

Master Policy Professional Indemnity Arrangements

**A report by the SLCC following the retender exercise
carried out by the Law Society of Scotland**

17 November 2021

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1. Background

a. What is the Master Policy?

The Master Policy is a single compulsory collective professional indemnity insurance scheme for all private practices of Scottish solicitors.

b. History of the Master Policy in Scotland

The Society's first Professional Indemnity Insurance Rules in relation to a Master Policy were the Solicitors (Scotland) Professional Indemnity Rules 1977 which came into effect on 1 January 1978. The scheme became mandatory for all members of the profession in private practice in 1 November 1978.

The first brokers to the Master Policy were Sedgwick Forbes UK Limited who worked with the Society to establish the administration and broking system for the scheme. Sedgwick Forbes was eventually bought by Marsh who continued as Master Policy brokers until 2016, when Lockton won the tender for 2016-21.

c. The role of the Master Policy brokers

The role of the company appointed to be brokers for the Master Policy is primarily:

- To negotiate with insurance markets each year to ensure that the Master Policy is renewed on as competitive and sustainable terms as possible
- To administer the Master Policy renewal process to the service requirements set down by the Law Society
- To provide advice and guidance to the solicitor profession on risk management.

The broker arranges for the Master Policy to be underwritten by insurers, monitors the performance of insurers, accepts notification of Master Policy claims, refers claims to insurers, and investigates any complaints concerning insurers' conduct of claims. The broker does not have a direct role in the handling of individual claims, which are allocated to insurers, who handle claims according to the Master Policy Claims Handling Philosophy.

d. Indemnity arrangements in other sectors/ jurisdictions

Some professions do not require their practitioners to hold professional indemnity insurance, however, there has been an increasing trend for professional indemnity insurance to be a condition of having a practicing certificate or be mandated by legislation for many professions.

There are master policy schemes in place in some other jurisdictions, including in Victoria, Australia.

The Master Policy approach differs from the professional indemnity arrangements for solicitors now in place in England & Wales, where the Solicitors Regulation Authority (SRA) sets rules¹ and minimum requirements for authorised firms to take out and maintain professional indemnity insurance, and firms can purchase insurance from one of a number of 'Participating Insurers' (insurers that agree to the minimum policy terms and conditions determined by the regulator).

Professional indemnity insurance costs are currently high across all professions, and across the UK. The Society highlights that Scottish solicitors pay considerably less for higher cover by comparison to their counterparts in England and Wales, due to the collective buying power of the Master Policy approach. Under the terms and conditions of the Master Policy, every Scottish legal firm, irrespective of size, business profile or claims record, will be provided with a quote under the Master Policy. That is not necessarily the position for firms in England & Wales who could find they either cannot source cover at an affordable price, or in some cases, obtain a quote for cover at all.

¹ SRA Indemnity Insurance Rules, <https://www.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/>

2. Statutory basis

a. Legislative basis and policy debate

The Law Society of Scotland has the statutory power to maintain professional indemnity insurance arrangements for all practising solicitors in Scotland. However, the exact nature of the professional indemnity insurance arrangements is not specified. The Law Society of Scotland has elected to do this by means of a Master Policy negotiated with an insurance broker, which then provides for cover through several insurers.

From discussions during the passing of the 2007 Act until now, there has been a recognition that while consumer protection aims drive the regulatory need for professional indemnity insurance arrangements, those arrangements operate as a system of professional indemnity insurance and not as a consumer compensation scheme. The arrangements can and do support consumer protection aims; helping to ensure liabilities to legal consumers are met in a range of circumstances – including after a firm has ceased – but that is not their operational focus, nor is it the role of the brokers or insurers to seek to meet this outcome. That is a clear and fundamental distinction, and indeed a research project commissioned by the SLCC in 2009-11², which considered the views of both the profession and the public, concluded that “the purpose of the Master Policy was to indemnify solicitors against claims of professional negligence rather than to indemnify clients against loss”.

These dual aims, of both indemnifying solicitors and making arrangements which meet a key client protection need, sit with the Law Society of Scotland. Those aims may often be in harmony, but could at times be in tension, and it is the Law Society, as representative body and primary regulator of the profession, who must seek to balance them in practice, as well as to consider how to appropriately present the aims, role, benefits and limitations of the Master Policy to the profession, to claimants, the wider public, policy makers and other stakeholders.

