Professional indemnity insurance - cyber cover

Consultation responses

October 2021

Publish my response with my name

Name	Respondent type
Aon plc	Broker
Bewica	Software/regulatory
Birmingham Law Society, Consultation Committee	Law society
Joe Bryant	Individual solicitor
City of London Law Society Professional Rules & Regulation Committee	Law society
Field Seymour Parkes LLP	Law firm or other legal services provider
HDI Global Speciality	Insurer
Howden Insurance Brokers Limited	Broker
International Underwriting Association	Representative group
The Law Society	Law society
Legal Risk LLP	Law firm or other legal services provider
Liverpool Law Society	Law society
Lloyd's Market Association	Insurer
Lockton Companies LLP	Broker
Murdochs Law Ltd	Law firm or other legal services provider
QBE European Operations	Insurer
The Access Group	Software/regulatory
TLO Risk Services Limited	Law firm or other legal services provider

Publish my response anonymously

ID	Respondent type
12	Insurer
13	Law firm or other legal services provider
16.	Individual solicitor
33	Law firm or other legal services provider
40	Insurer
44	Individual solicitor
59	Law firm or other legal services provider
66	Law student

Publish my name but not my response

Name	Respondent type
Hampshire Law Society	Law society
Travelers Indemnity	Insurer

Three respondents asked us not to publish their name or their response.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:77 Data

2. About you

1.
First name(s)

Jennifer

2.
Last name

Millar

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Other

Please enter your organisation's SRA ID (if applicable)

Please enter your organisation's name

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

8.
Please specify

Insurance Broker

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

As you will be aware, Aon is a leading broker for Solicitor firms. We have a team of in excess of 40 people in the UK dedicated to these firms. We handle over 50 of the larger SRA regulated firms. We place over £10 billion of total PI limits across these firms. We place a significant portion of this total, representing over £115 million of premium, in the London market.

We do have a focus on the larger end of the profession and as such, most of our clients purchase limits significantly higher than the £3m compulsory requirement. While only the first £3m is governed by the MT&Cs, most firms maintain coverage at least as broad through the full limits they purchase. Further, most large firms, maintain coverage that is somewhat broader than the MT&Cs, in large part due to their long-term relationship with insurers who have spent a substantial amount of time underwriting their risk. Over the past several years, this extensive PI underwriting process has encompassed cyber exposure along with many other areas of a firm's professional business which would normally be assessed when considering an offer of insurance terms.

As an organisation, we have been negotiating silent cyber clauses since late last year, for clients across industries, but the negotiations for the professions have been particularly challenging as the approach taken by PI insurers has been more restrictive than in other lines of cover.
Our role is to advocate on behalf of our clients to ensure they and their customers are protected to the extent possible, for risks arising out of their professional business. In that capacity, we feel it is important that we share our views on the SRA's proposal.

Our view is that the underlying premise, which we understand is to maintain the full breadth of the current MT&Cs, is correct. We would not wish to see any limitation on that coverage. We do not agree that the proposed approach to amending the MT&Cs, by excluding cover broadly and then carving back all of the cover that is compulsory, is the best way to protect law firms and their customers from PI risk.

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

Our concern is that the use of any exclusion would limit the coverage for many firms for which brokers have successfully negotiated broader terms than the MT&Cs. They and we have worked hard to develop insurers' understanding of their risk and to provide coverage with which both sides are comfortable.

12.

3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

The proposed exclusion is the widest type available on the market, permitting cover to be excluded for losses "in any way in connection with" cyber acts, malware, computer and infrastructure failures and data protection breaches. Given most law firms use computers for the overwhelming majority of their work, it is probable that such a broad exclusion will have unintended consequences. The effect would be to bring those firms back to the minimum coverage required under the SRA rules.

In doing so, the addition of the proposed exclusion would certainly reduce the scope of consumer protection currently in place for many firms and may, in fact, impact the terms and conditions which law firms have in place with their clients as regards liability.

Our view is that there is no need to amend the MT&Cs with a cyber exclusion, as has been proposed. Rather, we would recommend that the requirement of Lloyd's and others to identify cyber coverage is handled through an affirmative cyber cover statement that applies to the cover provided by the MT&Cs. This will reinforce to insurers that the MT&Cs must apply in full, irrespective of whether the loss was caused by a cyber act, incident or data breach. The manner in which insurers treat any cover that they may offer that extends beyond the minimum requirements of the SRA will be a matter for negotiation, as per the current situation. There is no need to deal with it in the minimum terms.

There are several examples of affirmative clauses currently in wide use in the London market for other lines of cover (D&O, for example) and in other industries (Financial Institutions, for example). We feel this affirmative cyber cover approach is much better for law firms and ensures continuity of protection for consumers. There should be no ambiguity that a PI matter (whether an actual claim or potential claim) triggered by a cyber event is covered under the MT&Cs.

13. 4) Are there any other impacts which you think we need to consider?

The consultation committee may also be (wrongly) assuming that any liabilities which are excluded by the proposed clause would be covered under a standalone cyber policy. We have found that this is often not the case.

Cyber policies provide several valuable first party covers and limited third-party privacy and security liability cover, where the liability arises in the context of a security or data breach. Such cover is not intended to be and does not operate as broad civil liability cover and is certainly not intended to be a back stop or gap filler for any cover which is being lost under a PI policy. Cyber policies are not underwritten (in terms of the analysis of the insured's risk) or priced to cover hefty PI exposures. This is reflected in the level of retentions, limits and price in cyber policies when compared to PI policies. PI and cyber policies address and mitigate different risks.

Moreover, cyber insurers are aware of what is happening in the PI market in terms of the application of silent cyber exclusions and are nervous that their policies may be seen as potential dumping grounds for excluded PI risks. This has led to several leading primary cyber insurers seeking to impose broadly worded professional services exclusions on their cyber policies. Pressure is therefore being exerted from both directions, resulting in a substantial risk of claims falling through the cracks between the two covers (assuming the law firm even purchases cyber cover in the first place).

To summarise, we do not agree with the proposed change to the MT&Cs and recommend that the SRA insist that participating insurers are required to affirm that the MT&Cs do provide coverage for cyber events. We would welcome the opportunity to discuss this with you.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:79 Data

2. About you

1.
First name(s)

Eva

2.
Last name

Berg-Winters

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Other

Please enter your organisation's SRA ID (if applicable)

Please enter your organisation's name

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

8.
Please specify

Bewica - Cyber security solution

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

Yes as the proposed change appears beneficial for clients due to the increased clarity provided

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

The draft clause would expand the current scope as it would eliminate or at least reduce the grey areas in the cover afforded by PII insurance

12.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

Cyber insurance claims have been increasing which is translating into a hardening market. The proposed clause takes away an option for insurers to offer PII which explicitly excludes any cyber cover. This might lead to some insurers withdrawing from the market or else it might further fuel price increases.

13. 4) Are there any other impacts which you think we need to consider?

Insurance steps in after a loss has occurred. Bewica strongly recommends for law firms to ensure they have core cyber security measures in place, to protect their clients and themselves from attacks succeeding.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:62 Data

2. About you

1.
First name(s)

Jayne

2.
Last name

Willetts

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Law society

Please enter your organisation's SRA ID (if applicable)

Please enter your organisation's name

Please enter the name of your institution

8.

Please enter the name of the society

Birmingham Law Society, Consultation Committee

Please enter the name of the group

Please specify

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

Yes. We welcome the SRA's exercise in clarification for the benefit of the profession. In our experience, insurance policies and indeed the MTCs often have areas of doubt which result in coverage disputes between insureds and insurers. Any steps that the SRA can take to improve the understanding of all parties in this area are prudent and sensible.
Cyber risks have become a significant concern for law firms in recent years and as a result cyber insurance is often purchased as a knee jerk reaction without a full appreciation of the cover it provides. By making it clear that the civil liability provision under the MTCs covers consumer/third party losses but not First Party (law firm) losses this will enable firms to consider and then arrange cover which suits their own business needs. Firms should not underestimate the value in having a specialist professional indemnity broker standing with them and advising them preferably before they sign the contract of insurance.

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

We consider that the draft clause maintains (as it should) the current scope of consumer protection.

12.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

We do not believe that the draft clause brings about any unintended consequences.
We propose that in order to be entirely clear the draft clause in the opening sentence should be amended to add the three words (in bold and underlined below) to read as follows:
"The insurance may exclude, by way of an exclusion or endorsement, the liability of the insurer to indemnity any insured for First Party Liability in respect of or in any way in connection with:…"

13. 4) Are there any other impacts which you think we need to consider?

No. Cyber in all its forms is a concern for everyone and has been put into sharp focus by the COVID world of home and remote working becoming the norm rather than the exception. In the past lawyers would always be advised that the safest place to be doing work electronically was in the office on the safe office systems, rather than for example on the train or in a coffee shop. Ways of working brought forward by COVID restrictions have changed. We appreciate that IT systems have also changed, but we do not underestimate that criminals remain one step ahead. Any initiatives by the SRA to inform and educate in this area of risk is of great benefit to law firms and their clients.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:25 Data

2. About you

1.
First name(s)

Joe

2.
Last name

Bryant

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Beale & Co

9.
Please specify if you are

an in-house solicitor

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

On behalf of what type of organisation?

Please enter your organisation's SRA ID (if applicable)

Please enter your organisation's name

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

Please specify

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

The proposed changes try to take a middle ground between cyber and PI cover. They 'partly' cover cyber and 'partly' exclude it. Whilst the distinction between first party and third party loss is a clear one (and one can see why the SRA might have chosen this to delineate their approach, given the consumer protection mantra), cyber events rarely work along these lines; and the practical effect of having partial cover is that, unless firms take out a cyber policy with the same insurer as their PI cover, there is a significant risk of confusion and a general absence of management of any cyber incident. One of the key factors in minimising the effect of any cyber attack is to act quickly and definitively; this hybrid approach gives enormous scope for delay whilst those affected consider which party ought properly to respond, and so it could well worsen the overall impact of a cyber incident as a result.

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

At worst (for the SRA/Consumer), the level of protection stays the same. However, given that the proposed clause makes explicit something which previously might have been arguable, I would say that it actually increases consumer protection.

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

As mentioned in my answer to question 1, the main consequence is the risk of confusion, delay and lack of definitive management of any cyber event. If Participating Insurers now know that they are on the hook for claims arising out of cyber events, I can well imagine that many will insist that, as a condition of providing PII, firms take out a qualifying cyber policy aswell. In a hard market where fewer insurers are willing to be involved, there is nothing to prevent them from taking such a hard line, given that there are so few other protections for them in the MTC. This will obviously make it even harder for many firms to obtain the cover they need to continue practising.

