

PLEASE READ THIS POLICY (AND THE SCHEDULE WHICH  
FORMS AN INTEGRAL PART OF THE POLICY) TO ENSURE  
THAT IT MEETS YOUR REQUIREMENTS

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The Legal Defence Union (the **insurer**), and the **insured** agree that

- This Policy the Schedule (including any Schedule issued in substitution) and any Endorsements shall be considered one document and any word or expression to which a specific meaning has been attached shall bear such meaning wherever it appears
- The Proposal or any information supplied by the **insured** shall be incorporated in the contract
- The **insurer** will provide the insurance described in this Policy subject to the Terms and Conditions for the Period of Insurance shown in the Schedule and any subsequent period for which the **insured** shall pay and the **insurer** shall agree to accept the premium

Signed for and on behalf of the Legal  
Defence Union Ltd

The Legal defence Union is company limited by guarantee  
Registered in Scotland Company No 106696  
Walkend, Aldbar  
By Brechin  
DD9 6SW

**This is a "claims made" policy**

This Insurance covers only claims or losses notified to **us** during the **period of insurance**

## LEGAL DEFENCE UNION

### LEGAL EXPENSES INSURANCE MASTER POLICY

#### DEFINITIONS

##### **Insurer**

The Legal Defence Union Ltd

##### **We/Us/Our**

The Legal Defence Union Ltd

##### **Insured**

- 1 In respect of a corporate member of the **insurer**
  - a) the Corporate Member of the **insurer**; and
  - b) a partner, or any associate, trainee or other person working for the Corporate Member under a contract of service and whose actions are regulated by the Law Society of Scotland.
  
2. In respect of a member of the **insurer**, other than a Corporate Member, a solicitor member of the **insurer** who is:
  - a) working under a contract of employment whether or not with a firm or partnership of solicitors; or
  - b) engaged as a partner within a firm of solicitors which is not a Corporate Member of the **insurer**

##### **Appointed Representative**

A solicitor appointed to act in a professional capacity for the **insured** in accordance with the terms of this insurance

##### **Panel**

Solicitors approved by the **insurer** to act for the **insured**

##### **Period of Insurance**

The current period of membership by the **insured** of the Legal Defence Union and any subsequent periods which may be agreed.

##### **Any One Claim**

All claims or legal proceedings including any appeal against judgment consequent upon the same original cause, event or circumstance shall be regarded as one claim

##### **Employee**

Any person under a contract of service with the **insured** in connection with the **insured's** business

##### **Equipment**

Computers and anything else which contains a microchip. Computers include hardware, software, data, electronic data processing equipment, microchips (including integrated circuits) and micro-controllers, and any other computing and electronic equipment linked to a computer.

##### **Territorial Limits**

The United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands

##### **Legal Proceedings**

Legal Proceedings include investigations of the Law Society of Scotland, the Scottish Legal Complaints Commission, or proceedings before the Scottish Solicitors Discipline Tribunal but

excluding any investigations or proceedings by the Client Protection or Guarantee Fund Committee of the Law Society of Scotland or arising from any Accounts Rules Inspections or otherwise in respect of CML compliance matters unless such additional cover has been taken by the member

Provided that in respect of claims within the jurisdiction of the Employment Tribunal **legal proceedings** do not commence until Form ET1 (Originating Application) is received from an Employment Tribunal

### **Investigation**

A level 2 or 3 investigation by the Scottish Legal Aid Board.