An example of this tension might be that while a Master Policy helps ensure that all solicitors operating in Scotland have indemnity cover, thereby protecting clients who have a valid claim, it means that those firms with a good claims record are effectively subsidising those who don't (and potentially keeping those firms in business, where they otherwise might not be able to continue). Similarly, the Society's ability to offer a

² <https://www.scottishlegalcomplaints.org.uk/about-us/who-we-are/oversight-research/research-trends-in-practice/client-protection-fund/>

high standard of protection without an increased financial burden may be challenged if costs were to rise significantly and the Society had to balance increased costs for its members with the level of protection for clients. In that situation, there could be a tension for the Society to manage between its legitimate membership aim to indemnify solicitors and protect them from costly claims or insurance premiums, and the level of appropriate protection for consumers.

This tension can currently be seen playing out in England and Wales where the SRA and Law Society are in disagreement about how to deal with the closure of the Solicitors Indemnity Fund³.

b. The Law Society of Scotland's duties

The 1980 Act gives the Law Society powers to require solicitors to take out and maintain insurance, and to establish and maintain a fund for that purpose. The Law Society's Rules provide the basis for the Master Policy⁴.

Rule B7.1 provides that the Council of the Law Society should approve the terms of the Master Policy. The Insurance Committee has a remit:

- to negotiate the commercial terms of the PII arrangements for those members in private practice via the insurance brokers with the insurers
- to conduct the tender for the brokerage and administration of the current Master Policy arrangements
- to put in place an annual risk management programme for members via the brokers
- to liaise with the SLCC with respect to its oversight function of the PII arrangements for those members in private practice.

The Insurance Committee is a Member Services Committee of the Law Society and therefore does not sit as a regulatory sub-committee operating under a schedule of delegated powers from the Regulatory Committee. This has implications for its place within the Society's governance structure and its membership (all regulatory sub-committees are 50/50 non-solicitor/solicitor). It is not clear to what extent, if any, the Regulatory Committee of the Law Society can or does have any input into either overarching policy discussions on the role of indemnity arrangements in helping to meet the Society's consumer protection aims, or on the operation of the Master Policy specifically.

³ <https://www.legalfutures.co.uk/latest-news/not-our-job-to-help-retired-solicitors-sleep-easy-says-sra>

⁴ <https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-b/rule-b7/rules/b7-1-master-policy/>

By contrast, arrangements for the Client Protection Fund are overseen by the Client Protection Committee, which does sit as a sub-committee of the Regulatory Committee.⁵ Section 3F(2) of the Solicitors (Scotland) Act 1980⁶ specifically includes the administration of the Client Protection Fund (formerly the Guarantee Fund), but not indemnity arrangements, in the list of functions exercised by the Regulatory Committee. However, it is clear that the list is not intended to be exhaustive (the clause states “Those functions include (in particular)...”).

We believe it would be appropriate for the Regulatory Committee to make its views on indemnity arrangements known. The Regulatory Objectives it works to include protecting and promoting the interests of consumers and the public interest. In addition, the Committee notes that it is a key element of its remit “where any rules policy, process or procedural changes are not in the authority of the Regulatory Committee to change, to make recommendations for any changes to the appropriate governance group in the Society”.⁷ For example, we might expect to see the Regulatory Committee set the minimum criteria for the indemnity arrangements (as the [SRA does in England and Wales](#), for example) and the Insurance Committee to then procure against that criteria, or should that not prove possible, to engage in a discussion with the Regulatory Committee about what it might be possible to achieve. This would ensure that it is the Regulatory Committee, in line with its statutory role, that sets the regulatory minimum.

c. The SLCC’s oversight powers

The 2007 Act gives the SLCC powers to monitor the effectiveness of guarantee funds, including professional indemnity arrangements.⁸

The SLCC’s interest in the Master Policy primarily proceeds from an interest in ensuring that where redress is awarded, following a complaint against a firm being upheld, that wherever possible the complainer receives that redress in full. Depending on the circumstances of the case, the Master Policy may play a part in this. In some cases, a firm will make a claim against the Master Policy in order to meet the redress requirement. In others, where a firm does not meet its responsibilities to pay redress, this insurance means that, if a valid claim against a

⁵ <https://www.lawscot.org.uk/about-us/who-we-are/our-committees/regulatory-committee/client-protection-sub-committee/>

⁶ <https://www.legislation.gov.uk/ukpga/1980/46/section/3F>

⁷ <https://www.lawscot.org.uk/about-us/strategy-reports-plans/regulatory-committee-strategic-objectives-2021-2022/>

⁸ [Legal Profession and Legal Aid \(Scotland\) Act 2007](#), Section 39

solicitor is established, that claim can be paid – even if the solicitor is no longer in practice, no longer solvent or cannot be traced. As such the Master Policy can and does form an important consumer protection tool, and can help to drive public and consumer confidence in legal services.