14. 4) Are there any other impacts which you think we need to consider?

What I feel the SRA are not giving sufficient attention to (in this debate and generally), is the fact that the insurance market is an open market, with insurers being free to pull away if they do not feel that the terms on which they are being required to provide cover are fair. For as long as the SRA continue to press for more and more consumer protection (using the MTC as a

form of consumer guarantee), they will see the insurance market continue to hike its prices and/or move away from the sector completely. This cannot ultimately be good for the consumer; fewer insurers mean higher prices, higher prices mean both fewer firms (less consumer choice) and higher costs for legal work. There really ought to be more of a balance (as with other professions), where the cost of cover remains affordable, promoting growth of the profession (consumer choice); but at the price of the consumer agreeing to run the occasional risk of not having its claims paid.

The City of London Law Society

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The Cube,
199 Wharfside Street,
Birmingham,
B1 1RN

By email to piicyber@sra.org.uk

24 May 2021

Dear Sir/Madam,

Response of the CLLS Professional Rules and Regulation Committee to the SRA Professional Indemnity Insurance (*PII*) – Cyber Cover Consultation

1. Introduction

The City of London Law Society (***CLLS***) represents City lawyers through individual and corporate membership, including some of the largest international law firms in the world. The CLLS responds to a variety of consultations on issues of importance to its members through its specialist committees. This response has been prepared by the CLLS Professional Rules and Regulation Committee. For further information see the notes at the end of this letter.

The CLLS has read the SRA consultation paper on Cyber Cover (the ***CP***) with interest. We set out our comments in two sections below – first our general comments on the proposal and then some further observations. As our comments do not entirely correspond to the questions asked, we have not submitted our response via the online form.

2. General comments on the proposal

We agree with the reasoning behind the SRA's proposed amendments to the minimum terms and conditions (***MTCs***).

As the SRA argues, a purpose of mandatory insurance for regulated firms and sole practitioners should be to support consumer protection. By ensuring that individual firms or practitioners have adequate and appropriate insurance cover that meets certain specified terms and conditions, the SRA ensures that clients are protected should an unexpected event cause them loss. This, in turn, has the effect of protecting public confidence and the reputation of the profession as a whole.

We understand the concerns regarding liability for 'silent cyber' that have caused the International Underwriters Association (***IUA***) to mandate an endorsement for PII policies (***Endorsement***), but we do not think that the Endorsement strikes the right balance between excluding matters that might properly be covered by other (such as cyber) insurance and matters that should be properly covered by PII as currently drafted. Particularly paragraph 3 of the Endorsement reads as follows (our underlining):

> *This contract excludes <u>any</u> loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount <u>directly</u> caused by, <u>directly</u> resulting from or <u>directly</u> arising out of:*
>
> *a) a **Cyber Act**; or*
>
> *b) any partial or total unavailability or failure of any **Computer System***
>
> *provided the **Computer System** is owned or controlled by the insured or any other party acting on behalf of the insured in either case; or*
>
> *c) the receipt or transmission of malware, malicious code or similar by the insured or any other party acting on behalf of the insured*

We believe that the underlined words could have the effect of preventing a firm from making a claim under its PII for matters that would ordinarily be regarded as falling within the category of civil liability as defined in the SRA's consultation document. For example, suppose that a firm is working on a complex and time critical commercial transaction when it suffers a total loss of its document management and email systems. The costs to the firm of employing experts and temporary services to remedy the situation and/or buying new replacement hardware would be appropriately excluded under both the Endorsement and the SRA proposal. The firm might choose to purchase separate cyber cover to cover these first party losses.

However, what would be the position if the loss of that firm's systems caused a client to miss out on its commercial opportunity? As drafted, it would be unclear whether a claim against the firm for losses sustained by the client would be covered in the absence of there being some form of intervening act on the part of the firm. In such circumstances, the firm might find that it was not indemnified in relation to matters that it (and its client)

would expect to be covered by its PII. We think that the SRA's proposal addresses these concerns.

3. Further observations

We have a number of further observations:

- The SRA states that it does not believe that the amendments will lead to greater premium costs for firms. We would like to think that is correct given that the SRA's proposal strikes what we believe to be an appropriate balance between covering matters properly falling within professional indemnity cover and excluding those that might be covered by, for example, a separate cyber policy. However, in practice, we wonder whether asking insurers to write policies that differ from the Endorsement may still lead to a repricing for risk or to more insurers either exiting the market or seeking to impose other constraints on cover, both of which have the potential to impact premium costs. This is particularly the case given the likely impact of the pandemic on insurers. We think the SRA should exercise caution in making assumptions about pricing given the volatile environment and would be very interested to understand the analysis the SRA has carried out in this area to support its view.

- We believe that the SRA definition of '*Core Infrastructure'* should include all public utilities as well as the specifically listed suppliers of technology services. A successful attack on the electricity grid would be just as disabling as an attack on the telephone system. (We also think the second use of 'provided' in the draft definition is redundant).

- The Endorsement is specific that any cover for the costs of reconstituting or recovering documents owned or controlled by the insured does not extend to the same steps in relation to data. The Endorsement then goes on to include a definition of 'data'. We think that exclusion is an understandable approach on the part of insurers (albeit that firms would rather not have to agree it) because those costs are commonly included within the ambit of a cyber policy. The SRA draft does not deal with data specifically, we presume because cover for such costs is not specifically required under the MTCs in the absence of there being an associated civil liability. However, the SRA might wish to include some express wording on this point.

- We note the SRA's inclusion of specific wording regarding the obligation to indemnify in relation to a failure of automated technology. We are not sure that this additional provision is needed given the width of the write back already applying to (a)-(e) by reason of (i)-(iii), but we support its inclusion and the general principle that firms should expect to be covered by their PII policies where they use or misuse computer technology in the service of clients. As machine learning and other forms of artificial intelligence become increasingly standard tools and legal services digitise, it is vital that insurance cover adapts to properly address the services provided to clients.

If you would find it helpful to discuss any of these comments, then we would be happy to do so. Please contact me by email at **jonathan.kembery@freshfields.com** in the first instance.

Yours faithfully,

Jonathan Kembery
Chair
Professional Rules and Regulation Committee, City of London Law Society

About the CLLS

The City of London Law Society (CLLS) represents approximately 17,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a wide range of consultations and comments on issues of importance to its members through its 18 specialist Committees. The CLLS is registered in the EU Transparency Register under the number 24418535037-82.

Details of the work of the CLLS Professional Rules and Regulation Committee can be found here:

http://www.citysolicitors.org.uk/index.php?option=com_content&view=category&id=150&Itemid=469

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:65 Data

2. About you

1.
First name(s)

Stuart

2.
Last name

Ironside

3.
Please enter your SRA ID (if applicable)

685416

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

565970

9.
Please enter your organisation's name

Field Seymour Parkes LLP

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

Please specify

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

The proposed change to the MTCs seek to clarify what cyber cover will be available for firms under their Professional Indemnity Insurance policies. However as the draft changes are so widely drawn, this exposes insurers to situations ('Cyber Act') where the risk of claims being made against them on a wide scale is significantly increased i.e. a network outage and from a practical perspective it is very difficult to see this being acceptable to insurers without very significant detrimental consequences for law firms. If these changes will, or are likely to, cause premium substantial premium uplifts or reduced choice then we do not agree with the proposed change.

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

The draft clause expands the current scope of consumer protection. Whilst the previous MTC was silent on cyber risk by drawing the definition of Cyber Acts so broadly the new draft has effectively increased the scope of protection being sought from the PII market but this will be of negligible assistance for anyone if such insurance is not available at commercially viable rates.

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

Yes. There is a real likelihood of premium increases being levied by insurers in view of the perceived increase in exposure to claims or alternatively, and even worse for the profession, the insurers may consider the risk level too high and withdraw from the PII market. If as a result of the perceived increase in risk to the insurers, premiums are increased or capacity in the market is reduced this will have an adverse impact on the financial viability of firms. The cost of PII cover is already a major element of a firm's operating costs and an increase will impact adversely on the viability of law firms and hence result in more firms being unsustainable . This would reduce consumer choice as well as negatively impact on the financial stability of remaining firms.

In addition by drawing the lawyers' PII into a broader view of cyber risk the risk is that the lawyers will become seen as an alternative target for claims in the event of cyber induced losses even where the lawyers were not responsible for the system

failure.

Fundamentally if any amended clause cannot be drafted in such a way as to be acceptable to the primary layer insurers WITHOUT significant premium increases or insurers leaving the market then the whole issue needs to be rethought and should NOT be introduced until such time as any change can be facilitated without such knock on implications.

14. 4) Are there any other impacts which you think we need to consider?

There will clearly be an impact on the standalone cyber insurance market, which is likely to drive up premiums and trigger a review of the scope of cover provided by such policies.

Professional indemnity insurance (PII) – cyber cover: consultation
April 2021

We are writing in response to your consultation on a proposal to make a change to the minimum terms and conditions (MTCs) for the professional indemnity insurance (PII) for law firms of England and Wales. This proposal has been made in light of the increased risk of cyber-attacks on individuals and businesses.

General comments

As one of the main providers of PII for law firms across England and Wales HDI Global Specialty remains in complete support of the SRA's objective to maintain consumer protection. We believe that the relationships that law firms have with their clients are built upon a foundation of confidentiality and trust. At HDI Global Specialty, we see our role as PI Insurer as an important part of the suite of risk management tools that a law firm has that protect the high standards and reputation of the profession.

Understandably, the ever evolving and increasing threat of cyber exposure is of great concern to us. We share this concern with our Insureds. Whilst we believe that the proposed wording seeks to maintain the current level of consumer protection provided under the MTCs it is difficult to see how it achieves your aim of allowing insurers to be able to better manage their exposure. The additional clause provides clarity but does not necessarily provide comfort.

We believe that the management of the impact of a cyber-event can be very different to a more traditional PI claim. A strong data response plan can mitigate the impact of a cyber-event considerably. Early investigation and intervention are key to the protection of the public and the reputation of the profession. A cyber policy is one of the best ways for a firm to access the resources and support needed in such a time of crisis. Without standalone cyber cover in place firms may find themselves in a real danger of not being able to provide the appropriate response to a cyber-event and unable to mitigate the potential harm to their clients and the business. Our concern is that the clause may create a misunderstanding or a complacency around the level of cover provided for such a scenario under the MTCs.

With the increased use of technology as a means to conduct business and the evolution of lawtech (the importance of such becoming greater over the last year as many have had to adapt to new remote working practices) any potential aggregate cyber exposure has become difficult to quantify or assess. This is something that the cyber insurance market have the flexibility to manage. We are concerned around the lack of ability for PI insurers to aggregate exposures arising from systemic cyber losses, particularly in the scenario where there is a failure in the IT infrastructure that is through no fault of the Insured. Aggregation of exposure would not seem to be an unreasonable limitation of consumer protection.