### **Legal Expenses**

#### **Fees and Expenses:**

#### 1) **Fees**

- a) any fees, expenses and other disbursements reasonably and properly incurred by the **appointed representative** in connection with any **legal proceedings**, including costs and expenses of expert witnesses
- b) any fees, expenses and other disbursements reasonably and properly incurred by the **appointed representative** in appealing or resisting an appeal against the judgment of a **court** in connection with any **legal proceedings**

provided that

- i) the **insurer** will not pay any fees, expenses and other disbursements relating to the Law Society of Scotland, the Scottish Legal Services Complaints Commission or Scottish Solicitors Discipline Tribunal
- ii) the **insurer** will not pay the amount of any **insured's** Excess
- iii) the **insurer** will not pay any award of expenses made against the **insured**

### **Acts of Parliament**

All Acts of Parliament referred to in this Insurance shall be deemed to include any subsequent amendments or re-enactments thereof and equivalent legislation (if any) enforceable within the **territorial limits**

### **Court**

A court, tribunal or other competent authority

### **Excess**

The amount for which the **insured** is responsible under this insurance for payments of **legal expenses** in respect of each and every claim

### **Limits of Indemnity**

The maximum liability of the **insurer** under this insurance in respect of each of the following shall not exceed **any one claim**

### **COVER**

The **insurer** will indemnify the **insured** in respect of **legal expenses** which

- i) are notified to **us** during the **period of insurance**; and
- ii) arise from the conduct of the **insured's** business; and
- iii) which relate to any claim or **legal proceedings** made against the **insured** within the jurisdiction of a **court** within the **territorial limits**

in respect of:

### **Section A - Disciplinary**

the representation of the **insured** in the defence of any breach or alleged breach of professional duties or any conduct or alleged conduct leading to

- i) the commencement of proceedings before the Scottish Solicitors Discipline Tribunal,
- ii) or a complaint being referred for investigation by the Scottish Legal Complaints Commission under the Legal Profession and Legal Aid (Scotland) Act 2007 in relation to Inadequate Professional Services
- iii) or a complaint being referred for investigation under the powers of the Council of the Law Society of Scotland under the Solicitors (Scotland) Act 1980 as amended in relation to Inadequate Professional Services or conduct

### **Section B - Prosecution Defence**

the defence of any act or omission or alleged act or omission by the **insured** which leads to the bringing of an action for contempt of court in any **court**

### **Section C - Employment Disputes**

the defence of any dispute with an **employee**, **ex-employee** or prospective **employee** relating to

- i) the contract of employment with the **insured**
- ii) actual or alleged breaches of their statutory rights under employment legislation which may lead to civil or criminal claims or legal proceedings against the **insured**

### **Exclusions specific to Section C**

1. The **insurer** will not pay **legal expenses** arising from or relating to:
  - i) any benefit due under a contract of employment;
  - ii) any payment made in respect of redundancy;
  - iii) any basic or additional award
  - iv) a protective award
  - v) any compensatory award specified in a reinstatement or re-engagement order or made because of the **insured's** failure to provide written reasons for a dismissal;
  - vi) any interim relief or other interim payment
  - vii) any award made because of the **insured's** failure to provide written reasons for dismissal;
  - viii) any awards to the extent that they relate to contractual rights accruing to the **employee**, **ex-employee** or prospective **employee** prior to the actual or alleged contract of employment
2. the **insurer** will not indemnify the **insured** in respect of any dispute which falls within the jurisdiction of the employment tribunal until Form ET1 (Originating Application) is received from an Employment Tribunal, unless **the insurer** has advised **the insured** otherwise.
3. the **insurer** will not pay **legal expenses** relating to any dispute with an **employee**, **ex-employee** or prospective **employee** who was subject to a written or verbal warning within the six months immediately preceding the inception date of this Section and notified to the **insurer** within six months of the commencement of the first **period of insurance**
4. the **insurer** will not pay **legal expenses** under this section in respect of any member of the **insurer** who is not a corporate member of the **policyholder**

## Section D – Scottish Legal Aid Board

the defence of an **investigation** by the Scottish Legal Aid Board provided that a formal notice has been received from the Director of Audit of the Scottish Legal Aid Board

