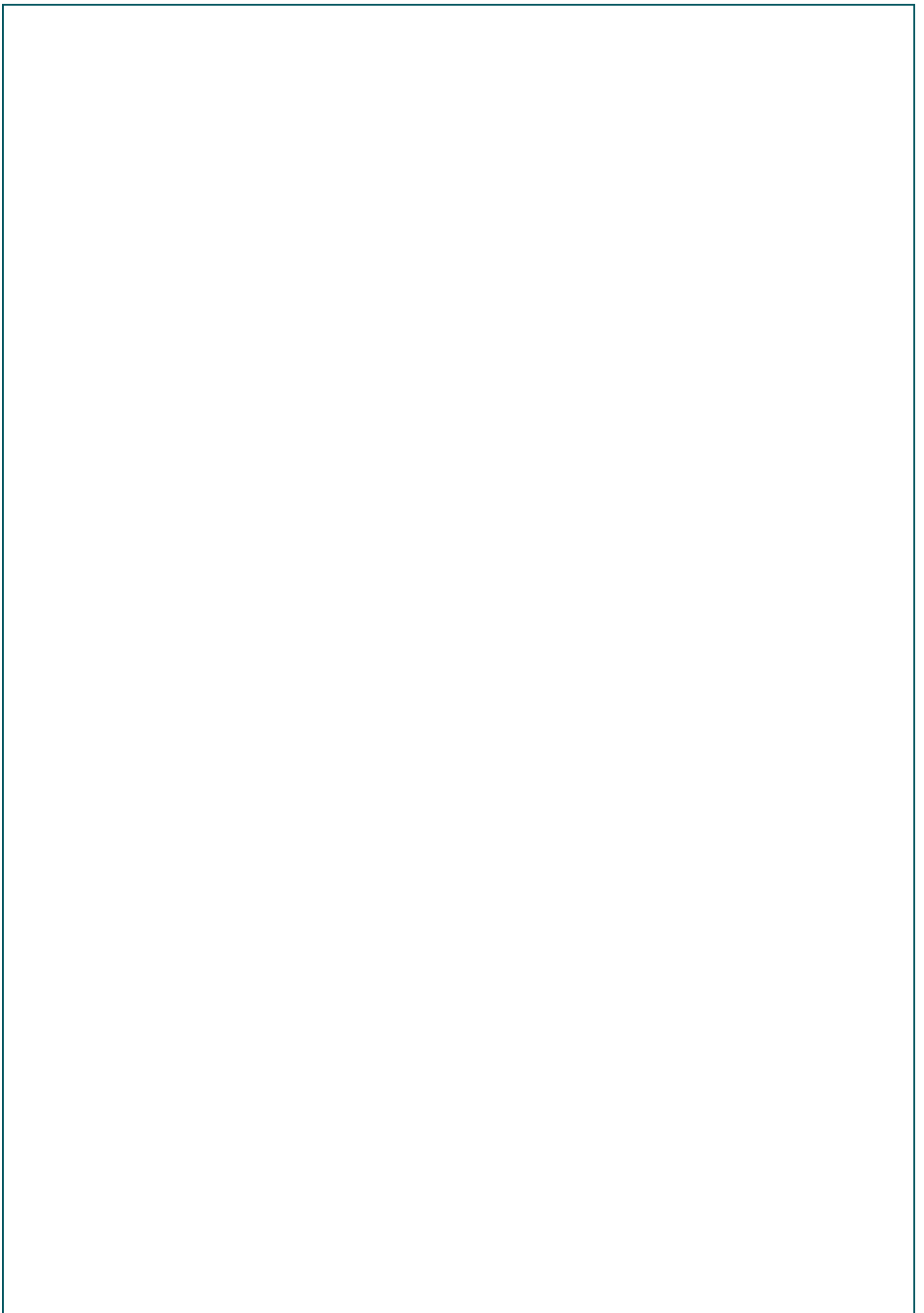


# PRISON OFFICERS ASSOCIATION OF SCOTLAND

## LEGAL EXPENSES POLICY





## LEGAL PROTECTION POLICY WORDING

**This is a “claims made” insurance. This insurance only covers Claims notified to the Coverholder during the Period of Insurance.**

The Policyholder has supplied certain information to the Insurer it is agreed this shall form the basis for the issue of this Policy.

The Insurer agrees in consideration of the premium paid by the Policyholder to indemnify the Insured Person to the extent and in the manner provided within this Policy at the request of the Policyholder.

