Protecting the users of legal services:

Balancing cost and access to legal services

Consultation responses

December 2019

Name	Respondent Type
Publish the response with my/our name	
Responses from organisations	
4 New Square	Law firm or other legal services provider
Association of British Insurers	Representative industry group
Association of Women Solicitors	Representative industry group
Bailoran Solicitors	Law firm or other legal services provider
Bar Council	Other (Organisation)
Birmingham Law Society	Law society
BladeLaw	Law firm or other legal services provider
Bristol Law Society	Law Society
Burges Salmon LLP	Law firm or other legal services provider
Cardiff and District Law Society	Law society
Chancery PII	Other (Organisation)
Chartered Institute of Legal Executives	Representative industry group
CILEx Regulation	Representative industry group
City of London Law Society	Law society
County Societies Group	Other (Organisation)
Criminal Cases Review Commission	Representative industry group
DAC Beachcroft LLP	Law firm or other legal services provider
Decoded: Legal	Law firm or other legal services provider
Ecohouse Victims Group	Representative consumer group
Express Solicitors	Law firm or other legal services provider
Hampshire Incorporated Law Society	Law society
Howden UK Group Ltd	PII broker
Ian Newbery & Co	Law firm or other legal services provider
Institute of Legacy Management	Representative industry group
International Underwriting Association	Representative industry group
JLT Group	PII broker
Joe Egan Solicitors	Law firm or other legal services provider
Junior Lawyers Division	Representative industry group
Law Society of England and Wales	Law Society
LawNet	Representative industry group
Legal Ombudsman	Other (Organisation)
Legal Risk LLP	Law firm or other legal services provider
Legal Services Consumer Panel	Representative consumer group
Leicestershire Law Society	Law society
Liverpool Law Society	Law society
Lloyd Rehman & Co.	Law firm or other legal services provider
Lloyd's Market Association	Representative industry group
Lockton	PII broker
Manchester Law Society	Law society
Mather & Co Solicitors	Law firm or other legal services provider

Middlesex Law Society	Law society
Miller Insurance	PII broker
Minster Law Limited	Law firm or other legal services provider
Morrish Solicitors LLP	Law firm or other legal services provider
MRTIPS	Law firm or other legal services provider
Newcastle upon Tyne Law Society	Law society
Northamptonshire Law Society	Law society
Nottinghamshire Law Society	Law society
Pearce West Employment Solicitors	Law firm or other legal services provider
Pett Franklin & Co LLP	Law firm or other legal services provider
Professional Negligence Lawyers' Association	Representative industry group
QBE Insurance Group	PII insurer
Slate Legal Limited	Law firm or other legal services provider
Sole Practitioners Group	Representative industry group
Solicitor Assist	PII broker
Surrey Law Society	Law society
UK Finance	Representative industry group
Zurich	PII broker

Responses from individuals

Alison Fielden	Solicitor
Andrew Harrison	Solicitor
Ann Mear	Other (Personal)
Becky Moyce	Other (Personal)
Charles Harris	Other legal professional
David Ofosu-Appiah	Solicitor
David Thomas	Solicitor
Fiona Swann	Other (Personal)
Graham Balchin	Solicitor
Jason Pearce	Solicitor
Janis Purdy	Solicitor
Jennifer Woodyard	Solicitor
John S Mackay	Non-legally qualified, working in legal services
Klearchos Kyriakides	Solicitor
Laurence Mann	Solicitor
Leigh Price	Non-legally qualified, working in legal services
Lionel Conner	Solicitor
Nicholas Davidson	Other legal professional
Oliver May	Other (Personal)
Peter Anthony Sloan	Solicitor
Peter Bloxham	Solicitor