### GENERAL EXCLUSIONS

This Insurance does not cover

1. the defence of any civil claim or legal proceedings made or brought against the **insured** arising from or relating to
  - a) bodily injury to or death disease or illness of any person
  - b) loss destruction or damage of or to any property including loss of use thereof
  - c) the breach or alleged breach of any professional duty except in so far as covered under Section A - Disciplinary
  - d) the breach or alleged breach of any duty owed in the capacity of director or officer of the **insured**
  - e) Third Party Complaints
2. any claim or legal proceedings made, commenced, brought or transferred outside the **territorial limits** or **legal expenses** incurred outside the **territorial limits**
3. any claim or legal proceedings in respect of which the **insured** is or but for the existence of this insurance would be entitled to indemnity under any other insurance policy held by the **insured** or any policy which the **insured** is required to hold by law
4. any act omission or dispute alleged or actual occurring prior to or existing at inception of this insurance and which the **insured** knew or ought reasonably to have known was likely to give rise to a claim or legal proceedings by or against the **insured**
5. damages fines or penalties of any nature
6. the defence of any claim or legal proceedings arising from any actual or alleged dishonesty fraud intentional violence or malicious conduct of the **insured**. If and to the extent that such claim legal proceedings are successfully defended the **insurer** may, in their absolute discretion, indemnify the **insured** for **legal expenses** incurred
7. the pursuit or defence of any action alleging defamation or malicious falsehood
8. disputes with government or local authority departments concerning the imposition of statutory charges except where an appeal is allowed within the regulations laid down at law following dismissal of an earlier application for relief
9. any claim or legal proceedings in respect of the ownership possession hiring or use of a motor vehicle except where such action gives rise to a conduct complaint under Cover Section A - Disciplinary
10. any disputes with the **insurer** except as dealt with under Claims Settlement Condition 3
11. any **legal expenses** incurred by the **insured** before **our** consent has been given as required under Claims Settlement Condition 1
12. any **legal expenses** incurred in relation to non-contentious matters
13. any claim or legal proceedings arising from any act committed deliberately recklessly or with wilful intent by the **insured**
14. any **legal proceedings** arising directly or indirectly from:

- i) **equipment** failing correctly to recognise data representing year 2000 or any other date in such a way that it does not work properly or at all;
  - ii) computer viruses, including any program or software which prevents any operating system, computer program or software working properly or at all.
15. any expense consequential loss legal liability or any loss or damage to property directly or indirectly caused by or contributed to or arising from
- a) ionising radiations or contamination by radioactivity from an irradiated nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
  - a) radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

## GENERAL CONDITIONS

### Cancellation

Cover provided to an **insured** may be cancelled at any time at the **insured's** request in writing and the premium in respect of the insurance shall be adjusted on the basis of the **insurer** retaining pro-rata premium, provided no return of premium shall be allowed if the **insured** has made a claim under the Policy in the current **period of insurance**

**We** may cancel cover provided to an **insured** by giving fourteen days' notice in writing to the **insurer**. Premium in respect of the insurance shall be adjusted on the basis of the **insurer** receiving or retaining pro-rata premium provided no return of premium shall be allowed if the **insured** has made a claim under the Policy in the current **period of insurance**

## CLAIMS SETTLEMENT CONDITIONS

1. **Our** consent to pay **legal expenses** must be obtained in writing. **Legal expenses** incurred before such consent is given will not be covered. Consent will be given if the **insured** can satisfy **us** that
- i) there are reasonable prospects of successfully pursuing or defending the **legal proceedings**
- and
- ii) it is reasonable in all the circumstances for **legal expenses** to be provided.

The decision to grant consent will take into account the advice of the **insured's appointed representative** as well as that of **our** own advisers. **We** may require, at the **insured's** expense, an opinion of Counsel on the merits of the **legal proceedings**. If the claim is subsequently admitted the **insured's** costs in obtaining such an opinion and providing such advice will be covered under this insurance.