Unless expressly stated nothing in this Policy will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999.

### DEFINITIONS

#### **Acts of Parliament**

All Acts of Parliament referred to in this Policy shall include any subsequent amendments, re-enactments or regulations and equivalent legislation enforceable within the Territorial Limits.

#### **Any One Claim**

All Claims consequent upon the same original cause, event or circumstance.

#### **Appointed Representative**

A consultant, solicitor, barrister or other appropriately qualified person appointed to act for the Insured Person in accordance with the terms of this Policy.

#### **Claim**

A claim under this Policy for Legal Expenses.

#### **Contracting Party**

A person, firm or company domiciled within the Territorial Limits with whom the Insured Person has a direct contractual relationship.

#### **Coverholder**

Abbey Legal Protection a trading division of Abbey Protection Group Limited, who administers and manages this insurance on behalf of the Insurer.

#### **Home**

The Insured Prison Officer's permanent private residence.

#### **Injury**

Physical bodily injury or death.

#### **Insured Person**

The Insured Prison Officer and their spouse or partner with whom the Insured Prison Officer has a continuous relationship and lives at the Home of the Insured Prison Officer and their:

- Children under the age of 21 normally resident with the Insured Prison Officer
- parents normally resident with the Insured Prison Officer

**Insured Prison Officer**

Any prison officer who is a subscribing member of the Policyholder.

**Insurer**

Brit Insurance Limited 55 Bishopsgate, London, EC2N 3AS.

**Legal Expenses****a) Fees**

- i. Any professional fees, expenses and other disbursements reasonably incurred by the Appointed Representative with the consent of the Coverholder; and
- ii. Any costs incurred by other parties insofar as the Insured Person is held liable in court or tribunal proceedings to pay such costs or becomes liable to pay such costs under a settlement made with another party with the consent of the Coverholder but excluding any costs which the Insured Person may be ordered to pay by a court of criminal jurisdiction.

**Period of Insurance**

As specified in the Schedule.

**Policyholder**

Prison Officers Association of Scotland

**Territorial Limits**

United Kingdom of Great Britain and Northern Ireland.

**Vehicle**

A motor vehicle including motorcycles required to be licensed for road use constructed or adapted principally for the carriage of up to seven passengers owner or hired by the Insured Person

**LIMITS OF INSURER'S LIABILITY**

The maximum liability of the Insurer under this Policy is limited to the amounts specified below:

1. £100,000 Any One Claim
2. £500,000 all Claims notified during the Period of Insurance.

## **SECTIONS OF COVER**

The Sections of Cover applicable are as specified in the Schedule.

The Insurer will only indemnify the Insured Person for Claims where the dispute and legal proceedings are or would be within the Territorial Limits and the Claim is notified during the Period of Insurance.

### **SECTION 1**

#### **CRIMINAL PROSECUTION COVER**

The Insurer agrees to indemnify the Insured Prison Officer against Legal Expenses incurred in defending a prosecution in a court of criminal jurisdiction arising out of the Insured's employment as a prison officer.

The Insurer agrees to indemnify the Insured Person against Legal Expenses in defending a prosecution in a court of criminal jurisdiction arising out the use of a Vehicle.

The Insurer agrees to indemnify the Insured Prison Officer against Legal Expenses in defending a prosecution alleging assault in a court of criminal jurisdiction.

#### **Exclusions to Section 1**

The Insurer will not be liable to indemnify the Insured Person in respect of Claims arising out of or in connection with:

- a) any prosecution alleging dishonesty;
- b) any prosecution for non-endorseable road traffic offences.

### **SECTION 2**

#### **DISCRIMINATION DEFENCE COVER**

The Insurer agrees to indemnify the Insured Prison Officer against Legal Expenses incurred in defending a civil proceedings alleging breach of the Race Relations Act 1976 or the Sex Discrimination Act 1975 by the Insured Prison Officer.

### **SECTION 3**

#### **EMPLOYMENT DISPUTES COVER**

The Insurer agrees to indemnify the Insured Person against Legal Expenses incurred in pursuing Employment Tribunal or Court proceedings against an employer or ex-employer over the terms of their contract of employment.

### **SECTION 4**

#### **DISCIPLINARY HEARINGS COVER**

The Insurer agrees to indemnify the Insured Prison Officer against Legal Expenses incurred in representing the Insured Prison Officer at disciplinary hearings at which the Insured Prison Officer is facing dismissal provided that the Policyholder agrees that it is appropriate to incur Legal Expenses in the particular circumstances.