Publish the response anonymously

Responses from organisations

ID-067	Law firm or other legal services provider
ID-089	Law firm or other legal services provider
ID-098	Law firm or other legal services provider
ID-112	Other
ID-118	Law firm or other legal services provider
ID-145	Other
ID-159	Law firm or other legal services provider
ID-166	Law firm or other legal services provider
ID-167	Law firm or other legal services provider
ID-196	Law firm or other legal services provider
ID-208	Law firm or other legal services provider
ID-221	Law firm or other legal services provider
ID-268	Law firm or other legal services provider
ID-273	Law firm or other legal services provider
ID-281	Other
ID-284	Law firm or other legal services provider
ID-294	Law firm or other legal services provider
ID-305	Law firm or other legal services provider
ID-323	Law firm or other legal services provider
ID-331	Law firm or other legal services provider
ID-Anonymous1	
ID-Anonymous2	

Responses from individuals

ID-050	Lawyer
ID-059	Solicitor
ID-072	Solicitor
ID-079	Solicitor
ID-091	Solicitor
ID-095	Non-legally qualified, working in legal services
ID-100	Solicitor
ID-102	Solicitor
ID-127	Solicitor
ID-170	Solicitor
ID-172	Solicitor
ID-178	Non-legally qualified, working in legal services
ID-205	Solicitor
ID-217	Solicitor
ID-230	Solicitor
ID-256	Solicitor
ID-278	Solicitor
ID-277	Solicitor

ID-283	Solicitor
ID-287	Other legal professional
ID-289	Solicitor
ID-307	Solicitor
ID-314	Solicitor
ID-324	Solicitor
ID-327	Solicitor
ID-333	Other legal professional

Publish my/our name but not the response

Responses from Organisations

Aon plc	PII broker
Association of South Western Law Societies	Law society
Devon and Somerset Law Society	Law society
Honne Limited / Legal Eye	Law firm or other legal services provider
Purdys Solicitors	Law firm or other legal services provider