The SRA are keen to stress that the intended language should not have any impact on PII premiums. Whilst we agree that the intention of the clause is to clarify the cover already provided under the MTCs it is likely that a lack of comfort around cyber exposure and the likely increase in the frequency and severity of cyber related claims will continue to threaten Insurers' performance and ultimately require premiums to increase in line with the risk.

We would expect to see greater scrutiny of a firm's cyber security provisions and the presence of standalone cyber insurance when assessing PII premiums. It remains to be seen whether ultimately there will be an impact on the availability of PII in the market.

At HDI Global Specialty we look to assure our Insured's that we assess every firm on its own merit. We choose to partner with firms that can demonstrate a higher level of risk awareness and risk management. We will continue to look to establish a deep level of understanding of how a firm is able to detect, respond and protect itself from potential threat. This will include consideration of the level of cyber insurance that they may have.

Finally, attention does need to be drawn to the difference in terms and conditions likely to be seen on excess layer insurance. Insureds need to consider whether they have the full protection that they think they have or require.

Turning to the specific questions in the consultation:

Question 1: Do you agree with the proposed change to our MTCs?
As per our earlier comments, we accept that the proposed change provides clarity around the cover available for cyber risk under the MTCs but we do not feel that it achieves the SRA's second aim which is to allow insurers to better manage their exposure. The increasing risk of cyber exposure means that Insurers will need to apply even greater scrutiny to a law firm's risk management provisions and may need to build further protection into the premiums charged.

Question 2: Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?
We are of the view that the draft clause maintains the current scope of consumer protection afforded through the SRA PII arrangements.

Question 3: Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?
We do not believe that there are any unintended consequences arising from the drafting of the clause.

Question 4: Are there any other impacts which you think we need to consider?
Following a data or security breach there is a lot of work required to investigate and mitigate any potential harm. A cyber insurance policy should provide firms with access to the support and resources that they will need for this. It should be made clear that a PI policy is just one part of the layers of protection that a firm should adopt in order to manage cyber risk.

Final comments:
HDI Global Specialty are happy to clarify or discuss any of the comments above. HDI Global Specialty are proud of our significant long term commitment to the legal profession and welcome the opportunity to work with the SRA on what is a very challenging subject.

Sarah White, Senior Underwriter
International Professional Lines
HDI Global Specialty

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:67 Data

2. About you

1.
First name(s)

Howden Insurance Brokers Limited

2.
Last name

(submitted by Jenny Screech)

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Other

Please enter your organisation's SRA ID (if applicable)

Please enter your organisation's name

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

8.
Please specify

PII Broker

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

At the present time it is widely understood that:
a) the MTCs provide cover for third party loss, related defence costs and regulatory awards arising from a cyber event and in circumstances where automated technology has been used; and
b) the MTCs do not provide cover for first party loss in the same scenarios.

While we acknowledge that additional clarity on this point might be useful, we are concerned to ensure that any amendments do not create confusion, or increase the onus on the profession to prove that third party losses, defence costs and regulatory awards fall positively within the scope of cover.

In more recent years we have observed an increase in policy points taken by Participating Insurers. This impacts the protection of both the profession and the consumer. It is therefore important that any amendments are clear, unambiguous and avoid any unintended consequences. Our concerns in this regard are outlined further below.

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

Our concerns regarding the SRA's proposed drafting for the amendment are as follows:

a) The stated intention is for the status quo to remain and the purpose of the amendment is to confirm cover for third party claims, related defence costs and regulatory awards arising out of the listed events or when automated technology is used. It therefore seems counter-intuitive that the issue is being addressed as an exclusion with a "carve-back" as opposed to affirmative cover.

Addressing this issue as an exclusion with "carve-back" creates a greater level of uncertainty and risk of unintended consequences. It also places the onus on the insured to establish cover, which is not aligned to the best interests of either the profession or consumers.

We consider that greater clarity and more certainty would be achieved if the matter were dealt with by way of an additional sub-clause to clause 1 of the MTCs that affirms cover to the extent that civil liability (clause 1.1), defence costs (clause 1.2) or an award by a regulatory authority (clause 1.4) arise

from a cyber act or incident, or when automated technology is used.

Additional wording for such a clause in the MTCs could be as follows:

1.5 Cyber Act inclusion clause
The cover contemplated by clauses 1.1, 1.2 and 1.4 shall not be excluded or restricted due to the liability of the Insurer to indemnify each insured arising out of or in any way in connection with a Cyber Act or Cyber Incident or the use of any automated technology.Definitions to be added to the Glossary
Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.
Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

Cyber Incident means:
1.1 any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
1.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

b) If, however, the SRA remains of the view that an exclusionary approach is preferred, we have a number of comments on the current draft clause. They are as follows:

(i) The proposed SRA wording follows many of the IUA definitions, but then uses broader introductory language than the IUA clause. We refer in particular to the use of 'in any way in connection with', which is similar to 'indirectly' and risks extending to scenarios where a cyber incident is not the proximate cause of the loss/claim. In contrast, the IUA form is on a 'directly' basis only. We expect that our concerns would be countered with the view that the wording of the "carve-back" is sufficiently robust. However, when considering the best interests of the profession and the consumers of legal services, we question the use of exclusionary language that is broader than necessary and increases the onus on the insured to establish cover by way of evidencing that the claim falls within the carve-back.

It is acknowledged that the use of "in any way in connection with" replicates the exclusion for "war, terrorism and asbestos" at clause 6.10 of the MTCs, but that is a different scenario and untested as far as we are aware. There is no requirement for the proposed wording to mirror that clause and no reason why more restricted introductory language should not be adopted.

(ii) We note that the exclusion is not limited to the 'insured's own systems'. The issue is discussed in paragraph 5 of the Explanatory Note, where the SRA notes that the IUA clause 'writes back in' some cover for losses where the insured's own systems are impacted – but maintains that the SRA's form does not need to do this because of the expansive carve-back for third party losses. However, on our reading of the IUA form, we do not consider that it "writes back in" the cover suggested. We also query the need for and wisdom of the exclusion being broader than is required on this point. Limiting the endorsement to the "insured's own systems" will provide greater clarity and certainty. It could not be interpreted as affording any first party cover, given that the carve-back is specifically related to cover under clauses 1.1, 1.2 and 1.4.

We therefore propose that the definition of "computer system" in the SRA's draft should be amended to refer to the insured's own systems. The amended definition would therefore read as follows:

Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility owned or operated by the insured.

(iii) The carve-back is currently worded as follows:
"provided that any such exclusion or endorsement does not exclude or limit any liability of the insurer to indemnify any insured against:…."

It is a minor issue, but to ensure consistency with the existing MTCs the wording should be:
"……to indemnify each insured against:…."

(iv) We are also raise the potential ambiguity in the definition of "core infrastructure" as a result of the duplication of "provided". The SRA's proposed wording is as follows:

Core infrastructure means any service provided to the insured or any other party acting on behalf of the insured provided by an internet services provider, telecommunications provider, or cloud provider.

We propose that this should be amended as follows:

Core infrastructure means any service provided by an internet services provider, telecommunications provider, or cloud provider to the insured or any other party acting on behalf of the insured.

12.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

We refer to the comments made under question 2 above regarding our view that more certainty and clarity will be achieved if this issue is dealt with by way of an affirmative clause. We have included suggested wording above.

Alternatively if it is to be dealt with by way of an exclusion as proposed by the SRA, then it is currently drafted more widely than it needs to be and we propose that the words "or in any way in connection with" should be deleted and that sub-clause 2 should be amended to refer to the insured's own systems or those operated by them or on their behalf.

We also refer to the minor amendments referred to in (b) (iii) and (iv) above.

13. 4) Are there any other impacts which you think we need to consider?

We have nothing further to add.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:75 Data

2. About you

1.
First name(s)

Christopher

2.
Last name

Jones

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Representative group

Please enter your organisation's SRA ID (if applicable)

Please enter your organisation's name

Please enter the name of your institution

Please enter the name of the society

8.
Please enter the name of the group

International Underwriting Association

Please specify

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

No. We view the consultation proposals as a missed opportunity to evolve the market thinking on the approach to cyber risk, particularly in ensuring that pure cyber risks are appropriately addressed in a standalone cyber policy. The proposals do little to recognise the increased frequency and severity posed by cyber risks and the need for insurers to manage their exposures, indeed the cover provided is potentially.

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

One might argue that, in reaffirming the existing position in the minimum terms, consumer protection has been maintained. However, we highlight in Q4 below (General Comments 5-7) the potential options available to insurers in better managing their exposure to cyber related risks and these may impact the availability and affordability of cover. We understand and support the underlying consumer protection rationale often cited by the SRA but a core function of achieving that is a thriving PII market and the extremely wide basis of cover, allied to the ambiguity in the proposed wording and lack of contractual flexibility, continues to challenge that likelihood.

12.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

Yes. We would refer to our comments in Q4 on the potential impact of these proposals. The approach to infrastructure failure remains particularly problematic given the potential sideways aggregation risk to insurers from, say, the failure of the Internet. It is hard to understand how the SRA expects PII insurers to manage and price such a risk on an 'any one claim' basis, noting that the standalone cyber market excludes such risks for precisely the systemic reasons noted above. We highlight one potential solution around IT infrastructure risk – the ability to aggregate losses – as an example of where increased flexibility would be of benefit for insurers.

We would also re-emphasise our concerns on the defence costs writeback (Paragraph 6(ii)). The definition of defence costs in the SRA minimum terms is extremely wide and could, we think, be argued to include in this context (without limitation) first party mitigation costs such as notification costs in data breach incident. This is not only a pure cyber insurance policy loss, but is also contrary to the SRA's position of not covering first party losses. At the very least, there is an ambiguity in the proposed MTCs that is extremely unhelpful to firms and insurers.

13. 4) Are there any other impacts which you think we need to consider?

Yes. See the following general comments on the consultation paper proposals:

1. We are pleased to continue our engagement with SRA on this issue and welcome the areas where the proposed MTC's align with our model clauses. As we understand it, the IUA clauses 04-017 and 04-018 have formed the basis for the clauses predominantly used in the wider PII market and therefore adopting similar language, albeit only the definitions, in the SRA minimum terms provides a degree of continuity and familiarity for insurers. We are also comfortable with the proposed clarification on the use of automated technology to provide professional advice, though feel there would be benefit in better identifying what is meant by automated technology in this context as it could be argued that any use of automated technology could trigger the 'write-back', regardless of whether it was used in the provision of professional advice (not the intention we assume).