The SLCC has previously stated its concern that in some cases, complainers do not receive the full redress they have been awarded. As the Master Policy is a key tool in supporting this, it is vital that its terms, as far as possible, enable payments to be made to complainers for redress which have not or cannot be met by the firm.

This is important because the Law Society and the legal profession rightly point to the consumer protection offered by the Master Policy as a key benefit of being a regulated profession. The Law Society website states, “Scottish solicitors working in private practice have professional indemnity insurance cover for claims against them. This insurance means that, if you establish a valid claim for negligence against a solicitor, that claim will be paid - even if the solicitor is no longer in practice, no longer solvent or cannot be traced.”⁹ However, this does not make clear that, at present, there are situations where redress awarded is not covered by the Master Policy, particularly where it takes the form of a rebate of fees rather than compensation, where it falls beneath the self-insured amount, or in some cases, where it is more difficult to establish whether the solicitor is no longer solvent.

In addition to its role in supporting redress, we very much welcome and commend the role of the brokers in using evidence and insight from claims data to help inform and advise the profession on risk management, following the excellent work of the Insurance Committee to establish the requirement for a minimum of one hour ‘risk management’ CPD for all solicitors. This complements the work of the SLCC in providing guidance to the profession on recognising and avoiding the common causes of complaints, and good complaint handling. This is a key tool in ensuring the profession provides a professional service to clients, and helps to reduce the likelihood of avoidable complaints and claims.

d. Arrangements for this report

In January 2020 the Convener of the Insurance Committee met with the SLCC Board to discuss the Master Policy, and, noting the forthcoming retender exercise, confirmed that arrangements could be made for the SLCC to have observer status. In November 2020 the Law Society confirmed the dates for the meeting of the tender

⁹ <https://www.lawscot.org.uk/members/regulation-and-compliance/professional-indemnity-insurance/>

panel in March 2021, and the SLCC confirmed that the Director of Public Policy would attend as the SLCC's observer. In January 2021, the Committee confirmed arrangements for the SLCC to observe the tender process, noting that:

- the tender is confidential and the observer was required to agree to and sign a confidentiality agreement with respect to the information shared or observed
- the observer would be permitted to attend and observe the presentations of the potential brokers to the tender panel, but would not be allowed to ask questions to potential brokers
- the observer would not be invited to stay on for the tender panel's deliberations.

The above terms were set out in a confidentiality agreement signed by the Director of Public Policy on 23 February 2021. This followed a discussion between the SLCC and the Insurance Committee regarding the final condition – that the SLCC could not observe the panel's deliberations.

Throughout the process, the clerk to the Insurance Committee kept the SLCC informed of the timescales and developments in the tender process, and provided a helpful point of contact. We would like to record our thanks to the Law Society Insurance Committee for its positive engagement with us on this matter. We hope this will form the basis for future constructive engagement between us.

e. Other discussions on the Master Policy

Throughout this period, productive discussions have been ongoing regarding current and future arrangements for the Master Policy, including:

- discussions with the current broker to allow payments to be made to cover outstanding claims
- discussing potential changes to the principal terms of the Master Policy with the lead insurer in advance of the 2021-22 insurance year to ensure that wherever possible, where awards of redress are made under the statutory complaints scheme, the complainant always receives the redress
- joint work between the Law Society, the SLCC and Scottish Government to consult on changes to the 2007 Act, including to allow for a process where, when an awarded rebate of fees cannot be paid by the practitioner due to death, insolvency or cessation, the equivalent amount can be treated as an actual loss for the client/complainer, and so instead be paid out by the professional indemnity insurance scheme.¹⁰