## **SECTION 5**

### **CONSUMER DISPUTES COVER**

The Insurer agrees to indemnify the Insured Person against Legal Expenses incurred in the pursuit or defence of any dispute or legal proceedings made by or brought against the Insured Person in a contractual dispute with a Contracting Party over a contract:

- a) to obtain any service as defined by the Supply of goods and services Act 1982 or;
- b) for the sale or purchase of any goods as defined by the Sale of Goods Act 1979

provided that;

- a) the amount in dispute exceeds £250 and;
- b) the Insured Person is contracting as a consumer and not in the course of business.

### **Exclusions to Section 5**

The Insurer will not be liable to indemnify the Insured Person in respect of Claims arising out of or in connection with:

- a) any dispute arising from or relating to the use, sale, maintenance or repair of motor vehicles, their parts or accessories
- b) any disputes arising from or relating to any work carried out in or for the benefit of land or buildings other than the Home.

## **SECTION 6**

### **FATAL ACCIDENT ENQUIRY COVER**

The Insurer agrees to indemnify the Insured Prison Officer against Legal Expenses incurred in representing the Insured Prison Officer at a Fatal Accident Enquiry where the Policyholder agrees that it is appropriate to incur Legal Expenses in the particular circumstances.

## **SECTION 7**

### **PERSONAL INJURY COVER**

The Insurer agrees to indemnify the Insured Person against Legal Expenses incurred in the pursuit of any dispute or legal proceedings for damages for injury to the Insured caused by the actual or alleged act or omission of a third party.

### **Exclusions to Section 7**

The Insurer will not be liable to indemnify the Insured Person in respect of Claims arising out of or in connection with injuries sustained as a result of medical or clinical negligence.

## GENERAL EXCLUSIONS

The Insurer shall not be liable to indemnify the Insured Person in respect of:

1. the defence of the Insured Person in civil legal proceedings arising from:
  - i. injury or disease including psychiatric injury and stress;
  - ii. loss, destruction or damage of or to property;
  - iii. alleged breach of any professional duty;
  - iv. any tortious liability;
2. any dispute legal proceedings made, brought or commenced outside the Territorial Limits;
3. Legal Expenses incurred without the prior written consent of the Coverholder or in excess of the Coverholder's Consent;
4. any Claim relating to or arising from any cause, event or circumstance occurring prior to or existing at inception of this Policy and which has or which the Insured Person knew or ought reasonably to have known may give rise to a dispute legal proceedings by or against the Insured Person;
5. fines or other penalties imposed by a court or tribunal;
6. any dispute legal proceedings in respect of which the Insured Person is, or but for the existence of this Policy would be, entitled to indemnity under any insurance policy whether a legal expenses insurance or not;
7. any Claim arising out of the deliberate, conscious, intentional or negligent disregard by the Insured Person of the need to take all reasonable steps to avoid and prevent Claims, disputes legal proceedings;
8. any dispute or legal proceedings with Government or Local Authority departments concerning the imposition of statutory charges;
9. disputes or legal proceedings between Insured Persons;
10. any dispute between the Insured Person and the Policyholder, the Coverholder, the Insurer or the Appointed Representative;
11. any dispute or legal proceedings arising out of breach or alleged breach of confidentiality or passing off whether related to intellectual property or not or the use or alleged use of any intellectual property;
12. any dispute or legal proceedings arising out of or in connection with actual or alleged defamation or malicious falsehood;
13. any Legal Expenses incurred in respect of or in connection with a judicial review;
14. appeals arising out of legal proceedings to which no Coverholder's Consent has been granted;
15. any claim, consequential loss, legal liability or any loss or damage to property directly or indirectly caused by or contributed to by seepage, pollution or contamination of any kind;
16. any Legal Expenses which the Insured Person should or would have had to incur irrespective of any dispute;
17. any expense, consequential loss, legal liability or any loss or damage to property directly or indirectly caused by or contributed to by:
  - a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
19. any loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with (including any action taken in controlling, preventing, suppressing or in any way relating to) any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

- a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b) any act of terrorism.

For the purposes of this exclusion an act of terrorism means an act including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

## **GENERAL CONDITIONS**

### **1. Arbitration**

Any dispute between the Insured Person and the Insurer shall be referred to a single arbitrator who shall be either a solicitor or barrister agreed upon by both parties or failing agreement one who is nominated by the President of the appropriate Law Society or by the Bar Council or appropriate professional body within England & Wales. The apportionment of the costs of the arbitration shall be determined by the arbitrator.

