

## Consultation: run-off cover

### Introduction

1. This consultation proposes to make explicit on the face of IPReg's regulatory arrangements the requirement to put in place professional indemnity insurance run-off cover when a firm closes (if there is no successor practice that has assumed all its liabilities) to ensure that former clients of the firm remain protected by PII. The consultation also asks whether there should be a requirement for firms to make information about their PII insurer available to clients and, if so, the best way of doing this. It also proposes to make explicit the requirement to provide IPReg with information about PII on request.
2. **This consultation closes on Wednesday 9 October 2019 at 5pm.**

### The current regulatory framework

3. IPReg's [Rules of Conduct](#) require all those it regulates to have in place professional indemnity insurance (PII) that is commensurate with the risks arising from the extent and size of their practice, having due regard to the requirement only to undertake work within their expertise or competence.<sup>1</sup> IPReg-regulated firms and individuals can only take out a PII policy with "participating insurers" that have agreed to provide cover that meets our [minimum terms and conditions](#) (MTCs). This is to ensure that there is a basic standard of consumer protection in place across all regulated firms and attorneys.
4. The MTCs allow a participating insurer to require the insured attorney or firm to notify it of any claim or notice of intention to make a claim and of any circumstances that may give rise to a claim. The insurer can refuse to indemnify the attorney or firm (or may reduce the sum payable) if this is not done.<sup>2</sup>
5. The Rules of Conduct also require, amongst other things, that those we regulate act with integrity at all times and put their clients' interests foremost.<sup>3</sup>
6. IPReg has taken out an insurance policy that provides for discretionary payments of up to £25,000 to compensate certain categories of clients for losses or hardship suffered as a result of fraud or other dishonesty (including failure to account for money) if those losses are not covered or required to be covered by PII.<sup>4</sup>
7. The Rules of Conduct also require information that IPReg requests from attorneys or firms to be submitted in a timely manner.<sup>5</sup> Information about PII is required as part of the annual re-registration process.

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<sup>1</sup> [Rules of Conduct](#): Rule 17 and Rule 4

<sup>2</sup> MTCs: Section 8 – Notification

<sup>3</sup> Rules of Conduct: Rule 5

<sup>4</sup> [Registered Bodies Regulations 2015](#): Regulation 19 and Annex B

<sup>5</sup> Rules of Conduct: Rule 19

## Discussion

### *Run-off cover*

8. PII works on a “claims made” basis. This means that when an issue comes to light that may lead to an insurance claim, it is the insurer who is providing cover on the date the claim is made that would pay the claim (this may not be the insurer who was providing cover when the event occurred). In many areas of law including intellectual property, issues may not come to light until some time after the event occurred; this may be after a practice has stopped trading.
9. IPReg therefore considers that it is consistent with the requirement in its Rules of Conduct to act with integrity and to put clients’ interests foremost for those it regulates to continue to have insurance cover in place after their practice has closed. If all the clients of the practice that has closed have been taken on by another regulated firm (a ‘successor practice’) it is likely that its PII will cover any claims. However, if there is no successor practice then a “run-off” policy must be taken out to ensure that former clients remain protected by PII.
10. The requirement to take out a run-off policy is not currently explicitly stated in our Rules of Conduct. Our experience is that, although most attorneys do take out run-off cover when they close their practice, some do not. If a run-off policy has not been taken out, there is no insurance in place if a former client makes a claim. Although it would be open to the former client to pursue the matter through the courts, we consider it would be targeted and proportionate to amend our Rules of Conduct to make explicit the requirement to take out run-off cover. We understand that in most cases, the additional cost to take out run-off cover is relatively small.

**Question 1: What are your views on including in the Rules of Conduct an explicit requirement to take out run-off cover in the event that a practice closes without all its liabilities concerning PII being acquired by another provider regulated by a legal services regulator?**

### *Provision of information to clients about PII*

11. IPReg’s recently published [Guidance](#) on improving information for consumers and small businesses suggested that it would be helpful to consumers to have an explanation of the protection that a regulated firm or attorney’s PII provides. We are aware of at least one firm that provides information on its website about who its insurer is.<sup>6</sup> We consider that it is good practice to make this information available. However, we are aware of some instances where clients have requested information from an attorney or firm about who their insurer is (because they want to make a claim) and the attorney or firm has refused to provide the information. This could put the client at a significant disadvantage if the attorney or firm does not report to their insurer the fact that the client wants to make a

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<sup>6</sup> We understand that most firms include information about insurance in their terms of business and/or engagement letter, but it is not clear whether this includes details about their insurer.

claim because under the MTCs the insurer can deny the claim or reduce the amount it pays (see paragraph 4).