¹⁰ <https://consult.gov.scot/justice/amendments-to-legal-complaints/>

3. An assessment of the Tender process

a. What we are able to comment on

The SLCC has considered the start to finish process for the tender, including the process set out and followed by the Law Society. However, we have not been party to many of the papers or discussions which have taken place within the Law Society regarding the tender process, so where we are unaware of the existence or content of particular documents or discussions, we have said so. We have made no comment on the detail of the tender presentations made to the Law Society, or any of the other company or tender-specific information shared with us as part of this process. That is rightly confidential, and we are concerned with the overarching process undertaken by the Law Society in appointing a broker, rather than the final decision made.

b. Rationale/ purpose of the tender and the goods/ services required

We understand that the Law Society shared a full tender brief with those invited to tender, but that this is not published (the SLCC has not seen this document). However, we also believe that a clear, published statement on the rationale for the tender, beyond the Law Society's ongoing requirement to make arrangements for professional indemnity insurance for the solicitor profession, would be a helpful addition to the process, allowing the wider profession, the SLCC and other interested parties to understand the aims which underpin the tender process and decision.

c. Exploring the market to identify the widest possible pool of providers

While we have not seen any market analysis which may have been carried out, it was clear from discussions during the tender process that the Law Society has a good understanding of the indemnity insurance market, which would allow it to draw up a list of providers to approach. We note the highly specialist nature of professional indemnity insurance, however, in a small, targeted field it is vital that attempts are made to attract tenders from all possible quarters to help ensure best fit and value for money. It is also important that the Law Society consider learning from any providers approached who chose not to tender, to ensure that any unnecessary barriers to tendering are removed. This will avoid skewing the available pool of companies. Due diligence would also require consideration at this stage about any potential conflicts which might exist, and how those could be mitigated, to ensure a fair and transparent process. Again, this is particularly important in a small specialist market. We understand that the Society has Conflict of Interest protocols which

operate throughout the organisation and these would apply to the procurement of a Master Policy broker.

d. Agreeing key criteria and a scoring mechanism for submissions

In order to ensure a fair, transparent and purposeful tender process, key criteria should be agreed, along with a scoring mechanism to aid decision making. The Law Society identified key issues of importance to it in assessing providers. These issues were used to shape a questionnaire shared with potential providers to outline the information they required to provide to the tender panel in advance, and to guide the presentations and discussion at the panel session. The issues also formed the basis of a scoring grid used by the panel in its decision making.

The use of clear criteria to guide tender submissions, to aid discussion and to support scoring and decision making is helpful. It is not clear, however, how these issues were identified, and it would be useful to tie these back to a clear policy statement on the overall purpose of the Master Policy, in order to demonstrate the policy objectives being achieved. It is also not clear the extent to which the criteria were developed with input from across the Law Society, for example, drawing on input from the Regulatory Committee. While the Insurance Committee is charged with conducting the tender process on behalf of the Council, we believe that the Regulatory Committee has a clear interest in the provision of indemnity arrangements which both meet the needs of the profession and deliver the required consumer protections.

e. Setting out clear decision making processes

The scoring grid used by the panel to aid its decision making is highlighted above, but the broader decision making processes used by the panel, the Insurance Committee, and, ultimately, the Council of the Law Society are unclear to us.

On 1 April 2021 the tender panel presented its recommendation to the Insurance Committee for discussion. Following that discussion, the Insurance Committee presented its recommendation to the Law Society Council on 29 April. The Law Society Council is the decision maker (this power is not delegated to the Insurance Committee). At time of writing, we are not aware that a decision has been publicly issued, although we have been advised that it has been made.

It is not clear what mechanisms exist should the Council not agree with the recommendation of the Insurance Committee (or the wider Insurance Committee not

agree with the panel's recommendation). However, the Council's final decision is usually publicised to the profession, with reasons given, and it should be open to members to question that decision through the Society's structure.

4. Key findings and recommendations

a. Key strengths and recommendations for improvement

With the caveat that we have only been able to observe part of the tender exercise, from what we have seen, we believe that overall the process for selecting the best company to appoint as broker and administrator of the Master Policy was generally sound.

To enhance this, best practice could be sought from comparable procurement processes operated by others, including public sector procurement arrangements. Given the highly specialised and restricted market, and the significant size of the contract, this could provide a helpful way to ensure a transparent and competitive tender process in future years.

