brokers will advise on all aspects of the procedures involved in arranging Master Policy cover.

### **Notification of Claims and Circumstances**

The Master Policy requires (General Condition 1 of the Certificate of Insurance) practice units to: "give written notice to the Brokers (regardless of any Self-Insured Amount) as soon as reasonably practicable after becoming aware of circumstances which might reasonably be expected to produce a claim irrespective of the [practice unit's] views as to the validity of the claim or on receiving information of a claim for which there may be liability under [the] Certificate."

There is no claim form which requires to be completed in order to intimate a claim or circumstance. All that is required initially is a letter, to the Brokers, explaining the factual background. Copies of relevant correspondence should be submitted along with any Legal Aid Application, Writ or Summons.

If the preparation of a detailed summary of the facts or a statement by those involved is likely to delay matters, the practice should simply write to the Brokers in the first instance with brief particulars of the available information rather than delaying their intimation until more detailed information is available.

Where a Writ, Summons or notice of a Legal Aid Application has been received, clearly the matter should be intimated immediately, with these items, in order that the insurers may take whatever action is required within the appropriate time limits.

### **Claims Handling**

Following intimation of a claim or "circumstance" the insurers (typically the leading insurer unless there is a conflict of interest requiring one of the co-insurers to be involved) will contact the practice with regard to the investigation and handling of the matter. In cases of particular complexity or high value, one of the solicitors on the insurers' panel will be appointed by the insurers in consultation with the practice.

Where the claim clearly falls within the Self-Insured Amount, Insurers may in certain circumstances agree to the practice resolving the claim themselves.

The insurers operate in accordance with a stated claims handling philosophy which has the approval of the Society. This covers issues such as response times and a grievance procedure. The panel solicitors, in turn, operate in accordance with guidelines which also have the Society's approval. The Society has concerned itself with the claims handling philosophy and with panel solicitor guidelines as matters of principle, in order to ensure that the Master Policy functions as it should in the best interests of the Profession and members of the public. However, the Society does not become involved in the resolution of individual claims.

### **Changes in practice unit**

Mergers, de-mergers and dissolutions are all events which potentially have implications for a practice unit's cover under the Master Policy and the Brokers should be contacted at an early stage in discussions in order that advice is obtained and appropriate provision made in the agreement entered into by the principals in terms of which they document the terms of their merger, de-merger or dissolution.

The important points to be borne in mind are:

- cover is on a "claims made" basis and the same applies to any top-up cover. This means that cover is provided under the Master Policy on the basis of the Certificate of Insurance in force at the date of intimation of the claim, potential claim or "circumstance" (not necessarily the Certificate of Insurance in force at the time when the error or omission or the dishonest, fraudulent, criminal or malicious act occurred or was alleged to have occurred).
- if a principal merely retires from a continuing practice unit; if a principal dies; or if a principal is assumed, the Certificate of Insurance in force at that time is unaffected. It, and subsequent Certificates, will continue to provide cover for the benefit of current, assumed and former principals.
- if there is a merger, de-merger or dissolution of a practice unit, the question which requires to be addressed is:- "whose Certificate of Insurance will provide indemnity in the event of a future claim arising out of the past work of a practice which has dissolved or which becomes part of a merged practice unit or out of a dishonest, fraudulent, criminal or malicious act or omission in that dissolved/constituent practice?"
- if the professional liabilities of a dissolving or merging practice are not assumed as the responsibility of a continuing practice unit, then, for the purposes of the Master Policy, the ceased practice unit is treated as going into "run-off" and future protection under the Master Policy is on the basis of "run-off cover" for which there may be a charge depending on the claims experience of the ceased practice.
- "run-off cover" means continuing cover under the Master Policy on the same terms and conditions (except as regards limit of indemnity) as those contained in the last issued Certificate of Insurance in the name of a ceased practice unit. This provides protection for the benefit of the former principals and employees of the former practice unit and their personal representatives.

The limit of indemnity in respect of "run-off cover" is linked to the mandatory limit of indemnity in force from time to time (currently £2m any one claim) rather than the limit of indemnity which applied at the time the practice unit ceased (which might well have been less than the current mandatory limit of indemnity). A lower limit of indemnity may apply to a claim or "Circumstance" intimated prior to 1st November 1995 in respect of a practice which ceased prior to that date.

If there is any doubt as to whether the "run-off" limit of indemnity is adequate in respect of the ceased practice's potential liabilities, the Brokers should be requested to clarify the position and consideration may require to be given to effecting additional cover.

The Brokers will require written confirmation from or on behalf of the principals concerned as to how future professional liabilities are to be covered under the Master Policy.

These are all matters which should, in the interests of all parties, be discussed timeously with the Brokers who will be able to give advice on the options available and their respective implications.

Other material changes of circumstances occurring mid-term should be notified, promptly, to the Brokers. Examples include changes in personnel, undertaking work involving "foreign" elements, opening branch offices.

### **Instructions to/from other professionals**

In the event of the practice receiving instructions from other solicitors or other professional firms, consideration should be given as to who should be liable to the client, or any interested third party, in the event of an error or omission on the part of either firm. The same considerations arise in the event of the practice unit itself requiring to instruct another professional firm. Letters of engagement with appropriate indemnity provisions may be required to regulate these matters.

### **Risk Management**

The advice of the Society and its Brokers is available in relation to practical risk management arrangements. Risk Management is supportive of and is complementary to better client care and essential to better practice management.

### **Number of Chargeable Principals**

A Principal of a Practice Unit means, in relation to that Practice Unit, a sole practitioner, a partner in a partnership, a member of a limited liability partnership, a director or shareholder of a company. A Principal of a Practice Unit also includes any individual being held out as, designated as or otherwise represented as a partner or a director of a Practice Unit, irrespective of the business structure. For the avoidance of doubt reference to partners would include partners designed as equity or salaried as all partners would be regarded as managers in terms of the glossary to the Society's Rules.