

**Note: This is not a draft policy but minimum terms which any policy must meet. Where exclusions are permitted, insurers may not impose more onerous terms but may choose to offer more extensive cover in respect of the matters excluded, or any other respects.**



## **Bar Standards Board: Minimum Terms of Entity Cover**

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Effective as from 00:00 Greenwich Mean Time on 1 April 2015.

## **1 INSURING CLAUSE**

1.1 Subject to the provisions of these Minimum Terms of Cover, the insurance must indemnify the Insured against any and all Claims:

- (a) which are first made against the Insured during the Period of Insurance, or
- (b) which are first made against the Insured during or after the Period of Insurance and which arise from circumstances first notified to the Insurer during the Period of Insurance or within 28 days of expiry of the Period of Insurance,

in respect of any and every description of Civil Liability whatsoever arising out of or in any way in connection with the Insured Practice whensoever and wheresoever the act or omission or other circumstances or event giving rise to such liability may have occurred.

1.2 The insurance must indemnify the Insured against Defence Costs.

1.3 The insurance must indemnify the Insured against civil liability in like terms to paragraph 1.1 to the extent that it arises from any Claim in connection with a Prior Practice.

1.4 The insurance shall have no retroactive date.

## **2 LIMIT OF INDEMNITY**

2.1 Subject to sub-paragraphs 2.2-2.7 below, the insurance must provide that the liability of the Insurer is not less than:

- (i) the Limit of Cover, and in addition
- (ii) Defence Costs without limit of amount.

2.2 The insurance may provide that if a sum in excess of the Limit of Cover has to be paid in order to dispose of any Claim, the Insurer's liability in respect of Defence Costs shall be in the same proportion as the Limit of Cover bears to the sum paid to dispose of the Claim. In the event of the Insurer having already indemnified the Insured in respect of Defence Costs, the Insurer shall be entitled to recover from the Insured such proportion of them as may exceed that proportion of the sum paid in order to dispose of the Claim as is represented by the Limit of Cover.

2.3 The insurance may provide that if a Claim becomes the subject of proceedings before any court or tribunal in the United States or Canada and is resolved (whether by judgment, settlement or otherwise) in accordance with the law of such jurisdiction, any Defence Costs covered under paragraph 2.1(ii) above shall be included within and not payable in addition to the Limit of Cover.

2.4 The liability of the Insurer under these Minimum Terms of Cover may exclude:

- (i) any award of punitive, exemplary or multiple damages by any court or tribunal in the United States or Canada;
- (ii) any costs and expenses incurred without the prior written consent of the Insurer;
- (iii) any award requiring repayment, reduction or waiver of any fees in whole or in part or case fee ordered by the Legal Ombudsman, and any order in

any court proceedings brought to enforce payment of any such award or case fee;

- (iv) any fine ordered by the BSB or any panel thereof or by any other Regulator.

2.5 The indemnity provided by the Insurer under these Minimum Terms of Cover may be provided by the Insurer in its absolute discretion in any one or any combination of the following ways:

- (i) by payment in or towards satisfaction of the Claim and/or claimant's costs to or to the order of the claimant making the Claim against the Insured;
- (ii) by payment in respect of the Claim and/or claimant's costs and/or Defence Costs to or to the order of the Insured against whom the Claim is made;
- (iii) by payment in or towards discharge of Defence Costs to or to the order of the legal advisers, adjusters or other persons by whom or in respect of whose services such costs and expenses were incurred.

2.6 The insurance may provide that if VAT is payable upon any element of the indemnity provided by the Insurer to any of the Insured who is registered for VAT, such VAT shall be paid and accounted for by such Insured and not by the Insurer.

2.7 The insurance may provide for a Deductible. In the event that the Deductible becomes payable by the Insured and is paid by the Insurer to dispose of a Claim, the Insured shall reimburse the Insurer in respect thereof.

### **3 EXCLUSIONS**

3.1 Any liability of the Insurer under these Minimum Terms of Cover for the following may be excluded (and where the Insurer chooses to provide cover for Defence Costs of Disciplinary Proceedings, or otherwise going beyond the minimum cover that is required by these Minimum Terms of Cover, the remaining exclusions may so far as relevant extend to such cover):