### **2. Cancellation**

This Policy may be cancelled at any time on the Policyholders written instructions and the premium shall be adjusted on the basis of the Insurer receiving or retaining a pro rata time on risk premium.

This Policy may also be cancelled by the Insurer giving thirty days' notice in writing to the Policyholder and the premium hereon shall be adjusted on the basis of the Insurer receiving or retaining pro rata time on risk premium. If the Policyholder is placed in liquidation, receivership or administration or adjudicated bankruptcy or if any application is made to the court or meeting convened for any such purpose, this Policy will lapse and the Insured will be entitled to a pro rata return of premium.

Provided always that no return of premium shall be allowed if an Insured Person has notified a Claim.

### **3. Cooling Off**

The Policyholder may cancel this Policy with effect from inception. The Policyholder has a right to cancel within 14 days of insuring or within 14 days of receiving full policy documents by writing to the Coverholder requesting cancellation and returning the policy documents to Abbey Legal Protection, Minorities House, 2-5 Minorities, London, EC3N 1BJ. No charge will be made and any premium paid by the Policyholder will be refunded.

### **4. Alteration of Risk**

The Policyholder must notify the Coverholder immediately in writing of any alteration in risk that materially affects this insurance.

### **5. Due Observance**

The Insured Person must act with due diligence and at all times act and comply with all the terms, conditions and provisos under this Policy.

### **6. Proper Law**

The parties are free to choose the law applicable to this Policy. Unless specifically agreed to the contrary this insurance shall be subject to the Laws of England and Wales.

### **7. Data Protection Act 1998**

It is agreed by the Insured Person and the Policyholder that any information provided to the Insurer regarding the Insured will be processed by the Insurer or the Coverholder in compliance

with the provisions of the Data Protection Act 1998 for the purposes of providing insurance and handling Claims, if any, which may necessitate providing such information to third parties.

## **CLAIMS CONDITIONS**

### **1. Notification of Claims**

It is a condition precedent to the liability of the Insurer that the Coverholder be notified in writing during the Period of Insurance immediately an Insured Person is aware of any cause, event or circumstance which has given or may give rise to a Claim dispute legal proceedings involving the Insured Person. Where such notification has been given, the Insurer agrees to treat any subsequent Claim in respect of the cause, event or circumstance notified as though the Claim had been notified during the Period of Insurance.

### **2. Coverholder's Consent**

It is a condition precedent to the liability of the Insurer that their consent to incur Legal Expenses must firstly be obtained in writing. This consent will be given by the Coverholder on behalf of the Insurer if the Insured Person can satisfy the Coverholder that:

- a) it is reasonable to incur Legal Expenses having regard to the proportionality between the remedy claimed and the Legal Expenses to be incurred and;
- b)
  - i. where the Insured Person is pursuing there are reasonable prospects of proving the other party's legal liability and of recovering the damages claimed or other legal remedy sought  
or
  - ii. where the Insured Person is defending the other party does not have reasonable prospects of proving the Insured's legal liability

If during the course of a Claim the Insured Person ceases to satisfy the Coverholder in respect of a) or b) above, indemnity will be withdrawn in respect of Legal Expenses. The decision to grant consent or to withhold it will be taken on receipt of:

- a fully completed insurance claim form;
- the information and documentation the Coverholder reasonably requests;
- a legal opinion from the Appointed Representative as to a) and b) above;
- any advice the Coverholder may deem it necessary to take.

With the agreement of the Insured Person, the Coverholder may provide assistance in settling disputes, the costs of which will be covered under this Policy subject to the payment of any Excess within the Limits of Insurer's Liability.

The Coverholder at its discretion may require the Insured Person to obtain an opinion from Counsel at the Insured Person's expense as to the merits of the subject matter of the Claim such opinion to have regard to the same issues that the Coverholder has in assessing the merits of

any legal action. If based upon such opinion the Coverholder is satisfied in respect of a) and b) above the Legal Expenses in obtaining that opinion will be paid by the Insurer within the Limits of the Insurer's Liability.

In granting its consent the Insurer undertakes to provide indemnity to the Insured Person subject to the terms and conditions of this Policy and its Schedule but such consent does not imply that all Legal Expenses will be paid. In particular Legal Expenses for matters that go beyond the immediate scope of the Claim shall be deemed by the Insurer to fall outside the indemnity provided by this Policy.

The Coverholder reserves the right to limit its consent by time and or financial amount of Legal Expenses and or stage of proceedings to allow for a review of their continued consent.