### Pleas in mitigation

In respect of proceedings under Section A – Disciplinary or Section D – Scottish Legal Aid Board; if reasonable prospects of successfully pursuing or defending the **legal proceedings** do not exist, but **we** and the **appointed representative** agree that there are good prospects of a plea in mitigation achieving a substantially lower penalty than would otherwise be

expected, **we** will consider granting consent to pay **legal expenses** to defend the **legal proceedings**. Such consent shall be given at **our** absolute discretion, and all other policy terms and conditions will apply unaltered.

2. Minimising Claims or Legal Proceedings

The **insured** must take all reasonable measures to minimise the cost of **legal proceedings**. This includes, but is not limited to, the **insured** and any agent or **appointed representative** of the insured complying with any pre-action, costs or other protocol that applies to any **legal proceedings**.

3. Arbitration

Any dispute between the **insured** and the **insurer** may be referred to a single arbiter who shall be a solicitor agreed upon by both parties or failing agreement one who is nominated by the President of Law Society of Scotland

All expenses of the arbitration shall be met in full by the party against whom the decision is made. If the decision is not clearly made against either party the arbiter shall have the power to apportion expenses. If the decision is made in favour of the **insurer** the **insured's** costs shall not be recoverable under this insurance.

4. Fraudulent Claims

If the **insured** makes any request for payment under this Policy knowing it to be fraudulent or false in any respect (or in circumstances where it ought reasonably to be known to be so) or where there is collusion between the parties to the dispute the insurance issued under this Policy shall be void and any premiums paid hereunder shall be forfeited

5. Due Observance

The due observance of and compliance with the terms, provisions and conditions of this insurance insofar as they relate to anything to be done or complied with by the **insured** shall be essential conditions to any liability of the **insurer** to make any payment hereunder.

6. Insolvency of **Insured**

If the **insured** is insolvent when a claim is notified to **us**, becomes insolvent before a claim is admitted, or becomes insolvent during the course of any **legal proceedings** to which the **insurer** has given support, the **insurer** shall thereupon reserve the right to refuse to admit a claim or withdraw its support of a claim.

7. Notification of Claims

In respect of Cover A - Disciplinary:

It is an essential condition to the **insurer's** liability that **we** must be notified in writing as soon as reasonably possible if the **insured** is aware of a complaint being referred for investigation or consideration by a Law Society Committee or the Scottish Legal Complaints Commission or the commencement of proceedings before the Scottish Solicitors Discipline Tribunal

In respect of Cover under Section B - Prosecution Defence

It is an essential condition to the **insurer's** liability that **we** must be notified in writing as soon as reasonably practical if the **insured** is aware of any actual or alleged act omission or dispute which has given or may give rise to any claim or legal proceedings involving the **insured** as soon as the same comes to the **insured's** attention

In respect of Cover under Section C – Employment

It is an essential condition to the **insurer's** liability that **we** must be notified in writing immediately the **insured** is aware of a any actual or alleged act omission or dispute which has given or may give rise to any claim or legal proceedings involving the **insured** as soon as the same comes to the **insured's** attention

In respect of Cover under Section D – Scottish Legal Aid Board

It is an essential condition to the **insurer's** liability that **we** must be notified in writing as soon as reasonably practical if the **insured** is aware of a complaint being referred for investigation or consideration by a Scottish Legal Aid Board committee;

If the **insured** fails to notify **us** in accordance with the above, any claim arising may not be admitted

*If a Form ET1 (Originating Application) is received from an Employment Tribunal the **insured** must immediately forward to **us** Form ET1 and Form ET3 (Notice of Appearance by Respondent) which should be left blank.*

*In view of the 21 days' statutory time limit this must be done immediately.*

8. Appeal Procedure

If the **insured** wishes to appeal against the judgment of a **court** reasons must be submitted to **us** and **our** consent obtained. This application must be sent by recorded delivery at least ten working days before the final date for lodging the appeal. **We** will inform the **insured** of **our** decision.

If **we** so require it the **insured** must co-operate in an appeal against the decision of a **court**.