- (i) Claims for bodily injury or death unless arising out of the provision of Legal Services to a client by the Insured;
- (ii) Claims for loss of or physical damage to property unless
  - (a) the property is property in the care of the Insured in connection with, but is not occupied or used by him for the purposes of, the Insured Practice, or
  - (b) the loss or physical damage arose out of the provision of Legal Services to a client by the Insured;
- (iii) Claims arising out of any fraudulent dishonest or malicious act or omission on the part of the Insured, save that (a) the Insurer must indemnify the Insured against Claims arising out of any fraudulent dishonest or malicious act on the part of the Insured's servant or agent for which the Insured is liable in law provided that the Insured establishes to the reasonable satisfaction of the Insurer that it did not commit or condone the fraudulent dishonest or malicious act or omission, and in any event (b) the Insurer must indemnify any other Insured which did not commit or condone the fraudulent dishonest or malicious act or omission;

- (iv) Claims against which the Insured is entitled to be indemnified under any other insurance, but only to the extent that he is entitled to be and is so indemnified;
- (v) Claims arising out of any breach of any duty owed by the Insured as an employer to an employee, or as owner or occupier of any property;
- (vi) Claims in respect of trading debts incurred by the Insured;
- (vii) Claims in respect of any loss or damage directly or indirectly caused by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (viii) Claims arising out of any dispute between present or former members, pupils, Clerks or Employees of Chambers or other regulated entity in respect of matters relating to or in any way connected with ownership, occupation, possession, management or administration of the Chambers or regulated entity or of any property used in or for the purposes of the Chambers or the regulated entity;
- (ix) Claims made against any Insured in their capacity as a director or officer of a body corporate.
- (x) Claims in respect of any liability incurred under any express term of a contract, save to the extent that such liability would have arisen as a matter of law in the absence of such express term and would otherwise fall within the provisions of these Minimum Terms of Cover.
- (xi) Claims arising out of or in any way in connection with the provision of Legal Services in a system of law and/or jurisdiction in which the Insured is not authorised to provide Legal Services by
  - (a) the BSB or any successor regulator to it; or
  - (b) any competent professional body; or
  - (c) any judicial or other body;
- (xii) Claims arising out of any criminal offence committed or allegedly committed by the Insured or out of an enquiry conducted by Her Majesty's Revenue and Customs into the Insured's tax or VAT affairs.
- (xiii) Costs or penalties incurred in respect of disciplinary proceedings of any type.
- (xiv) Conveyancing, to the extent that this involves services going beyond the scope of reserved instrument activities as defined in the Legal Services Act 2007 and ancillary advice, as for example by carrying out searches or lodging documents with the Land Registry or taking steps to transfer title.

#### **4 AVOIDANCE, REPUDIATION, RESCISSION AND REIMBURSEMENT**

- 4.1 The insurance must provide that, save in the circumstances set out in paragraphs 4.2 to 4.4 below, the Insurer shall not be entitled to cancel, avoid, repudiate or rescind any insurance or any liability thereunder to the Insured or to claim damages against

the Insured on any grounds whatsoever, including misrepresentation, non-disclosure, or breach of condition or duty.

4.2 If an Insured

- (i) has fraudulently misrepresented or fraudulently failed to disclose any material fact, or
- (ii) notifies any Claim knowing it to be false or fraudulent,

the insurance may provide the Insurer shall be entitled to claim damages and/or to avoid the insurance and/or to refuse to indemnify the Insured. In such event the Insurer may in its absolute discretion, notwithstanding any such avoidance of the insurance or refusal to indemnify, satisfy all or any part of any Claim made against the Insured responsible for such fraud (including the claimant's costs) by paying the same to the claimant. In such circumstances, the Insurer shall be entitled to recover any amount so paid from the Insured responsible for such fraud.

4.3 Where any misrepresentation or non-disclosure that does not otherwise entitle the Insurer to avoid the insurance has resulted in the Insurer effecting the insurance for a lower consideration than would have been the case if the correct and full facts had been disclosed, the insurance may provide that the Insured shall pay to the insurer such additional premium as the insurer would reasonably have required if the correct and full facts had been disclosed to it.

4.4 The insurance may provide that where any breach of the insurance has prejudiced the Insurer in its handling of any Claim against the Insured, the Insured responsible for such breach shall reimburse to the Insurer the difference between the sum paid by the Insurer in respect of the Claim and the sum which would have been payable in the absence of such prejudice.

**5 NOTICE OF CLAIMS**

5.1 The Insurance may not make provision in respect of notice of Claims that is more onerous to the Insured than that set out in paragraphs 5.2-5.4 below.

5.2 The Insured shall give written notice to the Insurer as soon as practicable of any

- (i) Circumstance that may subsequently give rise to a Claim against the Insured;
- (ii) Claim that has been made against the Insured.

5.3 The Insured shall forward every letter, claim form, application and process to the insurer immediately upon receipt, and shall in all cases upon request give to the insurer such further information and render such assistance as it may reasonably require.