If after consent has been granted it is shown that the Claim has not been brought within the terms and conditions of this Policy and its Schedule the Coverholder's consent will be withdrawn and no indemnity shall be provided. The Insurer shall be entitled to recover any Legal Expenses previously paid.

If the Insured Person elects to proceed with the pursuit or defence of a dispute or legal proceedings to which the Coverholder's consent has been refused through lack of reasonable prospects as required in b) i. and ii. above and if the Insured Person is successful in such pursuit or defence, the Insurer will pay Legal Expenses incurred after such consent had been refused subject to the terms conditions of this Policy.

### **3. Instruction and choice of Appointed Representative and Counsel**

Where recourse is necessary to a lawyer and proceedings are issued, the Policyholder is free to choose an Appointed Representative to act in the name of and on behalf of the Insured Person in any legal proceedings to which the Coverholder has consented. The name and address of the Appointed Representative the Policyholder proposes to instruct must be notified to the Coverholder in writing. The Coverholder will accept such nomination provided the Coverholder is satisfied the proposed Appointed Representative will cooperate and enable the Insured Person to comply with the terms and conditions of this policy and provided the proposed Appointed Representative's charging rates are fair and reasonable in regard to the particular legal proceedings.

A dispute arising from the Policyholder's choice may be referred to Arbitration in accordance with General Condition 1.

The Insured Person must not, without the written consent of the Coverholder, enter into any agreement with the Appointed Representative as to the basis of calculation of Legal Expenses. The Coverholder may withdraw consent previously given at any time.

In selecting the Appointed Representative the Policyholder shall have regard to its duty to minimise the cost of any Claim.

In all cases the Appointed Representative shall be appointed in the name of and on behalf of the Insured Person. If in the course of any Claim the Appointed Representative wishes to instruct

Counsel or an expert, Counsel's or the expert's name and an explanation of the necessity for such instruction must be submitted to the Coverholder for consent to the proposed instruction which will not be unreasonably withheld.

#### **4. Disclosure**

It is a condition precedent to the Insurer's liability that:

- a) The Insured Person must give the Appointed Representative and the Coverholder all necessary help and information including a complete and truthful account of the facts of the case and all relevant documentary or other evidence in the Insured Person's possession. The Insured Person must provide, obtain or execute all documents as necessary and attend meetings or conferences as requested.
  
- b) The Coverholder is entitled to receive from the Appointed Representative and Insured Person any information, document or advice in connection with any Claim and the subject matter of any Claim even if privileged. In addition the Insured Person must instruct the Appointed Representative to provide the Coverholder with regular updates on the progress of the subject matter of any Claim and inform the Coverholder immediately if and when any circumstance adversely impacts the factors taken into account in granting the Coverholder's consent. On request the Insured Person will give to the Appointed Representative any instructions necessary to secure the required access.

Indemnity may be withdrawn if the Insured Person fails to cooperate at all or within a reasonable time with the Coverholder's or the Appointed Representative's requests.

#### **5. Payment of Legal Expenses Professional Expenses and Awards of Compensation**

All bills for Legal Expenses which the Insured Person receives from the Appointed Representative should be forwarded to the Coverholder without delay. If the Coverholder so requires the Insured Person must ask the Appointed Representative to submit the bill of costs for assessment or certification by the appropriate Law Society, court or tribunal. The Insured Person is responsible for payment of all Legal Expenses. The Insurer may settle these direct if requested by the Policyholder to do so. The payment of some Legal Expenses does not imply that all Legal Expenses will be paid.

#### **6. Offer of Settlement**

It is a condition precedent to the liability of the Insurer that the Insured Person must inform the Coverholder in writing as soon as an offer to settle the subject matter of the Claim is received and or the Insured Person proposes to make an offer of settlement. In any settlement, the Insured Person must have regard to Legal Expenses, incurred or likely to be incurred and the recovery thereof.

No indemnity will be provided if the Insured Person enters into any agreement to settle without the prior written consent of the Coverholder (such consent not to be unreasonably withheld) and the Insurer shall be entitled to recover any Legal Expenses previously paid. If the Insured Person unreasonably rejects an offer of settlement which the Coverholder recommends

acceptance of or makes an offer which the Coverholder does not agree no further indemnity shall be provided.

The Insurer may at its absolute discretion decide to pay the Insured Person the amount of damages that the Insured Person is claiming or is being claimed against the Insured instead of indemnifying the Insured for Legal Expenses. Where the Insurer exercises this discretion the Insurer will cease to be liable for any further Legal Expenses.