2. It is worth emphasising that insurers' work on cyber risks does not solely derive from regulatory pressure from the PRA or from Lloyd's requirements. It also reflects the increasing exposures, both in frequency and severity, faced by PI insurers. The consultation paper pitches the proposed amendments in terms of clarifying the existing position. Whilst it is true that explicitly addressing cyber risks in the MTC seeks to clarify the approach, this is distinct from the actual proposed default coverage position, to which many insurers maintain concerns.

3. As noted in the consultation paper, the IUA clauses start from the basic premise of affirming that traditional PI exposures remain covered, but cyber related losses without a direct professional negligence element are excluded – these being more appropriately covered by a standalone cyber product. We recognise that our interpretation of this goes beyond the proposed SRA civil liability distinction as our clauses exclude cover where there are third party losses arising directly from a cyber act (i.e. malicious activity or malware transmission) or failure of a computer system. The use of the 'directly' trigger is key, of course. This also applies to third party mitigation costs and defence costs (which remains very broadly defined in the SRA minimum terms and arguably applicable in both first and third party contexts). Moreover, the proposed SRA approach arguably widens coverage from a first party perspective – not the stated intention of the SRA (per paragraph 11 of the consultation paper). The fact that the SRA has chosen not to follow this delineation, whilst not a surprise, represents a departure from the broad view expressed by PII insurers in our extensive market survey. This will undoubtedly lead to a reaction by insurers in their risk and pricing assessment of solicitor firms.

4. Overall, the proposed amendments offer little, if any, comfort for PI insurers in managing their potential cyber exposures going forward. The Paragraph 6 (a) to (e) exclusion essentially excludes items that have never been considered part of a traditional PI policy and then potentially writes them all back into the PI cover. This fails to reflect the concerns that drove the PRA, Lloyd's and insurers' wider analysis of cyber risks. For example, one of the core reasons that we landed on the affirmation / exclusion approach of the IUA clauses was a widespread concern that providing cover for third party liabilities arising from IT infrastructure failure, out of control of the insured and unrelated to their professional activities, would mean that insurers would not be able to adequately quantify or manage their aggregate exposures arising from such a systemic loss. This would pressure their own internal capital management and regulatory prudential requirements and, ultimately, impact the type and cost of product they are able to provide. Clearly, the SRA is not prepared to exclude that risk totally, but there are other options available such as allowing insurers to aggregate their exposures to infrastructure loss.

5. There are several references in the consultation paper that the proposals should not directly affect the premium paid by law firms. Though it is for each insurer to consider their own position, this is almost certainly incorrect and is potentially misleading for those law firms considering the consultation paper. As noted, the cyber risk to firms is significantly increasing and, given the lack of any assistance or flexibility in the minimum terms, insurers will rate the risk according to this increasing exposure, their internal assessment of the cyber risk at the firm in question, their existing portfolio of business, premium base and wider corporate appetite for PII. Premium may well, therefore, be affected.

6. Following on from the previous point, one might certainly expect that there will be more detailed questions of firms on their potential cyber exposures, on their network security and, particularly, on whether they have cyber response insurance in place. Much of this is already embedded into the underwriting process, but feedback from members suggests that one may see increased scrutiny, more selective underwriting and differential terms going forward, dependent upon the responses to the questions raised. This is reflective not only of the wider cover required in the minimum terms (compared to the 'non-regulated' professions) but also the evolving nature of the cyber risk itself.

7. Whilst the MTC's only apply to participating insurers on the primary layer of cover, the excess markets have more flexibility in their terms, which could lead to differing levels of cover through the coverage tower. We may also see some markets considering leaving the primary markets for the excess layers to manage their potential cyber exposures. Moreover, it is currently unclear how reinsurers will be approaching this issue but, clearly, the matters noted above will be under consideration. The reaction of the reinsurance market will be critical to dictating how primary market insurers are able to act. In a sense, this is not something the SRA can control but we raise the point here to reiterate that the primary market may be more constrained dependent upon the wider market dynamics.

8. We submit that the SRA could do more to highlight the benefits of standalone cyber cover for law firms and the additional (particularly first-party) protections that that product commonly provides. It may be critical to many businesses that they have such protection. First party cover, which may enable an insured's business to be up and running after a cyber act or cyber incident, may also help reduce exposure to third party claims.

9. It is important that any changes to the MTCs are finalised and communicated to stakeholders as soon as possible. We understand that August 2021 has been pencilled in as finalising this work. This is very close to the October renewals and leaves precious little time for insurers to finalise their underwriting approach and to effectively communicate this to brokers and insureds. We would urge the SRA to expedite the post-consultation process as much as possible.

Solicitors Regulation Authority professional indemnity insurance – cyber cover consultation

Law Society response

May 2021

Executive summary

1. The Law Society is responding to the consultation in its representative capacity as the independent professional body that supports and represents 200,000 solicitors from England & Wales.

2. Like the Solicitors Regulation Authority (SRA), the Law Society is committed to ensuring that the consumers of solicitors' legal services, and their beneficiaries, are adequately and appropriately protected. We work tirelessly with our members to promote access to justice, uphold the rule of law, maintain high professional standards, reduce barriers to diversity and inclusion, and promote innovation and technology in the sector.

3. The SRA has proposed changes to the minimum terms and conditions (MTCs) for the professional indemnity insurance (PII) which must be secured by its regulated entities. These changes are a response to demands from the insurance industry (regulators and underwriters), for PII policies to provide greater clarity on cyber-related risks. We accept that the MTCs need to be amended to provide clarity about what is covered in the event of a cyber act or a partial or total failure of any computer system.

4. The SRA has drafted a new exclusion clause, which it intends to add to the other exclusion clauses that already exist in the MTCs. The purpose of the new clause is to exclude from cover any cyber-related first party losses (ie. losses that affect only the firm, but not its clients or others), while affirming that third party losses remain within the scope of the MTCs.

5. We support the SRA's commitment to ensuring that the MTCs will not exclude or limit any liability of the insurer to indemnify a law firm against any claim for civil liability, including the obligation to remedy a breach of the SRA Accounts Rules. So, for example, a claim for civil liability from a client or third party that arises from a cyber-attack which affects the law firm's IT systems would be covered. And, we encourage the SRA to maintain a focus on consumer protection when considering other policy changes relating to indemnification.

6. If the proposed exclusion clause were implemented, there would be no strict regulatory requirement for firms to purchase a separate cyber insurance policy. However, as a practical matter, and in order to comply with the requirement for firms to maintain 'adequate and appropriate' cover (set out in rule 3.1 of the SRA Indemnity Insurance Rules), many – if not most – firms would nevertheless be compelled to do so.

7. While we appreciate the thought and effort that the SRA has put into the current proposals, we have a significant concerns about the possibility of coverage disputes between the provider of a firm's cyber insurance and the provider of their mandatory PII, and therefore we cannot support the implementation of the new exclusion clause.

8. Unless these issues can be resolved, the proposals set out in this consultation would present substantial new risks to our members and the consumers of their legal services.

Consultation questions

9. The SRA has posed four questions about their approach to changing the MTCs:

> **Question 1:** Do you agree with the proposed change to our MTCs?
>
> **Question 2:** Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?
>
> **Question 3:** Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?
>
> **Question 4:** Are there any other impacts which you think we need to consider?

Our response is as follows.

Question 1: Do you agree with the proposed change to our MTCs?

10. There are arguments in favour of maintaining the current approach of not attempting to define all the policy terms, because this could, for instance, allow for a degree of constructive ambiguity in which sensible commercial compromises could be made – but the Law Society accepts that:

    a) the insurance industry has justifiable concerns about the growing danger posed by a variety of cyber risks;
    b) these cyber risks are likely to evolve and further proliferate;
    c) the calls from insurance regulators and underwriters for greater clarity on whether or not cyber risks are covered under PII policies are reasonable in the circumstances; and
    d) the SRA is right to seek a solution that provides the requested clarity, without compromising the safety of solicitors' clients.

11. However, our preferred option would be for the SRA to introduce wording that would affirm that solicitors' MTC-compliant PII covers all cyber risks, *including first party losses*.

12. The International Underwriters Association (IUA) has produced an endorsement/clause specifically for PII policies that it considers would provide affirmative cover for cyber risks. We agree with the SRA that the IUA endorsement would not provide the same scope of cover for consumers as the MTCs. Nevertheless, it does provide a starting point for the development of a policy which could satisfy both the insurers' requirement for clarity and the profession's need for a joined-up insurance product, which does not threaten to create conflicts or gaps in coverage.

13. Other regulators, notably the Council for Licensed Conveyancers, are inclined to adopt the IUA endorsement, albeit in a modified form.

14. Although we do not believe that the CLC have sufficiently remedied the IUA wording to avoid the kinds of problems that led the SRA to reject this approach, we are not convinced that such changes are unachievable.

15. We would therefore encourage the SRA to reconsider this approach to dealing with the call for clarity on cyber risks, and our strong first preference would be for a version of the IUA wording which has been altered to adequately protect consumers.

16. If this challenge ultimately proves insurmountable – and the SRA can provide a persuasive explanation for why the consumer protection issues cannot be addressed with an affirmative endorsement – then we would reticently accept the changes outlined in their consultation document (appropriately reworked to avoid the following problems).

Question 2: Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

17. While the SRA's proposed wording would allow cover for 'cyber acts' to be excluded, we believe that it would also be effective in limiting that exclusion so that cover would be available for civil liability or third party losses, or related defence costs, as a result of breach of duty in the provision of legal work and anything incidental to that.

18. Whereas there might be arguments about that with the current wording, the proposed additions seek to make the position clear, and we are satisfied that they achieve that objective.

19. We therefore accept that in principle, if the proposed changes were implemented, the current scope of consumer protection *ought* to be maintained in most instances.

20. We have tested this assumption by internally sourcing a number of 'hard cases', including insider attacks, accidental dissemination of data (through incorrectly addressed e-mails or misplaced laptops), and cyber acts affecting firms' third party service providers. But in all instances, we are reasonably confident that any disputes would be dealt with by construing the exclusion clauses so that they give effect to the SRA's intention, which is that there will always be cover for the loss of the client.

21. However, we can still imagine some unlikely – yet by no means impossible – scenarios, in which the exclusion of cyber-related first party claims could give rise to or worsen third party losses that might otherwise have been avoided or minimised.