9. Conduct of Legal Proceedings

a) Nomination of the **appointed representative**

An **appointed representative** chosen from our **panel** may be nominated by the **insured** in which case the name and address of the nominee must be sent to **us**. **We** may refuse to accept such a nomination. The **insured** may then nominate an alternative **appointed representative** subject to **our** continued right of refusal. However, any dispute arising from the nomination procedure shall be referred to Arbitration in accordance with Claims Settlement Condition 3.

In selecting the **appointed representative**, the **insured** shall have regard to the duty to minimise the cost of any claims and **legal proceedings**.

In all cases the **appointed representative** shall be appointed in the name of and on behalf of the **insured**.

b) All information to be given to the **appointed representative**

The **appointed representative** must be given all information and assistance required. This must include a complete and truthful account of the facts of the case and all relevant documentary or other evidence in the **insured's** possession. The **insured** must obtain or execute all documents as may be necessary and attend any meetings or conferences when requested.

c) Access to the **appointed representative**

**We** are entitled to obtain from the **insured's appointed representative** any information document or advice relating to the **legal proceedings** whether or not privileged. On request the **insured** will give any instructions necessary to ensure such access.

d) **Appointed representative's** bills to be submitted



All accounts or other communications relating to any **legal proceedings** which the **insured** receives from the **appointed representative** should be forwarded to **us** without delay. If requested the **insured** must ask the **appointed representative** to submit the account for taxation.

e) Instruction of Counsel

If in the course of any **legal proceedings** the **appointed representative** wishes to instruct Counsel, Counsel's name must be submitted to **us** together with an explanation of the necessity for such action. Such consent shall be given at **our** absolute discretion, and all other policy terms and conditions will apply unaltered.

f) Offer of settlement

As a condition precedent to the **insurer's** liability hereunder, the **insured** must inform **us** in writing as soon as an offer to settle **legal proceedings** is received or made or an offer of payment into **court** is received.

The **insured** must not enter into any agreement to settle without **our** prior written consent. Any such agreement must take into account the **insurer's** interest in the recovery of costs.

If the **insured** unreasonably withholds agreement to a settlement, **we** reserve the right to withdraw **our** support.

g) Payment of **legal expenses**

Although the **insured** is responsible for payment of all **legal expenses**, **we** will settle these direct if requested provided that accounts are certified to the effect that such charges have been properly incurred and that **we** are authorised to settle on the **insured's** behalf.

The provision of indemnity for any **legal expenses** does not imply that all **legal expenses** will be paid. If the **insured** is in doubt **we** should be consulted.

The **insured** must not without **our** written consent enter into any agreement with the **appointed representative** as to the payment of **legal expenses**.

h) Recovery of outlays and expenses

The **insured** through its **appointed representative** shall be responsible for the repayment to the **insurer** of any:

- i) award of expenses in favour of the **insured**;
- or
- ii) any expenses agreed to be paid to the **insured** as part of any settlement.

When the total amount of **legal expenses** incurred is within the **limit of indemnity**, the **insured** and the **insurer** will share any legal expenses that are recovered according to the proportion paid.

Where the total cost of the legal action exceeds the **limit of indemnity**, the **insured** and the **insurer** shall have priority over any other parties with an interest in any costs recovery. The **insured** and the **insurer** will share any **legal expenses** that are recovered according to the proportion paid, subject to the **insurer's** right of recovery being restricted to the **limit of indemnity**.

## **LAW APPLICABLE TO THE CONTRACT**

The law applicable to this contract is subject to agreement between the parties. Unless a special endorsement to the contrary has been requested by the policyholder and agreed by **us**, the law applying to this insurance contract will be the Law of Scotland

## **COMPLAINTS PROCEDURE**

We are committed to maintaining a high standard of professional conduct in all our dealings with our members. However if you feel that your requirements have not been handled in the manner in which you would expect and you wish to make a complaint, you should initially contact:

The Chief Executive  
The Legal Defence Union  
Walkend, Aldbar, By Brechin  
DD9 6SW