Responses from individuals

Jeffrey Forrest	Solicitor

Protecting the users of legal services: balancing cost and access to legal

Response ID:302 Data

2. About you

1.
First name(s)

Mark

2.
Last name

Cannon

6.
I am responding..

on behalf of an organisation

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

4 New Square

10.
Please tick if you are regulated by the SRA

No

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer

: 1. Our Viewpoint This response is by a number of members of 4 New Square. We are barristers who have between us decades of experience in insurance law (including professional indemnity law) and of bringing and defending claims against professional persons and firms, including, in particular solicitors. We include editors and authors of Jackson & Powell on Professional Liability (Sweet & Maxwell; 8th ed, 2017) and Professional Indemnity Insurance by Cannon & McGurk (OUP; 2nd ed, 2016). We disagree strongly with the majority of the proposals. We are particularly concerned in the proposed reductions in the level of cover. 2. The Data First, we are concerned that the proposal is based upon incomplete, unreliable and out of date information. We note that the information (i) is only from a "most insurers currently active in the market" and (ii) is based on claims for the period 2004-14 As to the first, as others have observed, a number of insurers who insured solicitors on the MTC over that period, including Quinn, have become insolvent and their data has not been included. Quinn was a major insurer and, as a matter of our impression rather than methodical, statistical analysis, insured a large number of solicitors who faced numerous and considerable claims. The experience of a majority of insurers other than Quinn may well not give an accurate picture. The period covered is also a source of concern. As is the norm with PII, insurance under the MTC is on a "claims made" basis. This means that there is often an interval of some years between the acts or omissions which give to a claim and the claim being made and attaching to a particular policy. This means that claims made or settled in 2004 will include a substantial proportion (we do not know what) where the underlying facts took place well before 2004. This means that the data is not a good guide to the level of potential claims in the future. Domestic Conveyancing For example, house prices have risen considerably since the time at which the underlying conveyancing transactions which form the basis of the data for the earlier years took place: the UK House Price Index records that the average price of residential property rose from £89,230 in May 2000 to £226,906 in April 2018 an increase of over 150%. This means that (i) the average amount paid on domestic conveyancing claims over the period 2004-14 will be significantly lower than the average amount paid on domestic conveyancing claims in the future and (ii) the proportion of future claims for domestic conveyancing which will be over £1 million is considerably more than assumed for the purposes of the SRA's proposal. (The average price of a house in London is now £471,944.) (Rising house values will also impact on the value of claims relating to wills and inheritance.) Personal Injuries and Clinical Negligence The change in the discount rate in February 2017 means that, until proposed changes partially reduce its impact, the amount payable for claims for personal injury and clinical negligence has increased substantially. It follows that the value of claims against solicitors for mishandling such claims will also have increased. This increase is not reflected at all in the data on which the SRA's proposal is based. Inflation The problem with reliance on incomplete and historic data applies across the board, where inflation and other factors will have increased the value of claims (for example, over the period from January 2004 to date the RPI has increased by about 50%). 3. Non-Conveyancing Claims Above £500,000 The proposed limit on cover of £500,000 (to include third party claimant's costs and interest) is far too low. While many claims will fall below that limit, there will be many which do not. And those that do not will include cases where the claimants have suffered serious losses as a result of the failings of their solicitors and where any regulator which took the interests of consumers seriously would ensure that a far greater degree of recovery was likely to be available. Catastrophic Personal Injuries For example, we note that the highest payment value for personal injury claims is £5,197,000, that the highest for clinical negligence is £3,865,000 and that it is stated that 29 claims are at risk if the PII insurance available to meet them were limited to £500,000. Those claims are likely to include claims for mishandling claims for catastrophic personal injury where much of the damages which formed the subject of the mishandled claim were for the cost of future care. Having let such clients down, solicitors will then deny them due redress, in some cases with the amount of money available to meet a claim for damages far below £500,000 (because of the need to pay costs, including the costs of expert evidence, and interest). The result would be that those who suffer most as a result of their solicitors' negligence would receive only a fraction of the amount needed to compensate them. And this is without the need to take into account the impact of the change in the discount rate. Divorce/Pension Split Orders An area in which we and/or our colleagues in 4 New Square have experience of "consumer" claims which are worth far more than £500,000 (even before allowing for costs and interest) is mishandled divorce proceedings, including negligence in relation to pension split orders. As with personal injuries and clinical negligence, those who suffer the largest losses as a result of their solicitors' negligence could well find that they are only able to recover a fraction of their losses. The idea that a responsible regulator could consider this to be acceptable is appalling. 4. Aggregation We recognise that a balance has to be struck between the cost of insurance and protection of solicitors' clients and quasi-clients. That is why the MTC have always allowed for aggregation of claims. This inevitably means that there is a risk that those who suffer losses as a result of their solicitors' breaches of duty will not recover compensation through their solicitors and their PII insurers. The proposed limits would result in this happening far more often. Quite simply, £500,000 divided by £500,000 is 1. £3 million divided by £500,000 is 6. The aggregation clauses could apply where a solicitor acted negligently for numerous victims of a disaster or drug or medical procedure (e.g. the recent breast implant litigation). And they have been held to apply to numerous investors in an off-shore development: AIG Europe Ltd v Woodman and others