The Law Society identified its key criteria for the contract, invited tenders based on that, conducted a robust appraisal of the tenders against an objective measure of performance against those key criteria, and used that to form a decision. The key criteria identified focused on the practical role and responsibilities of the appointed company, and allowed the Law Society to judge proposals against those requirements.

What was less evident was how those criteria had been shaped, and the extent to which they had been informed by:

- A review of previous terms, both in terms of individual company performance, but also any key issues which had arisen and how they were dealt with
- Feedback from the profession on the operation of the Master Policy
- Feedback from claimants on the operation of the Master Policy
- An assessment of key risks and any appropriate mitigations in relation to the functioning of the Master Policy over the coming term.

We believe it would be helpful for the Law Society to be transparent about how the criteria were reached.

In addition, we believe that this tender decision should not only focus on the practical administration of the Master Policy, but on the extent to which the appointed company is able to support the Law Society to achieve its policy aims for the profession's indemnity arrangements, and to explore innovative solutions to issues such as reducing consumer harm and detriment, ensuring the sustainability of indemnity arrangements, appropriate apportionment, and tackling poor service and

risk management within the legal profession. That is not to say that companies have not or will not be able to do this, but that this did not appear to form a key part of the tender process or decision.

We also believe it would be beneficial for the Law Society to set out a policy statement on indemnity insurance arrangements for the solicitor profession. This should include consideration of both the regulatory and membership outcomes it is intended to support, with input from the Regulatory Committee on public and consumer interests. This would set the context for both the five year tender process, and annual discussions with the lead insurer on the principal terms of the Master Policy. It would ensure that all decisions regarding arrangements for professional indemnity insurance tie back to those overarching aims, and meet the expectations of the public, consumers, the legal profession, and policy makers.

Therefore, our recommendations are:

- The Law Society should consider setting out a clear policy statement on the overall purpose of indemnity insurance arrangements for the solicitor profession, and the role of the Master Policy specifically in achieving the stated aims
- There should be a clear role and opportunity for the Regulatory Committee to input to the approach and wider thinking on how indemnity arrangements support both consumer protection and public confidence
- The tender process should begin with a clear statement of rationale/ purpose of the tender and the services required
- Any market analysis should be thorough, and include discussions with providers who chose not to tender (to remove barriers and for future learning) and due diligence regarding any potential conflicts
- The decision making process should be set out clearly and transparently to both the profession and the public – it is vital that both groups have confidence in the way decisions are made, and the opportunity to input, question and challenge them, as required
- The Law Society should ensure that learning from the operation of the Master Policy, including the views of the profession and claimants, informs future decision making.

We are conscious that some of these recommendations may already form part of the Law Society's approach, but we have been unable to verify these as part of our observation.

b. Looking to the future

The SLCC's oversight role gives it powers to monitor the effectiveness of professional indemnity arrangements. As stated above, the SLCC's interest in the Master Policy primarily proceeds from an interest in ensuring that where redress is awarded, following a complaint against a firm being upheld, that wherever possible the complainer receives that redress in full. Indemnity arrangements are one important part of that picture. Our learning from observing the tender process is that many of the decisions which would likely have the greatest impact on this aim are taken either:

- at a policy level regarding how indemnity arrangements operate in general, and the role of Master Policy specifically in meeting the stated aims, or
- on an annual basis in discussions with the appointed broker to agree terms.

We therefore consider those aspects further below, and will discuss with the Law Society how we might discharge our oversight of those aspects of the indemnity arrangements in the coming five years.

For the SLCC's part, we would like to work with the Law Society to understand the full trajectory of decisions, including:

- How the Law Society keeps the role of client protection supports and indemnity arrangements, including the Master Policy, under review, including the minimum requirements set
- What policy statements the Law Society has developed regarding indemnity arrangements/ the Master Policy, and how these are applied and kept under review
- How that thinking informs the five-yearly tender process, to ensure that it helps the Society to achieve its stated aims
- How annual terms are developed which draw on that wider thinking, and which draw learning from previous years to refine and adapt to current conditions.