22. For instance, under the proposed changes, if ransomware on the computer system of a firm which does not have a separate policy covering cyber-related emergency responses or the restoration of electronic data leads to a filing deadline being missed, then it would be expected that the client's losses would nevertheless be covered by the firm's primary PII. If, however, the missed deadline was for a class action lawsuit or a property development, resulting in substantial losses to multiple clients, then aggregation could mean that the total losses could be in excess of the firms' minimum indemnity limit. Setting aside the question of whether or not the firm should have taken on such work without securing some form of top-up cover[1], there is a remote, yet significant risk of

[1] Even with warnings from the SRA and support from the Law Society, firms would not necessarily think to purchase top-up cover, and the lack of availability and cost of top-up cover makes its purchase even less likely in the current hard market.

such events occurring, and of clients being left without recourse to sufficient insurance to make good their losses.

23. Under the current policy wording, it is easily conceivable that the firm's PII insurer, made aware of the impending deadline, would choose to provide a cyber-response – even if it is not explicitly included under the policy – because they could see that doing so could avert substantially greater losses, which would otherwise be likely. This would be an example of the kind of 'commercial compromise' mentioned in our response to consultation question 1. However, with the proposed exclusion in place, such pragmatic action on the part of the firm's PII insurer would be precluded explicitly.

24. Indeed, problems would not necessarily be avoided if the firm *did* have a separate cyber insurance policy, especially if the policy was not provided by the same insurer as their mandatory PII. In such cases, there may not be the same sense of urgency for the matter to be resolved prior to the filing deadline, as the cyber insurer would not be on risk for any third party losses resulting from the cyber act.

25. In this, and other circumstances, we can see how the explicit exclusion of cyber-related claims from a firm's mandatory PII could, as a practical matter, result in a diminution of client protection, and how in rare cases it could create a substantial risk to consumers.

Question 3: Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

26. It seems likely that there will eventually be some hard cases of the sort outlined in our response to consultation question 2. But as in that scenario, such cases would have to involve a series complicating factors that align to frustrate the SRA's intention to preserve the current high levels of consumer protection.

27. Perhaps it would be possible to identify other circumstances in which the reforms would place clients in jeopardy, but being hard-to-predict is an intrinsic feature of 'black swan events' of this sort, so while a reasonable effort should be made to identify such problems, and thought should be given as to whether or not they could be averted by alterations to the proposed reforms, it seems unlikely that they could ever be ruled out entirely.

28. One unintended consequence of the new exclusion clause could be that it will compel firms to purchase cyber insurance from the same underwriter that provides their mandatory PII. They may feel that they have to do this to avoid the danger of coverage disputes, or situations (such as the one outlined at para. 24 above) in which a slow or inadequate response from an independent cyber insurer results in a claim against their PII policy that could otherwise have been minimised or avoided entirely.

29. If firms are compelled to use the same insurer for both policies – from either an abundance of caution or because the fears described above prove to be well-founded – it will further limit the insurance options available to our members.

30. Policy changes that have the effect of narrowing the availability of cover should be avoided at all times, but during a hard market they represent a serious risk of pricing out otherwise good firms. These firms would then be placed in the invidious position of

operating with cyber insurance which they reasonably fear may be inadequate, or without cyber cover entirely.

31. Some firms may even be forced to close if they feel that they cannot purchase cyber insurance, because although it may not be a mandatory requirement under the proposed new rules, they may fairly regard it as necessary in order to maintain an ‘adequate and appropriate’ level of cover.

32. Such pressures would not affect all firms equally, with smaller firms – and those operating in practice areas such as conveyancing – likely to experience more serious curtailment of their already limited options. This could have implications for diversity within the profession, as well as posing concerns about access to justice in communities that may already be underserved.

Question 4: Are there any other impacts which you think we need to consider?

33. We would advise that the matter of cyber risks should be monitored closely, on an ongoing basis. This would be a sensible precaution because one of the most obvious features of digital technology is the rapidity of its development, and while this can bring surprising benefits, it can also produce sudden and unexpected challenges.

34. While we appreciate the way that the SRA has attempted to ‘future-proof’ the wording of the new cyber exclusion clause, the only realistic hope for remaining on top of this issue is by continually tracking developments in the technology, reviewing arrangements to ensure they are keeping pace, and being prepared to consider changes, in order to provide solutions, should any novel challenges arise.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:42 Data

2. About you

1.
First name(s)

FRANK

2.
Last name

MAHER

3.
Please enter your SRA ID (if applicable)

126998

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

494979

9.
Please enter your organisation's name

Legal Risk LLP

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

Please specify

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

Yes, subject to the comments below.

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

I believe it maintains the status quo as intended, but please see answer to 3).

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

1. The proviso ("provided that any such exclusion or endorsement does not exclude or limit any liability of the insurer to indemnify any insured ...") differs from the proviso in 6.10 War and Terrorism etc. Insurers might content that a cyber incident was a terrorist incident (as press reports say they did in relation to a global law firm cyber attack and NotPetya). The difference
may therefore be better avoided.
2. The words 'series of related unauthorised, malicious or criminal acts' may be better omitted from the definition of Cyber Act, as they are almost certainly otiose because they replicate part of the aggregation clause 2.5 a) (ii). The aggregation clause causes enough difficulty in practice and this may complicate matters further and unnecessarily.

14. 4) Are there any other impacts which you think we need to consider?

Our support for the change is predicated on the assumption that insurers will agree as there is already a significant issue on availability of cover. However, if cover were reduced, cyber policies would not offer the same client protection.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:46 Data

2. About you

1.
First name(s)

Mickaela

2.
Last name

Fox

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Law society

Please enter your organisation's SRA ID (if applicable)

Please enter your organisation's name

Please enter the name of your institution

8.

Please enter the name of the society

Liverpool Law Society

Please enter the name of the group

Please specify

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

We are doubtful that the proposed changes to the MTCs achieves the objective or addresses the issue of silent cyber cover. As the SRA's approach is to set out within the MTCs parameters for insurers on what can and cannot be excluded from cover it is difficult to see how this will clarify matters from the professions' point of view. If the SRA's proposal is accepted in its current form there is every reason to believe (unless a firm has purchased additional cyber cover) that its PII policy for 2021/22 will look the same as is PII policy for 2020/21, which begs the question: how is the profession any better informed?

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

It maintains the status quo.

12.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

There are a couple of drafting points that need to be considered.
1. There is a similar exclusion at clause 6.10 of the MTCs. There the proviso reads: 'provided that such exclusion or endorsement does not exclude or limit any liability of the insurer to indemnify any insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) legal work or failure to discharge or fulfil any duty incidental to the Firm's Practice or to the conduct of Private Legal Practice'. For consistency, consideration should be given to adopting the same wording to the new clauses dealing with cyber.
2. The definition of 'Cyber Act' is an unauthorised malicious or criminal act or a series of unauthorised, malicious or criminal acts. We do not understand the need to include a series of unauthorised, malicious and criminal acts if one such act is a Cyber Act.

13. 4) Are there any other impacts which you think we need to consider?

No.

Facilitating a better future
lmalloyds.com

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28 May 2021

Solicitors Regulation Authority
The Cube, 199 Wharfside Street,
Birmingham
B1 1RN

Email: piicyber@sra.org.uk

Dear Sir/Madam

LMA response to SRA Open Consultation – Profession Indemnity Insurance (PII): Affirmative Cyber Cover

The Lloyd's Market Association (LMA) represents the 51 managing agents at Lloyd's, with 87 active syndicates underwriting in the market, and also the three members' agents which act for third party capital. Managing agents are "dual regulated" firms by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) and members' agents are regulated by the FCA. For 2021, premium capacity is in excess of £30 billion.

Whilst we did not receive notice of this consultation early enough to respond within the prescribed period, we nonetheless wished to have the opportunity of commenting and forwarding our views after consultation with our members, having been closely associated with the Affirmative Cyber workstream within the Lloyd's Market and particularly the PRA's expectation that all insurers should have action plans to reduce the unintended exposure which can be caused by non-affirmative cyber cover. Lloyd's in turn made it a mandate "to provide clarity on whether cyber coverage is provided by either excluding or providing affirmative coverage".

We are therefore writing to provide some high-level general comments on the 13 April 2021 consultation on amendments to the minimum terms and conditions (MTCs) for the professional indemnity insurance (PII) that the Solicitors Regulation Authority (SRA) requires all the law firms they regulate to have in place. Though we are responding as a representative association, we anticipate that a number of our members may also submit responses individually. We welcome the objectives outlined in the SRA's objectives outlined within its consultation paper and provide the following general comments to assist:

<u>General Comments</u>

1. We are pleased to see that the consultation recognises the difference between first party and third-party losses conducive to a PII policy; a point clearly articulated particularly in paragraph 11 and throughout the consultation paper.

2. We are also pleased that the definitions used within the proposed draft changes to the MTCs are closely aligned with those of the LMA model clauses, which are used in the PII market and reassuringly provide familiarity amongst insurers within the market across all classes.

3. The proposed draft changes to the MTCs intend to set out what may or may not be excluded from the insurance coverage in the event of a firm being subject to a cyber-attack/event pursuant to the Prudential Regulation Authority (PRA) regulations and Lloyd's mandate. Whilst the proposed clause to the MTCs does set out exclusions, it is possible that as drafted it may not meet the requirements of the Lloyd's mandate. Part of the Lloyd's mandate requires insurers to be explicit on what is or is not covered. In this respect, the proposed draft does not address any type of user or operational error that is non-malicious, such as the scenario of a typographical error or accidental deletion of data. We would suggest this intent should be affirmatively clarified.

4. In respect of the general drafting of model cyber affirmation clauses, the LMA have generally taken an exclusion/write back approach due to prevalent concern that providing cover for third party losses arising from IT infrastructure failure, outside of the insured's control and their scope of activities, would leave insurers unable to effectively quantify or manage their aggregate exposures stemming from such a systemic loss. This would place pressure on insurers' internal capital management and PRA regulatory requirements; in turn significantly impacting the type and cost of product they are able to provide, as well as their appetite to offer such a product.

5. Whilst acknowledging that the MTCs only apply to the primary layer of cover, it is worth noting that there is more flexibility on terms for insurers providing excess layers, which may impact the coverage offered and formulation of insurance towers. There is currently limited appetite to write MTCs primary business due to broad coverage, restricted premiums and the current hard market. We may see some insurers decide to withdraw further from the primary market to effectively manage their cyber exposures and limit their appetite to excess layers only. This may counterproductively result in difficulties for the SRA in managing their members' expectations around premiums and ability to afford adequate level of coverage.

6. It is pertinent to note that there are clear discrepancies between a PII and cyber policy, their respective cover and how each type of policy is triggered and responds. There is an obvious need to respond quickly in the event of a cyber attack. For instance, a ransomware attack that would shut down a practice needs first party coverage and expertise to assist in negotiating with the perpetrator and getting the business operational again. Members reputational damage needs to be managed and reporting obligations of any such attack/misuse of data to the consumer, in line with the Data Protection Act, need to be met. The PII policy is not structured to respond to this immediate threat and consumers data can then be open to misuse, hacking and attack. As a general point of construction, several insurers have commented on the references to first party exclusions in a PII policy, noting that PII has never been, or intended to be, a first party liability policy. We appreciate that the SRA have noted this point also.