(Solicitors Regulation Authority intervening) [2017] UKSC 18. In our experience the firms which are the subject of such claims are not always substantial practices with significant insurance above that required by the SRA. 5. LLPs and Limited Liability Companies The present requirements are that those personally liable need only have insurance cover of £2 million, whereas those who practise through LLPs or limited liability companies must have cover of at least £3 million. The reason for this is or should be obvious: in the case of LLPs and limited liability companies there is less incentive to take out excess insurance and there is less likelihood that the LLP or limited liability will have substantial assets to meet any uninsured liability. By way of contrast a sole practitioner or partner in a traditional firm faces personal liability and so is likely to want to take out top up insurance to protect his or her personal assets (in the same way that we do as self-employed barristers). To remove this distinction, as proposed, is a seriously retrograde step. Not only does it increase the chance that an LLP or limited liability company of solicitors will not have sufficient PII to meet claims of those of its clients or quasi-clients who suffer loss as a result of their breaches of duty, but there is an increased risk that such firms will become insolvent, to the detriment of their clients and employees. The statement in the Consultation Paper that "There is little evidence of different claims patterns based on the legal structure of a firm" misses the point entirely. The SRA appears to have forgotten why the requirement for compulsory insurance was higher for LLPs and limited liability companies. It was not because of any anticipation of different claims pattern, but because of the anticipated consequences of limited liability. 6. Sole Practitioners and Small Firms We note from paragraph 81 of the Consultation Paper that 93% of sole practitioners and 78% of 2-4 partner firms only take out the current minimum cover. They are ill-advised to do so given the possibility of aggregation. If a similar proportion were to limit their PII to the new, lower limits proposed by the SRA it would seem that the clients of a very large number of firms would be at a significant risk of not receiving redress for losses caused by their solicitors' breaches of duty. It is the firms which only take out the minimum level of PII required which need be made to take out cover which provides adequate protection to their clients and others who are entitled to redress for their wrongful acts. 7. Litigating Underinsured Claims We have acted for defendant professional firms whose PII is insufficient to meet their likely liability. There are nearly always significant conflicts of interest between the underinsured firms and the insurers. Insurers can find themselves facing applications for costs under s.51 of the Senior Courts Act 1980 (see, for example, the recent decision in Travelers Insurance Co Ltd v XYZ [2018] EWCA Civ 1099). These problems will be more frequent if the SRA's proposed reduction in the limits of cover are adopted. 8. Overall Clients go to solicitors for the many of the most important transactions or situations in their lives: the purchase and sale of their homes; divorce; personal injury etc. The availability of sufficient PII cover when such things go wrong far outweighs any marginal, speculative reduction in the cost of such cover.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: 1. Our Viewpoint This response is by a number of members of 4 New Square. We are barristers who have between us decades of experience in insurance law (including professional indemnity law) and of bringing and defending claims against professional persons and firms, including, in particular solicitors. We include editors and authors of Jackson & Powell on Professional Liability (Sweet & Maxwell; 8th ed, 2017) and Professional Indemnity Insurance by Cannon & McGurk (OUP; 2nd ed, 2016). We disagree strongly with the majority of the proposals. We are particularly concerned in the proposed reductions in the level of cover. 2. The Data First, we are concerned that the proposal is based upon incomplete, unreliable and out of date information. We note that the information (i) is only from a "most insurers currently active in the market" and (ii) is based on claims for the period 2004-14 As to the first, as others have observed, a number of insurers who insured solicitors on the MTC over that period, including Quinn, have become insolvent and their data has not been included. Quinn was a major insurer and, as a matter of our impression rather than methodical, statistical analysis, insured a large number of solicitors who faced numerous and considerable claims. The experience of a majority of insurers other than Quinn may well not give an accurate picture. The period covered is also a source of concern. As is the norm with PII, insurance under the MTC is on a "claims made" basis. This means that there is often an interval of some years between the acts or omissions which give to a claim and the claim being made and attaching to a particular policy. This means that claims made or settled in 2004 will include a substantial proportion (we do not know what) where the underlying facts took place well before 2004. This means that the data is not a good guide to the level of potential claims in the future. Domestic Conveyancing For example, house prices have risen considerably since the time at which the underlying conveyancing transactions which form the basis of the data for the earlier years took place: the UK House Price Index records that the average price of residential property rose from £89,230 in May 2000 to £226,906 in April 2018 an increase of over 150%. This means that (i) the average amount paid on

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the minimum level of PII required which need be made to take out cover which provides adequate protection to their clients and others who are entitled to redress for their wrongful acts. 7. Litigating Underinsured Claims We have acted for defendant professional firms whose PII is insufficient to meet their likely liability. There are nearly always significant conflicts of interest between the underinsured firms and the insurers. Insurers can find themselves facing applications for costs under s.51 of the Senior Courts Act 1980 (see, for example, the recent decision in Travelers Insurance Co Ltd v XYZ [2018] EWCA Civ 1099). These problems will be more frequent if the SRA's proposed reduction in the limits of cover are adopted. 8. Overall Clients go to solicitors for the many of the most important transactions or situations in their lives: the purchase and sale of their homes; divorce; personal injury etc. The availability of sufficient PII cover when such things go wrong far outweighs any marginal, speculative reduction in the cost of such cover.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

We consider that the exclusion is inappropriate as a matter of principle and the problems and concerns cannot be remedied by drafting.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree

Please explain your answer

: 1. Unnecessary complexity. We consider it is unnecessary complex to introduce discrete insurance cover/arrangements for firms engaged in conveyancing. It also suggests that there is a clarity and certainty for all firms whether there are engaged in the supply of such services. Many firms will undoubtedly be able to say that conveyancing is a core part of their business; but others will not – see our response to Question 5 below. 2. Attendant risks. Given that some firms might therefore fail to take out such cover if/when they needed it, we interpret the proposals as leading to the conclusion that the lawyers would be uninsured were a claim to arise from conveyancing. This is inimical to the protection of clients and unfair to the insureds.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

We consider that the proposed definition is too wide and would or might capture transactions that would not properly fall within conveyancing services, e.g.:

(a) Matrimonial work where property is transferred (whether as part of a negotiated settlement or arising from the Order of the Court).

(b) Enforcement/civil and cross-border fraud litigation work where property may be transferred to or charged to claimants.

(c) Lawyers involved in the structuring of investments/investment schemes which may have the disposition of real property as a component of the overall structure.

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

No

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: We refer to our answers to the previous Questions.

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22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Somewhat disagree

Please explain your answer

: 1 In theory, the proposed changes to PII requirements might provide law firms with more flexible options to potentially lower insurance costs. However: (a) the proposals over-simplify a potentially complex issue; (b) Question 8 is itself deficient on account of failing to ask whether the proposed flexibility would be desirable for the public and/or the wider profession. 2 First, the proposals fail to take account either of the fact that solicitors' professional indemnity insurance is written on a "claims made" basis or of the complexity of the successor practice rules. By way of example, a firm which does not undertake conveyancing business would still require conveyancing cover if, at any time within (at least) the preceding 15 years, it or any predecessor practice has conducted conveyancing work. 3 Second, paragraph 77 of the proposal talks of "unwind[ing] any remaining cross subsidy in the pricing of insurance between conveyancing and other areas of law". No attempt is made to quantify the effect of any such cross-subsidy – an omission which is a serious deficiency in the consultation document. However, and on the assumption that such a cross-subsidy exists: (a) It is inherent in the proposal that practices should "opt-in" to conveyancing cover that the cost of obtaining professional indemnity insurance for such practices will increase; (b) Conveyancing is already one of the more competitive areas of business practised by solicitors due to the competition provided by (non-legally qualified) licensed conveyancers. The imposition of an additional cost burden on those practices which do carry out conveyancing work can only make them less competitive, to the detriment not just of such practices but also the public at large; (c) Firms which have to date undertaken conveyancing work will not be able to escape the additional cost burden which would result if the SRA's proposals were adopted by (for example) stopping to provide services in the areas of work which will not be "opt-in" for insurance purposes, since they would be obliged to maintain cover in respect of potential liabilities for work carried out in the past. For sole practitioners who have carried out conveyancing work this could only exacerbate the cost of obtaining run-off cover. 4 Third, Insurers should be perfectly well able to assess the risk arising from conveyancing work with respect to an individual practice, and to reflect that risk in the premium quoted. If there is a problem of cross-subsidy, then it is a problem which market forces should be able to resolve; a change to regulation, with a consequent potential for both foreseeable and unforeseen adverse consequences, is unnecessary. 5 Fourth, the proposals will result in increased bureaucracy and indirect costs (such as management time) for the practices which would now need to obtain "opt-in" cover as extensions to standard/compulsory cover. 6 We do not understand the logic behind the proposal to exclude "large businesses" from insurance cover. We note that practices will remain under a regulatory obligation to have "appropriate cover". We again observe that Insurers are perfectly able to assess the risk relating to individual insureds from providing services to "large businesses" (and financial institutions) and to reflect that risk in the premium quoted. The SRA's proposal is unlikely to be of significant benefit, but will open the door to the possibility of firms carrying out work for which they have no insurance cover in place. See, further, the answer to Question 2 above.