## **7. Recovery of Costs**

Whenever the Insured Person is awarded costs or under the terms of any settlement where costs are included, those costs are to be repaid to the Insurer. The Insured Person and their Appointed Representative must make every effort to make a full recovery of costs. Where a settlement purports to be a global or a without costs settlement or where costs are awarded but not recovered, the Insured Person agrees that a fair and reasonable proportion of that settlement will be deemed costs and due to the Insurer. Where such a settlement is paid in instalments all costs to the Insurer shall be paid first.

## **8. Appeal Procedure**

If, following legal proceedings to which the Coverholder has consented, the Insured Person wishes to appeal against the judgment or decision of a court or tribunal, the grounds for such appeal must be submitted to the Coverholder through the Appointed Representative immediately

or as soon as practicable so that the Coverholder may consider whether to consent to such further action. If an appeal is lodged against a judgment or decision of a court or tribunal made in favour of the Insured Person following legal proceedings to which the Coverholder has consented, the Insured Person must notify the Coverholder immediately in order that cover shall continue. The Coverholder will inform the Appointed Representative of its decision. If the

Coverholder so requires it the Insured Person must co-operate in an appeal against the judgment or decision of a court or tribunal.

## **9. Duty to Minimise**

The Insured Person must take all reasonable precautions to avoid and prevent Claims legal proceedings and disputes.

The Insured Person must use every endeavour and take all reasonable measures to minimise the cost and effect of any Claim.

## **10. Fraudulent Claims**

If the Insured Person makes any request for payment under this Policy knowing it to be fraudulent or false in any respect or ought reasonably in the circumstances to know it to be fraudulent or false or where there is collusion between any parties to the dispute the Insurer shall be entitled to recover any Legal Expenses previously paid.

## **11. Insolvency or Liquidation of the Insured**

If the Insured Person becomes bankrupt or enters into a voluntary arrangement or deed of arrangement or if any application is made to the court or meeting convened for any such

purpose the Insurer has the right to immediately cease to provide indemnity for Legal Expenses notwithstanding any previous consent the Coverholder may have granted.

## **COMPLAINTS**

The Coverholder is dedicated to providing high quality service and wants to ensure it maintains this at all times. If the Insured Person is not satisfied with any part of the service they have received then they should write to the Coverholder who will do their best to resolve the problem.

In the first instance please contact:

**The Customer Services Manager**  
**Abbey Legal Protection**  
**Minorities House**  
**2-5 Minorities**  
**London, EC3N 1BJ**  
**Tel: 0870 600 1480**  
**Fax: 0870 600 1481**

The Coverholder is authorised and regulated by the Financial Services Authority. Firm Number: 308829

In the event the Insured remains dissatisfied and wishes to pursue matters further they may be able to refer the matter to the Financial Ombudsman Service.

Their details are as follows:

**Financial Ombudsman Service**  
**South Quay Plaza**  
**183 Marsh Wall**  
**London, E14 9SR**  
**Tel: 0845 080 1800**  
**[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)**

This procedure will not prejudice the Insured's right to take legal proceedings

## **FINANCIAL SERVICES COMPENSATION SCHEME**

In the event the Insurer fails to meet its obligations and the Insured has turnover or income of less than £1 million a year the Insured may be eligible for compensation from the Financial Services Compensation Scheme.

## **COMMUNICATIONS**

Initial notification of a Claim must be made in writing by first class post or facsimile to the Coverholder by addressing it to:

**Abbey Legal Protection**  
**Minorities House**

**2-5 Minorities**

**London**

**EC3N 1BJ**

**Tel: 0870 600 1480**

**Fax: 0870 600 1481**

All notices and communications from the Insurer or their representatives to the Insured shall be deemed to have been duly sent if sent to the Insured's address as last declared to the Coverholder or, in relation to any matters arising out of any Claim, if sent to the Appointed Representative.

All notices and communications from the Insured or the Appointed Representative to the Insurer shall be deemed to have been duly sent if sent to the Coverholder at the above address.

**Abbey Legal Protection**

Minorities House, 2-5 Minorities, London, EC3N 1BJ

**Tel:** 0870 600 1480 **Fax:** 0870 600 1481

[sales@abbeylegal.com](mailto:sales@abbeylegal.com)

[www.abbeylegal.com](http://www.abbeylegal.com)

Abbey Legal Protection is a trading division of Abbey Protection Group Limited

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