We believe that this is in line with the 'assure' aim of the Law Society's strategy¹¹, and consistent with the aims set out by the Regulatory Committee in its strategic plan¹². We also believe the approach we have set out is in line with our strategic approach to oversight, as set out in our recently published statement¹³. We would

¹¹ <https://www.lawscot.org.uk/about-us/strategy-reports-plans/strategy-2020-2022/>

¹² <https://www.lawscot.org.uk/about-us/strategy-reports-plans/regulatory-committee-strategic-objectives-2021-2022/>

¹³ <https://www.scottishlegalcomplaints.org.uk/media/2297/our-approach-to-oversight.pdf>

very much welcome any feedback from the Law Society on whether they feel the approach and measures in this report are consistent with the strategic direction we set through that work.

c. Proposed approach – the next five years

Our proposed approach is to use our learning from this work to inform the next five years, both for ourselves and for the Law Society. We would like to encourage the Law Society to set out a five year programme up to and including the next tender exercise. Timescales here are indicative, but would allow all points to be considered in a timely way in advance of the next tender exercise. The SLCC will discharge its oversight function by publishing an update each year on progress made.

SLCC business year starting	LSS business year starting	Actions	Assessment by the SLCC
Jul 21	Nov 21	<ul style="list-style-type: none"> • SLCC to publish this report • LSS to publish its response to this report • LSS to set out its own five year trajectory to the next tender and to publish this • Insurance Committee to share annual terms with SLCC 	<p>Is a response to our report published? (Yes/No)</p> <p>Has LSS set out a five year plan (Yes/No)</p> <p>Does the five year plan include all of the actions below (Red/Amber/Green)</p> <p>Has the Committee shared annual terms? (Yes/No)</p>
Jul 22	Nov 22	<ul style="list-style-type: none"> • Review of governance of indemnity arrangements (see Note 1 below) • Review of appropriateness of Master Policy in meeting the requirements of the 1980 Act (see Note 2 below) 	<p>Has LSS conducted a review of governance of indemnity arrangements? (Yes/No)</p> <p>Does the review consider the issues raised in this report? (Red/Amber/Green)</p> <p>Has LSS conducted a review of the appropriateness of</p>

			<p>Master Policy in meeting the requirements of the 1980 Act? (Yes/No)</p> <p>Does the review consider the issues raised in this report? (Red/Amber/Green)</p>
Jul 23	Nov 23	<ul style="list-style-type: none"> • LSS engagement with profession on experience of the Master Policy • LSS engagement with claimants on experience of the Master Policy 	Has LSS engaged with the profession and claimants to inform tender criteria? (Yes/No)
Jul 24	Nov 24	<ul style="list-style-type: none"> • LSS publish clear statement of rationale/ purpose for the tender and construct tender criteria • LSS and SLCC to agree observation of the tender exercise 	<p>Has LSS published a statement on the tender? (Yes/No)</p> <p>Has observation been agreed? (Yes/No)</p>
Jul 25	Nov 25	<ul style="list-style-type: none"> • Tender exercise 	Has the tender exercise been completed satisfactorily? (Red/Amber/ Green)
Jul 26	Nov 26	<ul style="list-style-type: none"> • LSS to run an internal 'lessons learned' and provide outcomes to the SLCC • SLCC to publish assessment of tender process, and close out report on the five year cycle 	<p>Has a 'lessons learned' exercise been completed? (Yes/No)</p> <p>Has a final report been published (Yes/No)</p>

Note 1 – Governance of indemnity arrangements

We have outlined above our belief that indemnity arrangements have a dual function as a benefit for the profession and as part of the public interest and consumer protection functions exercised by the Society as the primary regulatory of the profession. On that basis, we believe a review of the governance of the indemnity arrangements would be helpful to clarify in what ways and to what extent decisions about indemnity arrangements reflect and take into account those dual functions. We would specifically like consideration given to the role of the Regulatory Committee.

We would expect to see these issues debated by the Regulatory Committee and the Council. We will request minutes and papers under s39 of the 2007 Act.

Note 2 – Consideration of the appropriateness of the Master Policy in meeting 1980 Act requirements

The tender exercise itself focused on the technical operation of the Master Policy. It did not consider the continued appropriateness of the terms of the Master Policy, and the use of a Master Policy itself, in meeting the professional indemnity requirements of the solicitor profession, as set out in the 1980 Act. We understand that it is for the Council of the Law Society to agree, and review as required, the terms of the Master Policy and the appropriateness of the Master Policy approach, as well as alternative approaches. We therefore recommend that the Law Society publish current terms and set out intended timescales for any future reviews. We believe that these reviews should take place at least every ten years, to ensure they reflect the current context and inform good tender decisions.