5.4 All such notices shall be given and all such documents forwarded to the insurer at the address given in the Cover Note or at such other address as may be notified to the Insured.

**6 CONDUCT AND SETTLEMENT OF CLAIMS**

6.1 The Insurance may not make provision in respect of conduct and settlement of Claims that is more onerous to the Insured than that set out in paragraphs 6.2-6.9 below.

- 6.2 The insurer shall be entitled to take over and conduct in the name of any Insured the defence of any Claim and shall be entitled to appoint such legal representatives to investigate and defend the Claim or, following the notification of a Circumstance pursuant to sub-paragraph 5.2(i), any potential Claim as it considers appropriate. The Insured shall co-operate with, and provide all reasonable assistance to, the insurer in connection with any Circumstance or Claim notified pursuant to section 5.
- 6.3 Neither the insurer nor the Insured shall be required to contest or continue to defend any Claim unless a Queen's Counsel (appointed by agreement or by the Chairman of the Bar Council in the absence of agreement) shall advise that, taking due account of the interests of both the insurer and the Insured, such Claim should be contested or continue to be defended. The insurer and the Insured shall agree to be bound by the opinion of the Queen's Counsel, which shall be treated as having been given as an expert and not as an arbitrator. Liability for the Queen's Counsel's fee for advising under this paragraph shall lie with the party against whose contention the Queen's Counsel advises.
- 6.4 The Insured shall not settle any claim for indemnity, contribution or recovery, nor surrender any right to the same, without the prior written consent of the insurer. The Insured shall not admit liability for any Claim or incur any costs or expenses in connection therewith without the prior written consent of the insurer.
- 6.5 Subject to sub-paragraph 6.6, the insurer shall take all reasonable steps to inform the Insured of any proposals for settlement and shall not admit liability for or settle any claim without the written consent of the Insured.
- 6.6 The insurer shall be entitled to settle any claim without the prior written consent of the Insured if:
- (i) the Insured does not give written notice refusing his consent to a settlement recommended in writing by the insurer within 28 days (or such shorter period as the insurer may stipulate where the circumstances require) of the recommendation being sent to the Insured; or
  - (ii) it is not possible or permissible to obtain instructions from the Insured and where the insurer believes in good faith that settlement is necessary to protect the interests of the Insured and/or the insurer.
- 6.7 If the Insured refuses to consent to a settlement recommended in writing by the insurer, the insurer's liability in connection with the Claim shall not exceed the sum for which it could have been settled and the Defence Costs up to the date when such settlement could have been effected.
- 6.8 If the Insured offers to settle and/or settles any Claim, the insurer shall be under no liability to indemnify him in respect of that offer and/or settlement or to pay any costs or expenses incurred in connection with the same, unless
- (i) The insurer approves the settlement, or
  - (ii) (a) the Insured has notified the insurer in writing of the proposed terms of settlement; and
    - (b) The insurer has given its written consent to the proposed terms of settlement or has failed within 28 days of receipt of the said notice to give written notice to the Insured objecting to the proposed terms of settlement.

- 6.9 If any payment is made by the insurer in respect of a Claim against the Insured, The insurer will be subrogated to all rights of the Insured of indemnity, contribution or recovery to the extent of that payment.

## **7 EXTENDED INDEMNITY PERIOD**

- 7.1 The insurance must provide cover for no less than the minimum Limit of Cover from time to time prescribed by the BSB until the sixth anniversary of the end of the Period of Insurance in respect of Claims which are made against the Insured arising out of any acts or omissions giving rise to liability which occurred prior to the end of the Period of Insurance unless the Insured or a Successor Practice obtains insurance complying with the minimum terms required by the BSB for the period which immediately follows the period of insurance. In the event of such cover being triggered the Insurer may recover an additional premium in respect thereof. In the event that the Insured or a Successor Practice obtains insurance complying with the minimum terms required by the BSB during the period that the insurer is providing cover in compliance with this provision, the insurance in compliance with this provision shall cease with effect from the date of inception of such replacement insurance.
- 7.2 The insurance must additionally provide cover for no less than the minimum Limit of Cover from time to time prescribed by the BSB for a period of 30 days following the ending of the Period of Insurance, including in respect of claims which are made against the Insured arising out of any acts or omissions giving rise to liability which occurred within that 30 day period, unless before the end of that 30 day period the Insured or a successor practice obtains insurance complying with the minimum terms required by the BSB or the Insured Practice ceases. For the purposes of 7.1, the Period of Insurance includes this 30 day period where appropriate.