7. Protecting consumers by ensuring effective professional indemnity and compensation fund arrangements is at the forefront of the SRA's key objectives – intended to ensure financial protection to the consumer is achieved through a combination of compulsory PII and the compensation fund. Whilst patently important, there is some concern around the concept that the PII policy is emphasised primarily as a 'consumer protection' product. We would caution against approaching the changes in this manner on the basis that it may impact disingenuously on the legal profession. The PII policy was of course originally designed to first and foremost indemnify negligent solicitors against claims for their own errors and

omissions and has broadened in scope to its current iteration. The scope of a PII policy should not operate to cover non-negligent liability or plug the gap of protections to consumers that a standalone cyber policy may; yet focusing on the product as such misconstrues how the product operates. The inclusion of civil liability for any resultant Cyber Act or Computer System failure was never contemplated by insurers when the MTC was last amended and so consequently insurers may not have had the opportunity to be "able to identify, quantify and manage cyber insurance underwriting risk" exposures for the expanded scope of the cover in accordance with PRA expectations, which includes risk pricing.

We hope that these general comments provide insight into our position and are helpful in advancing the MTCs. We are willing to clarify or offer further explain on our position to work with the SRA in finalising its proposal to change its MTCs for the PII and to represent the insurers to assist in a positive outcome.

Should you wish to discuss this response, please do not hesitate to contact us via the details below.

Yours faithfully

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Professional indemnity insurance (PII): affirmative cyber cover

Response ID:74 Data

2. About you

1.
First name(s)

Lockton Companies LLP

2.
Last name

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Other

Please enter your organisation's SRA ID (if applicable)

Please enter your organisation's name

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

8.
Please specify

Insurance Broker- Lockton Companies LLP

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

Yes we agree. In view of the Prudential Regulation Authority (PRA) requirement that insurers suitably identify, assess and manage their cyber liabilities and in turn the Lloyds mandate that all insurers should provide language to either affirm or exclude cyber risks, we believe it is important that the MTC's are amended to provide clarity and certainty as to the cover.

The SRA has taken account of insurers' obligations while ensuring that regulated entities will continue to be afforded necessary coverage (and as such, ensure that law firms' clients remain protected even if the loss is due to a cyber event).

This can be compared with the potential effect of the IUA clauses. To illustrate this point, the following scenarios provide examples as to how the adoption of the IUA clauses might operate to reduce cover:

1. Cyber Attack Corrupts Software - Liability Directly Resulting: Client of insured solicitor accesses solicitor's system for automated legal advice. Hacker infiltrates system, corrupting data causing incorrect advice to be given. Advice given directly via application of software – no intervening act by professional adviser to understand or check advice. Liability claim brought against insured. NO COVER UNDER IUA017 OR 018.
2. Data Breach Through Hack: Insured's system is hacked and private information is maliciously released into the public domain. Claim brought against insured for breach of Data Protection Law. NO COVER UNDER IUA017 OR 018.
3. Data Breach Through Hack - Insured's Client Incurs Damages Cyber-attack discloses Insured's client's sensitive information. Client's customers sue client for mishandling their data. Client settles law suit with their customers for $1m. Client then sues Insured for costs incurred as a direct result of insured's data breach inclusive of $1m for their own liability. NO COVER UNDER IUA017 OR 018.
4. Poorly Designed Algorithm – Data Issues: Inherent problem in algorithm which fails to preserve original content of electronically stored information in insured's system. Damaged/lost client data. Claim brought against insured for breach of Data Protection Law. NO COVER UNDER IUA017 OR 018.

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

In our view the draft clause maintains cover however we think that the scope of cover needs to be addressed as the MTC definition for "private legal practice" is too narrow, so the potential cyber liabilities require more affirmative language.

Many firms undertake more than the traditional 'private legal practice' work. It is not uncommon for firms to deliver their

services through alternative legal delivery solutions including artificial intelligence, algorithms or software applications.

Many large law firms benefit from PII wordings which are wider than the MTC's with broader definitions, and in particular enjoy a definition for 'professional business' rather than 'private legal practice'. The Institute for Chartered Accountants in England and Wales (ICAEW) provides a minimum wording which includes a definition for "professional business". In 2018 the ICAEW specifically extended this definition of 'professional business' to include "the provision, sale, licence, lease, amendment or adaptation by the Insured of any computer software, hardware, solution, package or publication".

The insurance market has for years granted this wider cover to large law firms, so we think this should be made available to cover the business activities of a modern law firm regardless of its size.

12.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

The model clause does not expressly affirm cover for all potential cyber liabilities and we have suggested the following amendments:

1. Instead of 'private legal practice' include a definition for 'Professional Business' which, unless otherwise excluded by this insurance, provides cover for any advice given, or services, or activities performed (including but not limited to professional services carried out pro bono publico, or whilst acting as a mediator) by or on behalf of the Insured Firm or an Insured.

Provided always that:
(a) such advice, services or activities form part of the professional practice of the Insured Firm
and
(b) any entitlement to any fee or a portion of any fee accruing from such work shall inure to the benefit of the Insured Firm or other person or entity for whom the Insured Firm is legally responsible
or

(c) if such work is done for a fee which does not inure to the benefit of the Insured Firm or is done without fee, that it is undertaken in the name of or on behalf of the Insured Firm or any other person or entity for whom the Insured Firm is legally responsible, or is carried out with the consent of the Insured Firm.

Professional Business shall also include any new Professional Business commenced by any Insured during the Period of Insurance.

2. To provide greater affirmative language on the extent to which a law firm may incur a civil liability, the insuring clause should be amended to include "cyber liability" not just from the services provided but also any "media liabilities" which may arise from its domain name, metatags and hyperlinks and the marketing and advertising of the Insured's professional practice on its website including alterations or additions made by a hacker.

3. Further, a clause should be added to include cyber liabilities arising from the use or misuse by the Insured or any other person or entity of electronic media, data or other related systems, tools or networks resulting from the use by the Insured of the internet, intranet, extranet, and/or the Insured's own website, internet site, web-address and/or the transmission of electronic mail, social media messages or posts or other documents or data by electronic means.

4. Civil liability is not defined in the MTCs although it is italicised as though it is so defined.

5. We believe there should be some clarity as to whether facts giving rise to a claim regarding a breach of Data Protection Law, might also inadvertently exclude a claim in relation to a breach of contract/tortious claims. The IUA draws a distinction between these two forms of liability which is, in our opinion, potentially flawed. The SRA draft clause has used the same definition of Data Protection Law as the IUA. Then, the SRA clause goes on to say that any such exclusion in (e) cannot limit

the liability to indemnify for "civil liability". If the SRA is adopting the IUA's distinction between these two forms of liability, the SRA proviso does not make sense: you cannot have civil liability for a breach of Data Protection Law (if one adopts the IUA's distinction). It might therefore be more appropriate not to draw the same distinction between liability arising from a breach of Data Protection Law versus from a breach of contract/tortious claim. Further, this would bring clarity on the position regarding costs for recovering lost or damaged data (which is currently silent - other than in the context of a "breach of Data Protection Law"). The point is a subtle one and the SRA clause can be interpreted in two ways but may be worth further attention.

6. The definition of "computer system" does not align exactly with the definition in the IUA model clause as the IUA clause presupposes in 3(a) and 3(b) that it is a system owned or controlled by the insured or any other party acting on behalf of the insured.

13. 4) Are there any other impacts which you think we need to consider?

The amendment to the MTC to include this cyber clause gives rise to the opportunity for a more thorough review of the wording to ensure that the policy is fit for purpose to meet the requirements of a modern law firm in the 21st century. The MTC have changed very little over the past 20 plus years and therefore do not adequately cater for risks faced by modern law firms today which include the use of technology and AI, in particular.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:21 Data

2. About you

1.
First name(s)

Robert

2.
Last name

Forman

3.
Please enter your SRA ID (if applicable)

28694

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

645377

9.
Please enter your organisation's name

Murdochs Law Ltd

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

Please specify

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

No

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

Reduce

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

See below

14. 4) Are there any other impacts which you think we need to consider?

Notwithstanding the risk that some insurers may attempt to insert the IUA endorsement into a pii policy, it could only be construed in a manner consistent with the MTC (per 4.11 MTC) and thus, for example, client account shortfalls remain covered. The proposed new clause indicates that all existing cover (i.e. at 1.1, 1.2 and 1.4 MTC) must be maintained. Therefore, it appears at first glance that the clause is more of a 'for the avoidance of doubt' recital (which is indeed the implication in the SRA's consultation document).

By inserting an unnecessary clause, it could have unintended consequences, for example;

1 The implication of the clause is that first-party losses would have been covered but for the clause - otherwise why have it;
2 What is the interplay with clause 6.10 MTC - exclusion for acts of war and terrorism, following which the obligation to ensure appears at first glance, slightly different and slightly less onerous for insurers.
3 A specific clause could conceivably affect arguments on aggregation. E.g. by defining terms it may be easier for insurers to argue that acts or omissions are related.

Better I would have thought to deal with this at a higher level with all interested parties, or perhaps with an avoidance of doubt

definition.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:73 Data

2. About you

1.
First name(s)

Ally

2.
Last name

Williams

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Other

Please enter your organisation's SRA ID (if applicable)

Please enter your organisation's name

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

8.
Please specify

Insurer - QBE

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

We agree that there is a need for clarity surrounding the 'silent cyber' issue, for consumers, insurers and insureds. Unfortunately, for the reasons set out below, we do not consider that the draft clause provides clarity as intended. We feel that, by the broad language of the draft clause, the SRA has unknowingly expanded coverage to such an extent that it debilitates the insurer from managing its exposures. Furthermore, there are multiple contradictions within the language of the draft clause and the guidance set out in the consultation paper which should be resolved (and, preferably, re-issued for further market comment) before any application is made to the Legal Services Board, and before any permanent changes are made to the MTCs.

