

Master Policy Professional Indemnity Arrangements

Year 2 update report

24 November 2023

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1. Background

a. Our 2021 report

The [2007 Act](#) gives the SLCC powers to monitor the effectiveness of professional indemnity arrangements. In November 2021, following an invitation to observe the tender of the Master Policy carried out by the Insurance Committee of the Law Society, the SLCC published a [report](#) which reflected on the process of the tender and made recommendations for future exercises. It also considered wider issues relating to the effectiveness of the indemnity arrangements.

b. Our starting point

The SLCC's views on the Master Policy proceed primarily from an interest in ensuring that where redress is awarded the complainant should, wherever possible, receive that redress in full. Depending on the circumstances of the case, the Master Policy may play a part in this, meaning that it is an important consumer protection tool and can help to drive public and consumer confidence in legal services.

In recent years the Insurance Committee, the brokers and the SLCC have worked collaboratively to address specific issues in relation to the Master Policy. That has allowed a number of outstanding claims to be covered, and updated the Master Policy terms to ensure awards may now be made in additional circumstances. We appreciate the Insurance Committee's willingness to continue to consider and address any specific issues we raise in relation to the Master Policy, and we will continue to work collaboratively on these operational issues as they arise.

In addition to its role in supporting redress, we have welcomed the role of the broker 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.

The Master Policy is an important consumer protection tool and the Law Society and SLCC share an interest in ensuring that it supports public and consumer confidence in regulated legal services.

2. Key findings and recommendations

a. Findings and recommendations from our 2021 report

In our 2021 report we set out a number of recommendations relating to the tender process, and wider indemnity arrangements. The recommendations were:

- 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 noted that 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.

Finally, our 2021 report set out an indicative timeline for both the Law Society and the SLCC to address these issues, although we noted that the Society may wish to propose an alternative approach.

Our recommendations are intended to be constructive, but we recognise it is for the Insurance Committee and the Society to consider how to respond to them.

b. Discussion with the Law Society of Scotland

Throughout this process, there has been a robust debate about the report's findings, and continued difference of opinion on some key issues. However, we have welcomed the opportunity to better understand the Law Society's views and processes in relation to the Master Policy. We hope it has also provided an opportunity for the Law Society to better understand our aims and to consider how assurance could be provided that the way indemnity arrangements are governed and delivered is informed by regulatory need.

c. Our assessment of progress this year

In the continued absence of any alternative proposal from the Society, we have considered progress against the recommendations we set out in our 2021 report, taking into account any other action we have seen in relation to the indemnity arrangements.

The Law Society has not published any response to our report, although it has confirmed that the Insurance Committee has considered the report and our recommendations, and discussions on the issues raised have taken place between the SLCC and the Law Society.

The Society has engaged with our recommendation to review the governance of indemnity arrangements in that it has confirmed to us the arrangements currently in place and has stated that these do not need to be reviewed or updated any further. While we welcome the consideration given to this issue, we hope the Society will keep this under review and consider whether the appropriate balance is in place regarding the respective roles of the Regulatory Committee and its sub-committees, who exercise the Society's regulatory functions, and the non-regulatory work relating to indemnity arrangements which continue to be undertaken by the Insurance Committee.

We are also grateful to the Insurance Committee for setting out the steps it has taken over the past year to review the performance of indemnity arrangements, and that it has no concerns. We hope that in the coming years that ongoing review will include engagement with the profession and claimants on their experience of the Master Policy indemnity arrangements. This will help to inform the next tender as well as to provide a broader view of how the arrangements are working for all stakeholders and the extent to which they meet both the requirements of the 1980 Act and the public and regulated community's expectations of professional indemnity insurance arrangements which form a cornerstone of client protection.

Finally, we note the Committee's view that it is not yet at a point where it needs to look at the tender process for the Master Policy. We would agree in relation to the tender process itself but would note that our wider recommendations are intended to inform and support that process, and so would need to be considered in advance. This applies, for example, to our recommendation discussed above that the Society engage with the profession and claimants on their experience of the Master Policy.

We do appreciate the Committee's confirmation that it will again invite the SLCC to observe relevant stages of the tender process when it takes place.

3. Conclusion

This is our second annual update report. We continue to welcome the engagement of the Law Society and particularly the Insurance Committee with us on these issues, but it is disappointing that there is little concrete progress to report.

We appreciate that the Society believes the current legislation provides us with limited 'light touch' oversight powers, and that our recommendations go beyond that. We consider that our approach is proportionate and in line with the discretion given in this section of the Act. We have sought to align recommendations to the existing work of the tender, suggested they are phased over a number of years, and offered the Society discretion to propose alternative approaches, should it wish.

In doing so, we are looking for the Society to provide assurance that the Master Policy is operating well and in line with the regulatory objectives in order to ensure consumer protection and public confidence.

We expect that the next tender process will formally commence in mid-2025 to appoint a broker for the five-year period starting January 2027. For any of these recommendations to inform that process, it is important that they are considered, and where appropriate, acted upon, over the coming years.

We stand ready to work with the Society, the Insurance Committee and the Regulatory Committee to achieve this.

Appendix – Proposed approach

The table below was published in our 2021 report, setting out our proposed approach to assessing action against the recommendations we had made. We stated that we would like to encourage the Law Society to set out a five year programme up to and including the next tender exercise. The timescales outlined 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	RAG rating
Jul 21	Nov 21	LSS to publish its response to this report	Is a response to our report published? (Yes/No)	No
Jul 21	Nov 21	LSS to set out its own five year trajectory to the next tender and to publish this	Has LSS set out a five year plan (Yes/No) Does the five year plan include all of the actions below (Red/Amber/Green)	No
Jul 21	Nov 21	Insurance Committee to share annual terms with SLCC	Has the Committee shared annual terms? (Yes/No)	Yes
Jul 22	Nov 22	Review of governance of indemnity arrangements	Has LSS conducted a review of governance of indemnity arrangements? (Yes/No) Does the review consider the issues raised in this report? (Red/Amber/Green)	To some extent
Jul 22	Nov 22	Review of appropriateness of Master Policy in meeting the requirements of the 1980 Act	Has LSS conducted a review of the appropriateness of Master Policy in meeting the requirements of the 1980 Act? (Yes/No)	No

			Does the review consider the issues raised in this report? (Red/Amber/Green)	
Jul 23	Nov 23	LSS engagement with profession and 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	LSS publish clear statement of rationale/ purpose for the tender and construct tender criteria	Has LSS published a statement on the tender? (Yes/No)	
Jul 24	Nov 24	LSS and SLCC to agree observation of the tender exercise	Has observation been agreed? (Yes/No)	
Jul 25	Nov 25	Tender exercise	Has the tender exercise been completed satisfactorily? (Red/Amber/Green)	
Jul 26	Nov 26	LSS to run an internal 'lessons learned' and provide outcomes to the SLCC	Has a 'lessons learned' exercise been completed? (Yes/No)	
Jul 26	Nov 26	SLCC to publish assessment of tender process, and close out report on the five year cycle	Has a final report been published (Yes/No)	