## **8 DISPUTES AND GOVERNING LAW**

- 8.1 The insurance must provide that any difference or dispute (other than one arising pursuant to paragraph 6.3) that may arise between the Insurer and the Insured out of or in connection with the insurance shall be referred to a sole agreed arbitrator (or in default of agreement to a sole arbitrator appointed by the Chairman of the Bar Council), whose decision shall be final and binding. The insurance must provide that English law shall govern the insurance and any arbitration arising pursuant to this paragraph.
- 8.2 The insurance must provide that any provision which is inconsistent with the requirements set out herein shall be severed or rectified so as to comply with the requirements herein unless the provision concerned affords greater protection to the Insured than provided by the requirements herein.

## **9 DEFINITIONS**

In these Terms of Cover (and unless the context otherwise requires), the following expressions have the following meanings:

Ad Hoc Judge	Serving as an ad hoc judge or tribunal member in an international tribunal.
Arbitration	An arbitration, adjudication, expert determination, or early neutral evaluation.

Arbitrator	Serving in an Arbitration as: <ul style="list-style-type: none"> <li>(i) an arbitrator or umpire; or</li> <li>(ii) a concilio-arbitrator; or</li> <li>(iii) an adjudicator; or</li> <li>(iv) an expert determiner; or</li> <li>(v) a neutral evaluator.</li> </ul>
Authorised Insurer	<ul style="list-style-type: none"> <li>(i) a person who has permission under Part IV of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance including professional indemnity insurance;</li> <li>(ii) a person who carries on an insurance market activity, within the meaning of section 316(3) of that Act;</li> <li>(iii) 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 insurance including professional indemnity insurance; or</li> <li>(iv) a person who does not fall within paragraph (a), (b) or (c) and who may lawfully effect or carry out contracts of insurance including professional indemnity insurance in a member state other than the United Kingdom.</li> </ul>
Bar Council	The General Council of the Bar of England and Wales.
BSB	The Bar Standards Board
Chambers	The place or places (as notified to the BSB) at or from which the Insured carries on its practice.
Circumstance	An incident, occurrence, fact, matter, act or omission that may give rise to a Claim.
Civil Liability	For the purposes of these Terms of Cover, Civil Liability includes any liability to pay wasted costs;
Claim	A demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages.
Clerk	The clerk and junior clerks employed (whether under a contract of service or as an independent contractor) by the Insured in connection with Insured Practice.



Code of Conduct	The Chartered Institute of Arbitrators Code of Professional and Ethical Conduct.
Cover Note	The Cover Note issued by the insurer in respect of any Period of Insurance, including where the context so requires a Cessation Cover Note, and any endorsement.
Deductible	The amount set out in the Cover Note for which any Insured shall be responsible to contribute towards any payment made by the insurance in the defence or settlement of any claim.
Defence Costs	<p>Any costs or expenses incurred with the prior written consent of the insurer in any of the following situations:</p> <ul style="list-style-type: none"> <li>(i) As regards a Circumstance notified under sub-paragraph 5.2(i) in the investigation, defence and settlement of a potential Claim;</li> <li>(ii) in the defence or settlement of any Claim;</li> <li>(iii) in the conduct of any proceedings for indemnity, contribution or recovery relating to a Claim;</li> </ul> <p>provided that:</p> <ul style="list-style-type: none"> <li>(i) any such Claim or potential Claim are capable of giving rise falls or would fall within the terms of paragraph 1.1; and</li> <li>(ii) any such Claim or potential Claim are not excluded from cover by any of the exclusions under paragraph 3.1.</li> </ul>
Employee	Any person other than a Clerk who is employed (whether under a contract of employment or as an independent contractor) by the Insured in connection with the Insured practice.
European Lawyer	As defined in the BSB Handbook.
Foreign Lawyer	As defined in the BSB Handbook.
Insured	<p>Each of the following persons:</p> <ul style="list-style-type: none"> <li>(i) The Insured partnership, or limited company and legally qualified partners, directors, principals or employees thereof (including a Foreign Lawyer or European Lawyer in any of the said capacities).</li> <li>(ii) Any pupil of the Insured, but only in respect of work performed in practice whilst a pupil of the Insured.</li> <li>(iii) Any former pupil of the Insured who has not practised since completing that and any other pupillage, but only in respect of work performed in practice whilst a pupil of any Insured.</li> </ul>

- (iv) Any Clerk or employee, but only in respect of matters occurring whilst in employment as a Clerk or employee in connection with the Insured Practice of the Insured, or with the Insured Practice of any pupil or former pupil of any Insured to the extent and within the limits insured under paragraphs (ii) and (iii) above.
- (v) Any estate, legal personal representative or insolvency practitioner of any of the above in respect of any claim made or circumstance reported during the period of insurance in respect of the Insured practice.