12. We are therefore considering whether we should also introduce a requirement to provide information about who provides an attorney or firm's PII cover. This could be in a client care letter, on a website or on request. In considering which of these would best achieve the outcome that clients are aware of who their attorney's insurer is, we have reviewed [research](#) into client care letters. This shows, amongst other things, that although client care letters at the beginning of a legal process are welcomed by consumers, they are often perceived as difficult to read, the information in them is not always what consumers consider a priority and information in lengthy documents can often be missed. A further issue would be that if the insurer changes, notifying all clients (and former clients) of the change could be a significant task. Introducing a requirement to make information about the PII insurer available on request would ensure that up to date information is provided. However, it would be much more difficult for IPReg to monitor compliance. We therefore consider that if we are going to introduce this requirement it should be to require information on an attorney or firm's website. In the event that the attorney or firm does not have a website it would have to be made available on request.

**Question 2: What are your views on introducing a requirement to provide this sort of information about PII to clients? Do you think that the information should be provided in the client care letter, website or on demand (or a combination of these)?**

*Provision of information to IPReg about PII*

13. When attorneys and firms complete the annual return, they have to provide details of their PII policy to IPReg. Our experience is that although most attorneys do provide this information, a significant number either do not provide it or provide out of date information (e.g. a previous year's policy number). This results in considerable work chasing for the correct information. We therefore consider that it would be targeted and consistent to amend our Rules of Conduct to make explicit that this information must be provided on request to IPReg.

**Question 3: What are your views on introducing an explicit requirement to provide information about PII to IPReg on request?**

14. The draft text of the proposed changes is at Annex A.

**Question 4: Do you have any comments on the proposed drafting?**

## Annex A – proposed changes are shown tracked

### Rule 17 – Professional Indemnity

Without prejudice to any obligation contained in the Special Rules of Professional Conduct applicable to Litigation Practitioners and [New Rule #] on pro bono advice, each registered person must ensure that its Professional Indemnity Insurance (PII) is commensurate with the risks at large arising from the extent and size of their practice, with due regard to Rule 4 (Competence).

In relation to that ~~professional indemnity insurance~~ PII, each registered person ~~or his firm~~<sup>2</sup> in private practice must take out and maintain a policy with a participating insurer.

Each registered person in private practice must take out and maintain a PII run-off policy with a participating insurer in the event that their practice closes without all its liabilities concerning PII being acquired by another provider regulated by a legal services regulator.

Information about an attorney or firm's PII must be provided in [client care letters], [and/or] [on the attorney or firm's website] [and/or] [on demand]. Any limitation of liability for negligence must be clearly drawn to the attention of a client and be understood and accepted by him.

Information about a registered person's PII (including run-off cover) must be provided to IPReg on request.

Every registered person in private practice must ensure that all monies held by them for or on behalf of their clients and other persons are at all times protected by compensation arrangements to compensate for losses or hardship suffered by such persons in consequence of fraud or dishonesty or fraudulent or dishonest failure to account.

#### Guidance

17.1 *It would be expected that Professional Indemnity Insurance of at least £1 million would be required for all registered persons and their firms, unless demonstrably, their practice does not warrant a sum that high.*

17.2 *The following insurers are participating insurers:*

*PAMIA Limited*

*Allianz Global Corporate & Specialty SE*

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<sup>7</sup> Drafting note - the term "his firm" has been deleted because the definition of "registered person" in the Rules of Conduct already includes "a body (corporate or unincorporated)" that is on the register(s).

*China Re Syndicate 2088 via Catlin Underwriting Agency*

*Limited Royal & Sun Alliance Insurance plc*

*~~Wimsure Underwriting Limited on behalf of underwriters at Lloyds~~*

*These insurers have entered into a commitment with IPReg to insure on, at least, minimum terms, which is a critical element of IPReg's compensation arrangements. Participating insurers will confirm this on request.*