We have previously highlighted our view that the Society's periodic review of its terms and approach should be an aspect of our oversight of the indemnity arrangements, to support public confidence that issues relating to the Master Policy's role as a key consumer protection are full taken into account.

We would expect to see debates at Insurance Committee, Regulatory Committee and Council. We will request minutes and papers under s39 of the 2007 Act.

5. Conclusion

Firstly, we want to reiterate our thanks to the Law Society, and specifically the Insurance Committee, for working with us to facilitate our observation of the Master Policy tender process. This has been a very helpful learning opportunity for us in understanding how the tender process fits within the wider operation of the Master Policy, and professional indemnity arrangements more generally. We hope this report will equally be a helpful opportunity for the Committee and wider Law Society to better understand our interest in this area, and will help to support future joint working between us.

As well as commenting on the delivery of the tender process itself, we have made comment here on those wider arrangements, and how we believe they could be enhanced. As stated throughout this report, we are conscious that some of the recommendations we make may well already be in operation. However, the fact that we have not seen them, and have been unable to find them in the public domain, suggest that at the very least, further consideration could be given to the transparency of these decisions that have significant implications for the profession and public alike.

For the SLCC, the recommendations we have made are intended to continue a constructive dialogue with the Society about how professional indemnity arrangements can best support and protect both the profession and legal service users. We know that these aims are shared by the Society, and we look forward to working together to achieve them.

6. Appendix – Statutory Basis

Legal Profession and Legal Aid (Scotland) Act 2007

39 Monitoring effectiveness of guarantee funds etc.

(1) The Commission may monitor the effectiveness of—

(a) the Scottish Solicitors Guarantee Fund vested in the Society and controlled and managed by the Council under section 43(1) of the 1980 Act (“the Guarantee Fund”);

(b) arrangements carried into effect by the Society under section 44(2) of that Act (“the professional indemnity arrangements”);

(c) any funds or arrangements maintained by any relevant professional organisation which are for purposes analogous to those of the Guarantee Fund or the professional indemnity arrangements as respects its members.

(2) The Commission may make recommendations to the relevant professional organisation concerned about the effectiveness (including improvement) of the Guarantee Fund, the professional indemnity arrangements or any such funds or arrangements as are referred to in subsection (1)(c).

(3) The Commission may request from the relevant professional organisation such information as the Commission considers relevant to its functions under subsections (1) and (2).

(4) Where a relevant professional organisation fails to provide information requested under subsection (3), it must give reasons to the Commission in respect of that failure.

Legal Profession and Legal Aid (Scotland) Act 2007, Section 39,
<https://www.legislation.gov.uk/asp/2007/5/section/39>

Solicitors (Scotland) Act 1980

44 Professional indemnity

(1) The Council may make rules with the concurrence of the Lord President concerning indemnity for solicitors and former solicitors and incorporated practices against any class of professional liability, and the rules may for the purpose of providing such indemnity do all or any of the following things, namely—

(a) authorise or require the Society to establish and maintain a fund or funds;

(b) authorise or require the Society to take out and maintain insurance with an

authorised insurer;

(c) require solicitors or any specified class of solicitors and incorporated practices or any specified class thereof to take out and maintain insurance with an authorised insurer.

(2) The Society shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of the rules.

(3) Without prejudice to the generality of subsections (1) and (2) rules made under this section—

(a) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;

(b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (1)(a) and require solicitors or any class of solicitors and incorporated practices or any class of incorporated practices to make payments to any such fund;

(c) may require solicitors or any class of solicitors and incorporated practices or any class of incorporated practices to make payments by way of premium on any insurance policy maintained by the Society by virtue of subsection (1)(b);

(d) may prescribe the conditions which an insurance policy must satisfy for the purpose of subsection (1)(c);

(e) may authorise the Society to determine the amount of any payments required by the rules subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;

(f) may specify circumstances in which, where a solicitor or incorporated practice for whom indemnity is provided has failed to comply with the rules, proceedings in respect of sums paid by way of indemnity in connection with a matter in relation to which he or, as the case may be, it has failed to comply may be taken against him or, as the case may be, it by the Society or by insurers;

(g) may specify circumstances in which solicitors and incorporated practices are exempt from the rules;

(h) may empower the Council to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and

(i) may contain incidental, procedural or supplementary provisions.