Each of the Insured shall be severally insured by virtue of the issue of a Cover Note to the Insured and shall for all purposes in connection with these Terms of Cover be treated as separately insured hereunder as if under a separate insurance, so that (for example) no act or omission (including fraud, committed or condoned) on the part of any one or more of the Insured shall prejudice the rights of or adversely affect any other(s) of the Insured or in any way derogate from the cover granted to any other(s) of the Insured.

Insured Practice

- (i) The supply of Legal Services regulated by the BSB;
- (ii) the supply of Legal Services as a Foreign Lawyer or European Lawyer in any jurisdiction by an Insured;
- (iii) acting as an Arbitrator;
- (iv) acting as a Mediator;
- (v) acting as a Legal Secretary;
- (vi) acting as an Ad Hoc Judge;
- (vii) employment and voluntary work at the Bar Pro Bono Unit or at a law centre or legal advice centre or in relation to, or as honorary legal adviser to, a charity or other Voluntary Association;
- (viii) membership of any disciplinary tribunal or investigation committee;
- (ix) acting as an expert on matters of English law, European Union law, public international law, the law relating to international arbitration, or transnational law anywhere in the world;
- (x) any other practices and occupations as may be specified in the Cover Note or in any endorsement thereto.

Insurer

The Insurer which issues the policy in compliance with these minimum terms, being an Authorised Insurer.

Legal Ombudsman	An ombudsman under the scheme established under Part 6 of the Legal Services Act 2007.
Legal Secretary	Serving as a legal secretary or assistant to an Arbitrator, Mediator or a domestic or international tribunal.
Legal Services	<p>Legal advice representation and drafting or settling any statement of case witness statement affidavit or other legal document but does not include:</p> <ul style="list-style-type: none"> <li>(i) lecturing in or teaching law or writing or editing law books articles or reports;</li> <li>(ii) examining free of charge newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;</li> <li>(iii) communicating to or in the press or any other media;</li> <li>(iv) exercising the powers of a commissioner for oaths;</li> <li>(v) giving advice on legal matters free to a friend or;</li> <li>(vi) in relation to a barrister or Registered European Lawyer who is a director of a company or a trustee or governor of a charitable benevolent or philanthropic institution or a trustee of any private trust, giving to the other directors trustees or governors the benefit of his learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust.</li> </ul>
Limit of Cover	<p>The sum of £500,000 each and every Claim or such other Limit of Cover in excess of the Deductible as may be specified in the Cover Note (subject to a minimum of £500,000), provided that the insurance may stipulate that only one Limit of Cover shall apply to all Claims which in the reasonable opinion of the insurer arise from or are attributable to</p> <ul style="list-style-type: none"> <li>(i) the same act or omission; or</li> <li>(ii) a series or group of related acts or omissions; or</li> <li>(iii) a series or group of similar acts or omissions; or</li> <li>(iv) the same originating cause.</li> </ul>
Mediation	A mediation or conciliation.
Mediator	Serving as a mediator or conciliator in a Mediation.
Period of Insurance	The period (all dates inclusive) specified in the Cover Note.
Prior Practice	Each practice which was previously regulated by the BSB and has ceased to exist and to which the Insured practice is ultimately a Successor Practice by way of one or more mergers, acquisitions, absorptions or other transitions. A practice shall not cease to exist by virtue of this definition merely by virtue of a minor change in the

number or identity of partners or the directors, officers or shareholders of a company.

Registered European Lawyer

A European Lawyer registered as such by the BSB and by an Inn pursuant to a direction of the Joint Regulations Committee under Regulation 30 of the Consolidated Regulations and who supplies Legal Services from an Insured entity in England and Wales and who (for the avoidance of any possible doubt) is not employed to supply Legal Services under a contract of employment or by virtue of an office under the Crown or in the institutions of the European Union.

Successor Practice

The practice regulated by the BSB into which a Prior Practice has been merged, acquired by, absorbed or otherwise traced by transition or a sequence thereof. A practice will be a Successor Practice where it has been held out expressly or by implication in any way whatsoever as a successor to a Prior Practice or where the owner or owners of the majority interest in the Prior Practice are owners, part owners or employees of the practice under consideration as Successor Practice.  
More than one Successor Practice to a Prior Practice may exist.

Voluntary Association

A body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.