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

In answering this question, it is important to highlight that cyber is an evolving exposure. As an insurer who writes cyber insurance business, we have relevant and specific insight into this line of business and we agree with your statement in the consultation paper that "over the years, the risk of cyber-attacks on individuals and businesses has increased and, year on year, the size and scale of these attacks are changing". We do not accept that, by attempting to codify policy response to these expanding and changing risks, the SRA have not expanded the scope of consumer protection that is already afforded under the MTCs.
Our concern is that in attempting to clarify the situation, the SRA has inadvertently brought within the scope of cover, exposures that are not related to the acts, errors and omissions of solicitor insureds acting in the course of private legal practice. On the contrary, the Consultation paper states that the draft clause is intended to "make sure that there is protection for consumers for claims arising from legal work, regardless of the nature of the event which has resulted in the loss".
It is our view that the proposed wording operates to expand both the current level of consumer protection afforded through the MTCs and the scope of cover afforded to insureds in respect of cyber risks.
Furthermore, as we now reach the important juncture of affirming cover, it is vital that we do so without ambiguity.
In paragraph 11 of the section in the Consultation headed "Our proposal", you state that "the loss to the business itself – the law firm – caused by the cyber-attack (first-party losses) would not be covered, as is currently the case. The PII policy is not intended to provide cover for first-party losses suffered by the law firm including those caused by a cyber-attack, for example, loss of the firm's own money or the costs of rectifying any reputational issues". Whilst we agree that first party losses should not be covered under a PII policy, our concern is that there is scope for an insured to argue that some first party losses are covered under the draft clause, for the reasons we discuss further in our answer to question 3.
It is our belief that the draft clause operates to 'write back' some first party cyber exposures and does not achieve the SRA's

intention to exclude first party losses entirely. Furthermore, where in the normal course of insurance whereby insurers may utilise underwriting strategies, including but not limited to exclusions, sub-limits or aggregated policy limits, to manage their exposures, the draft clause and indeed the terms of the MTCs make it impossible for insurers to control their liability in that way. The potential exposures are too broad and too unmanageable with the current conditions imposed on the market.
By way of example, the consultation paper touches on some cyber incidents such as an ICO fine or a data breach because of a lost laptop, but we do not believe due consideration has been given to the civil liability that may stem from a cyber event impacting third party suppliers such as cloud providers, hosting providers, case management systems and other third-party vendors. In a ransomware event, whilst it may be your interpretation that extortion is not covered as a first party loss, data breach is now an underlying and common loss in these matters.

12.

3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

Yes. As an insurer, it is our obligation to ensure that we can explain the scope of cover afforded under the PII policy to our clients, the insureds. However, the draft clause in its current format is too ambiguous and open to interpretation. If the draft clause is to work practically then it must be more explicit in its meaning. Further confusion is added when the proposed clause is read together with the accompanying guidance which uses ambiguous phraseology which is not explained, for example "the only type of loss intended to be covered by the MTCs is loss flowing from an issue with the insured's own systems where civil liability also occurs". It is not clear what "an issue with the insured's own systems" is intended to mean in this context.
Even more concerning is that the draft clause fails to exclude events that arise out of a failure of the core infrastructure; meaning insurers would be responsible for liability following a failure of the internet or any other utilities provider (something the cyber market excludes as mandatory in all policies due to serious concerns around an aggregation event). In most core infrastructure failures, there would have been no act, error or omission by an insured, despite it being the intended function of this type of insurance to cover losses which flow from such events.
Aggregation
Introducing cyber exposures under an any one claim PI product adds further complexity regarding an insurer's management of capacity. In particular, without clarity around a consistent approach to aggregating losses flowing from a cyber event, controlling cyber losses becomes a very difficult task.
Cyber insurance carries with it a heightened risk of catastrophe type exposures and as a quickly developing emerging risk it is difficult to rely on catastrophe models or historic data to measure the exposure and anticipate the potential quantum of losses. An unexpected accumulation of risk and a potential uncapped market loss could have dire consequences not only to Insurers but the solicitors' PII market as a whole.
It is not clear to us how the SRA considers that PI insurers should be able to underwrite this type of risk – particularly for firms who have hundreds of clients which could potentially be affected by the same event. Aggregation of losses is a key tenet of all insurers when establishing adequate capital provisions and as stated, we believe the draft clause creates a significant increase in the possibility of substantial side-ways uncapped aggregation. Furthermore, as we have seen with Cyber Insurance, the retraction in the reinsurance market to cover such exposures incapacitates insurers from protecting their capacity through mechanisms such as reinsurance.
At the most basic level, insurers will have to determine whether they are able to calculate what the potential aggregate exposure may be and given the cyber market has been unable to do so, it remains a possibility that PI insurers would follow suit if the conditions required by the SRA remain so prohibitive. More broadly and at best, those underwriting the risks will have to factor in the increased exposure (and capital loading) into the premiums charged (so to state PI premiums will be unaffected is misleading). At worst, existing insurers will exit the market, and a probability that new markets will be dissuaded from entering.
At the very least, the SRA should allow for the policy to be aggregated in respect to a cyber event. This would in some way enable Insurers to manage a side-ways exposure that under the current MTC provisions, is impossible to cater for on an any one claim basis.
The 'writeback'
The first part of the draft clause (i.e. sub-clauses 6(a) – 6(e)) lists various events that are excluded from cover and we agree that losses arising from those types of events do not fall within the scope of cover of a PII policy.
Our main concern is with the second part of the draft clause, which starts "provided that any such exclusion…." and the numbered sub-clauses (i), (ii) and (iii). For ease, we refer to this section of the draft clause as the 'Writeback' as it seeks to 'write back' into cover various cyber losses.

It would appear to us that the draft clause as a whole seeks to delineate between first-party losses (which should fall to cyber or business interruption type policies) and third-party losses (which the Consultation guidance note says should fall to the PII policy irrespective of the cause of loss). No civil liability arises in respect of first party losses and so these would not be written back by sub-clause (i).

Of significant concern is sub-clause (ii) of the Writeback, which relates to the provision of defence costs cover. We believe that there is scope for an insured to argue that there is cover for first-party type costs under the guise of 'mitigation'. Sub-clause (ii) states that insurers cannot exclude or limit any liability of the insurer to indemnify an insured against defence costs (as referred to in clause 1.2 of the MTCs) in relation to: (i) any claim referred to in clause 1.1; or (ii) any circumstances first notified to the insurer during the period of insurance; or (iii) ……".

So, whilst the insured's own costs of a cyber event should not be covered under clause 1.2 of the MTCs (and so would not be caught by the Writeback), there seems to be scope for a significant increase in the type of costs that insureds may argue are covered by this sub-clause (ii). The Writeback severely limits the exclusions which Insurers can place on anything which could feasibly fall within the broad scope of 'investigating, reducing, avoiding or compromising any actual or potential claim' within the definition of defence costs (as per the SRA Glossary).

Example 1, if an insured firm suffers a cyber-attack which prevents the firm from operating for a period of time, then there is potential for civil liability claims arising by the firm's clients (for example, because of missed court deadlines) and so the insured firm may seek to notify the cyber-attack as a Circumstance under its PII policy. The insured may then undertake a review of every single open contentious file to determine whether any deadlines have been missed. Under clause 1.2 of the MTCs, insurers must indemnify the insured against defence costs (defined in the glossary as "legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the insurer in investigating, reducing, avoiding or compromising any actual or potential claim") in relation to any circumstances first notified to the insurer during the period of insurance. As matters currently stand, insurers would not advance defence costs for this type of cost which is a first-party cost (unless additional mitigation cover had been purchased) which would fall squarely within the cover of a cyber policy. However, the draft clause (specifically sub-clause (ii)) removes insurers ability to exclude cover for this type of loss, even though it is a first-party loss. This contradicts the comments in the guidance that first-party losses are not intended to be covered. It also contradicts the comment in the guidance that "the only type of loss intended to be covered by the MTCs is loss flowing from an issue with the insured's own systems where civil liability also occurs". It is unclear how the SRA anticipates insurers would be able to limit this type of potential exposure when clause 2.2 prevents any monetary limit being imposed on Defence Costs. This is the area of cover which appears most expanded by the proposed wording.

Example 2, the Consultation paper explicitly states that ICO fines would not be covered under the policy, but no further clarity is given to the obligations imposed on the insured by the ICO in such an event. What about notification costs, i.e. the costs of notification its clients of the breach/suspected breach? These are a classic first party loss, but they are arguably also defined as mitigating the loss under the defence costs clause 1.2 and so cannot be excluded under the cyber clause.

The concept of 'mitigation costs' continues to blur the line of coverage. In reality, it is not simplistic enough to state that first party losses would not be covered. PII insurers should be able to exclude from cover these types of costs or elect to cover them in certain circumstances. It also inhibits the insurer when on a practical basis, first party costs may be incurred to stem the third-party liability.

Wording contradictions

We have identified various contradictions within the proposed wording and accompanying guidance. We set these out below.

1) The Consultation paper states that the draft clause is clarifying the coverage position in respect of a 'changing' risk and yet you do not expect insurers to increase premiums for this 'clarified' cover. We believe the introduction of the draft clause in its current wording will lead to increased premiums for insured firms.

2) The Consultation paper states that PII policies are written on a broad civil liability basis for claims arising out of its private legal practice. However, the proposed wording opens up insurers to exposures which do not 'arise out of' private legal practice, but are instead incidental to it, i.e. failure of core infrastructure.

3) You state that "there is protection for consumers for claims arising from legal work, regardless of the nature of the event which has resulted in the loss". In footnote 2, however, you refer to a civil liability policy not setting boundaries as to the nature of the 'wrongdoing'. This implies that there must be some 'wrongdoing', even with no boundaries set as to the definition of that. That accords with insurers' understanding of the purposes of PII policies but does not accord with the comments in the Consultation paper which veer towards cover for losses with no proximate cause test being applied.

4) The Consultation paper states, "the only type of loss intended to be covered by the MTCs is loss flowing from an issue with the insured's own systems where civil liability also occurs". It is unclear how that is to be read alongside the guidance stating that "there is protection for claims arising from legal work, regardless of the nature of the event which has resulted in the loss".

5) One of the aims is stated to be to "allow insurers to be clear and therefore better able to manage their exposure". However, there is no guidance as to how insurers can manage their exposure to core infrastructure events or first-party losses argued to be mitigation costs under the defence costs definition. The draft clause does not allow insurers to manage their exposure at all.

Automated technology
Finally, we do not consider that the wording of the final paragraph relating to automated technology is sufficiently particularised. We understand the SRAs desire to leave the term open and flexible to encapsulate future developments. However, in the guidance, it is stated that this clause is intended to operate to writeback cover where automated technology is "utilised to provide advice that results in loss covered by the civil liability clause within the MTCs". However, that is not what the clause says. The clause says that insurers cannot limit any liability to indemnify any insured against the matters (i), (ii) and (iii) where automated technology has been utilised. As the term 'automated technology' is not defined, it leaves open to an insured to seek to argue that any file that has 'utilised' automated technology (not necessarily in the provision of advice) automatically falls back to cover. It is clear that was not the intention, but the wording does not adequately reflect the intention. It could be made clearer as a standalone clause.

