

# **Master Policy Professional Indemnity Arrangements**

**Year 3 update report**

January 2025

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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 complainer 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.

We have also welcomed the role of the broker in using evidence and insight from claims data to help inform and advise the profession on risk management. 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 Insurance Committee, the brokers and the SLCC continue to work collaboratively to address specific issues in relation to the Master Policy. 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.

However, as our report sets out, we believe that a more proactive approach is also needed to keep the Master Policy arrangements under review and to monitor how the arrangements work in practice to ensure they meet any stated aims.

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**

Over the past year we have been in regular dialogue with the Society and the brokers – and separately with the insurers and their legal representatives – to ensure that the Master Policy paid out to cover appropriate awards in relation to individual cases about a ceased firm.

We were concerned that the starting point for the insurers to this new issue was to argue that it couldn't be covered by the policy, to appoint legal representatives to manage discussions with us, and to resist paying out. We understand that the policy may not cover all situations, and that has to be tested in each case, but we would have hoped for a more positive engagement to explore whether valid claims had been made, particularly given the circumstances of the situation.

Following extensive discussions between us, the Society and the brokers over a number of months, we are pleased to report that this issue now seems to have been resolved for both existing and future cases. However, while we welcome the engagement on this and the work to ensure this has happened, many people waited far too long to receive their awards and we spent unnecessary time arguing about what awards could be covered by the policy, chasing payments, and keeping complainers updated on progress. That simply should not have been necessary, and it's disappointing that the Master Policy arrangements didn't ensure that happened

without our intervention and significant additional work on our part.

This goes to the heart of the recommendations we have made to the Law Society's Insurance Committee and Regulatory Committee about the arrangements. Novel issues will come up from time to time that will need considered and agreed, as has happened this year. It's vital those are dealt with those swiftly and in line with the stated aims of the policy, appropriately balancing the various interests of the profession, consumers and the public interest. There should also be an opportunity for wider post-event analysis and learning to drive improvement.

However, if those aims are not clearly set out and understood by everyone involved, then it becomes much more challenging for swift and appropriate decisions to be taken because it's not clear what principles should drive and underpin those decisions. That leads to the confusion and messy debate we saw this year and incurs additional time and cost for everyone involved, as well as delays and distress for those consumers awaiting awards.

We believe it's also the case that issues could potentially be avoided at source if everyone was clear about the aims of the indemnity arrangements and that the arrangements were regularly tested against those aims to ensure they are fit for purpose. Put simply, understanding if something is fit for purpose requires you to first be clear on its purpose.

The lack of clarity means an assessment of fitness for purpose simply cannot be made. And it's not clear the extent to which this wider question is being asked either by the Insurance Committee or the Regulatory Committee who are, in different ways, responsible for its operation. We know from previous exchanges that the Insurance Committee regularly reviews the performance of indemnity arrangements. We believe the events of this year may have raised questions within the Society about that performance, and any reflections on that would be welcome. But pre-emptive, risk-based regulation should also require those questions to be asked and answered proactively from time to time, even in the absence of any concerns, to inform ongoing arrangements and hopefully to avoid future issues.

Regardless of the approach to indemnity arrangements, we would expect the Society to have a stated view on what those arrangements should aim to achieve and on the various trade-offs and policy decisions that guide how they should operate in practice. That might include, for example, detailing any essential or desirable

features, how these are balanced when they are in conflict, who is responsible for deciding what that balance should be (e.g. the Council, the Regulatory Committee, the Insurance Committee) and communicating that view transparently to all interested parties. We understand that the specific details of the policy have to be negotiated commercially. We do not believe that stops the body responsible for commissioning the policy from setting out what it hopes to achieve as the starting point for those negotiations.

We understand that the Society has previously carried out periodic reviews of its approach looking strategically at how indemnity arrangements are delivered. The last one we are aware of took place in 2015. We believe an updated review is now overdue.

That is why we believe Society should consider again the recommendations we made in our 2021 report. We will continue to press the Insurance Committee and the Regulatory Committee to do so. And we would welcome any steps the Society took to set out its own approach to this work.

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. We have not seen any action this year, nor are we aware of any underway.

As we move closer towards the next tender process beginning in 2025, we believe the proposed actions we outlined – for example, reviewing the appropriateness of the Master Policy in meeting the requirements of the 1980 Act, or engaging with the profession and claimants on their experience of the Master Policy indemnity arrangements – become more pressing. We would welcome hearing from the Society about how it is preparing for the tender. 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.

These actions would 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.

### **3. Conclusion**

This is our third annual update report. We continue to welcome the engagement of the Law Society and the Insurance Committee with us on these issues, and we particularly recognise the engagement of the Society and the brokers with us in helping to resolve some significant issues this year.

However, it is disappointing that those issues were so difficult to resolve, and that there is still little concrete progress to report on our broader recommendations. We believe the two issues are linked and we urge the Society to consider again whether some of our recommendations may have helped to avoid some of the issues we saw this year, and similar issues arising in future.

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 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, in the coming year.

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)	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)	Not yet due
Jul 24	Nov 24	LSS and SLCC to agree observation of the tender exercise	Has observation been agreed? (Yes/No)	Yes, in principle
Jul 25	Nov 25	Tender exercise	Has the tender exercise been completed satisfactorily? (Red/Amber/ Green)	Not yet due
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)	Not yet due
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)	Not yet due