(4) Failure to comply with rules made under this section may be treated as professional misconduct or unsatisfactory professional conduct.

(5) In this section an “authorised insurer” is—

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of general liability insurance;

(b) a person who has permission under Part 4 of that Act to effect or carry out contracts of insurance relating to accident, sickness, credit, suretyship, miscellaneous financial loss and legal expenses;

(c) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of general liability insurance; or

(d) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts relating to accident, sickness, credit, suretyship, miscellaneous financial loss and legal expenses;

“professional liability” means any civil liability incurred by a solicitor or former solicitor in connection with his practice or in connection with any trust of which he is or formerly was a trustee and, as respects incorporated practices, means any liability incurred by it which if it had been incurred by a solicitor would constitute such civil liability.

(6) The definition of “authorised insurer” in subsection (5) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.

Rules of the Law Society of Scotland

B7.1 Master Policy

7.1.1 In this rule 7.1, unless the context otherwise requires, terms listed in the first column of rule 7.1.1 shall have the meanings respectively ascribed to them in the second column of that rule:

Term	Definition
acceptable alternative insurer	a person so designated by the Council in terms of this rule 7.1
authorised insurer	any person permitted under the Financial Services and Markets Act 2000 to carry on liability insurance

	business or pecuniary loss insurance business
brokers	the brokers from time to time appointed by the Council to act on behalf of the Society and its members in relation to any master policy entered into by the Society in terms of this rule 7.1

7.1.2 The Society shall take out and maintain with authorised insurers to be determined from time to time by the Council a master policy in terms to be approved by the Council to provide indemnity against such classes of professional liability as the Council may decide. The Council at its discretion may amend the terms of the master policy from time to time.

7.1.3 Subject to rule 7.1.6, the master policy shall provide indemnity for all regulated persons to whom this rule 7.1 applies and for such former regulated persons and other parties as may be mentioned in the master policy.

7.1.4 The limits of indemnity and the self-insured amounts under the master policy shall be as may be determined from time to time by the Council. Nothing in this rule 7.1 shall prohibit any regulated person from arranging with the insurers to extend the cover provided by the master policy if and on such terms as the insurers may agree.

7.1.5 Subject to rule 7.1.7, every regulated person to whom this rule 7.1 applies shall be obliged to be insured under the master policy and:

- (a) to comply with the terms of the master policy and of any certificate of insurance issued to him thereunder; and
- (b) to produce along with each application for a practising certificate a certificate from the brokers certifying that the regulated person in question is insured under the master policy for the practice year then commencing or the part thereof still to run as the case may be, or such other evidence of such insurance as may be acceptable to the Council.

7.1.6 Rule 7.1.3 is qualified to the effect that the master policy need not provide indemnity for any regulated person to whom this rule 7.1 applies who is, or is a member of, a multi-national practice, provided that this qualification shall not apply in respect of any such regulated person who is, or is a member of, a Scottish multi-national practice.

7.1.7 Where in terms of rule 7.1.6 no indemnity is provided by the master policy in respect of a regulated person to whom this rule 7.1 applies:

- (a) that regulated person shall not be obliged to comply with rule 7.1.5; and
- (b) that regulated person shall be obliged to be insured with an acceptable alternative insurer, in terms equivalent to the terms of the master policy or acceptable to the Council; and:

- (i) shall comply with the terms of that insurance policy and of any certificate of insurance issued to him thereunder; and
- (ii) shall produce along with each application for a practising certificate (or, if he is a registered foreign lawyer, registration certificate) a certificate certifying that he is insured for the practice year in question or the part thereof still to run as the case may be, or such other evidence of such insurance as may be acceptable to the Council.

7.1.8 The Council shall designate an authorised insurer or authorised insurers as an acceptable alternative insurer or as acceptable alternative insurers for the purposes of rule 7.1.7.

7.1.9 The Council is hereby empowered to take such steps as it may consider expedient in order to:

- (a) ascertain whether or not this rule 7.1 is being complied with; or
- (b) satisfy itself with regard to any matters arising out of the master policy or any insurance policy taken out in accordance with rule 7.1.7.

<https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-b/rule-b7/rules/b7-1-master-policy/>

<https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-b/rule-b7/advice-and-information/b7-1-information-on-the-master-policy/>