13. 4) Are there any other impacts which you think we need to consider?

We have touched on this above but it is a fundamental concern and so we raise it again here. In paragraph 6 of the Consultation paper under the heading 'Our proposal', you state that 'there is protection for consumers for claims arising from legal work, regardless of the nature of the event which has resulted from the loss'. This statement is a contradiction to one of the fundamental principles of insurance - the cause of loss. Whilst we accept that current cover does extend beyond that of negligence (such as in a breach of the SRA Accountancy Rules), it is important that the cause of loss remains a fundamental component of whether cover is triggered and that unintended and unforeseen losses do not fall within the scope of a PII policy. PII policies were never intended to be a failsafe or a catch all for any and all losses. It is intended to provide an indemnity to professionals for their acts, errors or omissions in the course of their private legal practice which give rise to civil liability and associated defence costs. It is not intended to afford protection for every single type of loss which may arise in the course of a law firm's business.
The existing MTC arrangements preclude insurers from aggregating their PII limit or offering inclusive defence costs. Allowing more flexibility to insurers in their underwriting offering would alleviate some of the aggregation exposure and unknown quantum of a potential catastrophic loss.
The SRA should also consider how the other insurance provision might apply where restrictive cover has been included under the cyber policy. Furthermore, cyber policies now include a PI exclusion as market standard which excludes anything arising directly from a PI event. Instead of delineating, the proposed cyber clause serves to blur the lines between a 'cyber' event and a 'PI' event.
Please be mindful that until the SRA have finalised their findings on the consultation, it is difficult for an insurer to establish their underwriting strategy prior to the October renewal period and creates more uncertainty in a challenged market. Following on from this point, it is wrong to state that 'the proposed change should not directly alter the premiums paid by law firms'. The cyber market continues to respond to the environment through restricted coverages and increased premiums; therefore, one would expect the PI market's appetite to respond similarly when considering the same exposures.
Simply put, in its current format, the draft clause makes it extremely difficult for an insurer to identify the exposures covered under the PII policy and more difficult still to quantify those exposures on an individual or an aggregate basis. The proposed changes operate to significantly expand PI insurers' exposures, within a policy that already dictates an any one claim limit and defence costs which are not limited nor subject to excesses.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:23 Data

2. About you

1.
First name(s)

Brian

2.
Last name

Rogers

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Other

Please enter your organisation's SRA ID (if applicable)

Please enter your organisation's name

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

8.
Please specify

Software/regulatory

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

Yes - as has been said in the consultation documents, PII policies already cover this area and therefore the clause is merely clarifying the position.

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

Maintains but clarifies the scope of cover.

12.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

Not that I can see.

13. 4) Are there any other impacts which you think we need to consider?

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:76 Data

2. About you

1.
First name(s)

Michael

2.
Last name

Silcock

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

In what personal capacity?

Please enter the name of your firm/employer

Please specify if you are

Please specify

Please enter the name of your institution

Please specify subject and level

Please enter the name of your institution

Please specify

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

9.
Please enter your organisation's name

TLO Risk Services Limited

Please enter the name of your institution

Please enter the name of the society

Please enter the name of the group

Please specify

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

We agree with the need to bring clarification to the question of how much cyber cover is to be given under the PI policy. The problem lies with the SRA's need to give the consumer protection and the insurance markets requirements to quantify the coverage being offered and price it accordingly. Striking the right balance between these two issues will allow a vibrant and sustainable insurance market place for Solicitors in England & Wales

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

In our view the proposal restricts the current scope of cover offered under the current MT's & C's, however it does extend beyond what insurers believe should be offered by a PII policy, particularly when it comes to offering first party cover unrelated to private legal practice. Total clarity is a must as insurers need to quantify their exposures and be able to price accordingly. There is an element of ambiguity in the proposed wording particularly the phrase 'issues with insure's own systems' that potentially writes back a limited amount of first party cover.

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

Cyber Insurance and the losses flowing from such policies have evolved over the past few years and will continue to do so. As such, any wording incorporated now needs to reflect the potential for change in the nature of cyber claims in the future, or be reviewed annually to ensure that it continues to be fit for purpose.

14. 4) Are there any other impacts which you think we need to consider?

Competitively priced and comprehensive insurance is a must for the legal profession. There is a direct relationship between these two facets. In order for prices to be competitive there must be insurer competition and so there must be scenarios where more than one insurer is prepared to offer terms. Currently there is a lack of insurer appetite for Solicitors PII, this is driven by current economic conditions, extent of coverage and loss history, and has resulted in an increase in premiums very little competition. Any cyber clause that gives too broad cover will result in insurers withdrawing, resulting in further increases in premium.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:12 Data

2. About you

Please enter the name of the society

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

No; the broad scope of the MTC is making Solicitors PI unprofitable for insurers and therefore reducing the amount of capacity available; reduced capacity results in higher costs for insured's; for the interest of SRA members the scope of cover should be reduced and a seperate Cyber policy should be considered. The accounting rules are challenged enough for Insurers.

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

Expand; this clause is allowing for both first and third party incidents; PI insurance is not in place to improve SRA members practice or cover any first party claims. lack fo defiitions are unclear for Autmotaed technology and teh scope of cover for breaches in data protection law seem expanded.

12.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

Yes; where firms do (and they should) purchase seperate cyber cover the lines between the two policies have become even less clear; the intent of the Insurance market action on silent cyber is to remove any grey areas; the cleanest and most effect way of doing this is to remove all cyber explosure from all policies other than specific cyber contracts;

13. 4) Are there any other impacts which you think we need to consider?

Expanding the scope of cover year after year will stop insurers from offering the cover; prices will increase and smallers firms will be unable to obtain/afford cover.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:13 Data

2. About you

Please enter the name of the society

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

Yes

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

Yes

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

No

14. 4) Are there any other impacts which you think we need to consider?

No

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:16 Data

2. About you

Please enter the name of the society

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

Yes.

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

I think it only maintains the current scope of consumer protection. We have seen insurers this year seek to more broadly exclude cover for cyber and data protection events but the cover we have ultimately taken out only does so for excess layers.

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

No.

14. 4) Are there any other impacts which you think we need to consider?

No.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:33 Data

2. About you

Please enter the name of the society

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

We agree that the exclusion will remove any ambiguity around future claims for Cyber acts. This will ensure that firms who wish to obtain insurance for cyber acts can consider the market separately to their PII insurance. We hope that such clarity would have a positive impact on the level of PII renewal premiums if cyber security is removed as a potential risk to PII Insurers.

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

We believe it maintains the existing policy, which does not have any real reference to data loss or cyber acts anyway, so explicit exclusion should not alter anything.

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

It would only present a consequence to solicitors if they had made claims in the past, related to cyber and expect to make further claims in the future of this nature. This is unlikely to be the case on the basis of the policies that we have seen.

14. 4) Are there any other impacts which you think we need to consider?

The main impact will be that firms/solicitors will need to seek alternative insurance to cover this – purely because it draws attention to this now and may request support through the consultation on how to go about this. The impact of a cyber act may be difficult to quantify and specialist cover may need to be sought.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:40 Data

2. About you

Please enter the name of the society

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
1) Do you agree with the proposed change to our MTCs?

No. We agree that cover should be provided for third party civil liability claims arising out of any negligent act, error or omission but not for acts over which a Law Firm or Solicitor has no control.

11.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

Clearly it maintains the current cover afforded through PI arrangements.

12.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

You have not provided a draft clause. Cover is to be provided in respect of systemic Cyber losses irrespective of negligence on the part of the insured. Systemic losses should not be the subject of cover under an E&O insurance policy.
Transmission of malware which is not due to the negligence of the insured should not be covered under a PI policy.

13. 4) Are there any other impacts which you think we need to consider?

Your approach as it stands is highly likely to reduce the number of participating insurers, leaving only those who are willing to accept the potential risk of systemic losses impacting their balance sheets.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:44 Data

2. About you

Please enter the name of the society

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

No, I believe it is naive. The problem is not the lack of insurance. The problem is that firms fail to take sufficient measures to protect themselves against cyber fraud. Consumers do not want payment in the event of a loss, they want the loss never to happen in the first place. By focusing on insurance rather than prevention the profession will have a false sense of protection. More work needs to be put into minimum protection standards such as encouraging cyber essentials plus and discouraging poor practice by disciplining firms that do not take adequate measures to protect themselves.

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

It significantly reduces the scope of consumer protection because firms will focus on the resolution after the event rather than prevention ahead of the event. The role of the regulator is to protect consumers from harm in the first place not to focus on measures that deal with the issue after the event.

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

Yes, there are unintended consequences, the whole proposal focuses on after the event issues rather than prevention at the outset. The clause is ill-conceived in the first place and much more emphasis should be placed on adequate measures to prevent or mitigate the risk rather than mopping up afterward. The regulator should be considering is penalising and disciplining firms that do not adequately consider the risk of cyber attack. Firms should be taking adequate measures and staff training before considering insurance.

14. 4) Are there any other impacts which you think we need to consider?

Yes the requirements on running practices should mandate the requirement for Cyber Essetnails Plus and staff training.

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:59 Data

2. About you

Please enter the name of the society

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

Yes

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

Maintain

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

no comment to make

14. 4) Are there any other impacts which you think we need to consider?

has the insurer market been rigorously tested/consulted by the SRA to be confident that there will be no related and notable increases in premiums in the primary layer?

Professional indemnity insurance (PII): affirmative cyber cover

Response ID:66 Data

2. About you

Please enter the name of the society

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
1) Do you agree with the proposed change to our MTCs?

I do agree that silent cyber is a problem for Insurers and Insureds in PII policies. It would appear many Insureds have double cover for cyber risks and Insurers are spending time and money considering how the policies interact. However, in light the onerous risks of cyber cover, the notion that these do not require an increase in premium seems prejudicial to Insurers in the PII space. Couple with the extremely onerous run off insurance requirements these changes are likely to see even harder market conditions, possibly even a decrease in the number of policies written. From an Insurer perspective excluding cover and requiring firm to have separate MTC complaint cyber cover would seem a fairer and more practical solution. The SRA needs to consider the implications to the wider market from expanding the cover required under the MTC.

12.
2) Does the draft clause, in your view, maintain, expand or reduce the current scope of consumer protection afforded through our PII arrangements?

Expand

13.
3) Does the draft clause bring about any unintended consequences and if yes, how might the draft clause be amended?

Cyber policies will never pay out!

14. 4) Are there any other impacts which you think we need to consider?

Yes, sort out the run off provisions if you don't want to see an increase in premium and or Insurers exiting the market