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23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: As explained in our earlier responses, we do not consider the proposed reductions in the limits in cover to be appropriate because they would leave solicitors significantly underinsured and consumer clients without proper compensation for losses caused by the legal wrongs of their solicitors. The same applies to the proposed limits on run-off cover (£1.5 million for firms which do no conveyancing and £3 million for those that do). This will often be the only insurance available to meet claims which emerge in the years after an insured firm or solicitor ceases to practise and does not have a successor practice. It serves two purposes. The first is to enable the retired solicitors to sleep at night, knowing that there is insurance in place to

meet claims against them. The second and more important is to ensure that former clients can obtain redress. Insurance limited to the amounts proposed would fail to achieve either objective. Where cover is exhausted then the retired solicitor's home and pension would be at risk. And it would be a case of "first come, first served" for former clients seeking redress and a case of no effective redress for those who came later.

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: 1 As we have noted above, the SRA's proposals are effectively designed to disincentivise legal practices from providing conveyancing services and/or providing service to large businesses or financial institutions. They are therefore likely to decrease choice to the public and/or businesses. 2 Since the SRA has made no attempt to quantify the potential benefit to other practices of no longer having to pay for compulsory cover for conveyancing or the provision of services to large businesses and/or financial institutions, it would be wholly speculative to assume that the proposals would encourage new firms to enter the wider legal services market, thereby increasing choice for users of legal services in other areas.

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

No.

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: 1. We challenge the underlying premise of the Question, namely that the Compensation Fund should be a targeted hardship fund protecting only the vulnerable who are considered as needing and deserving it the most. We comment on proposals not referred to in this question to provide the perspective of practising barristers on the issues so far as we see them affecting the reputation of lawyers, fairness to those who instruct them and barristers. 2. We strongly disagree with a proposal that would involve the imposition of a means test for consumers. For sound reasons a regulatory objective is 'protecting and promoting the interests of consumers' (s 1(1)(d)) and this must apply to all consumers whatever their means. Consumers, even wealthy ones, cannot be assumed to be sophisticated users of legal services and even if they are, they instruct solicitors and are prepared to allow them to hold very substantial, often life-changing, sums on their behalf because they believe it is safe to do so. For a regulator to suggest that any consumer must look to himself or herself would significantly undermine the reputation of solicitors. A means test is not applied in other areas of consumer protection (e.g. the Consumer Rights Act 2015 and the Financial Services Compensation Scheme). 3. We disagree with the proposed means test which is likely to give rise to injustice and arbitrary outcomes. This is both because the proposal entails a rigid threshold, which inevitably means dramatically different outcomes for consumers in broadly comparable situations, and because of the manner in which it is proposed to test. As an example to illustrate the problems with the proposal: a. Consumer A may have temporarily converted her property assets into cash. That sum, say £300,000, may represent nearly all of her life's savings and she may have retired. b. Consumer B may be a relatively young and successful professional with a home worth £1,000,000, a mortgage that is comfortably under control of £500,000 and considerable income with the potential for that income to increase considerably over time. As we understand the proposal Consumer A would not be able to claim on the Compensation Fund, while

Consumer B would. This position would be manifestly unjust and undermine the reputation of the profession. 4. We also strongly disagree with the proposal that an estimate be provided with no verification unless asked. It would work to the benefit of dishonest and careless claimants at the expense of the honest and careful. 5. As to the proposal that the costs of making a claim be excluded, a complete exclusion is inappropriate. A simplified process would obviously help but it is unrealistic to expect that that would mean that all claimants would be able to negotiate the process without assistance. The consequence for the consumer would be further unrecovered expense to remedy the errors of a lawyer (undermining the reputation of the fund) and/or more pressure an overstretched voluntary sector. But while we consider a complete ban on recovery of costs to be wrong in principle, we can see the case for a cap on costs. 6. We disagree with the proposal that there be a limit for claims other than a per claimant limit. Applying any other test will provoke complex 'aggregation' style arguments that will give rise to disputes such as those which arise in relation to aggregation clauses in insurance policies. Confronting potentially meritorious claimants with a technical aggregation style argument would undermine the reputation of the profession. 7. We also consider that the proposal that a claim limit should apply per retainer may lead to unjust outcomes based on the peculiarities of how parties, perhaps without thinking or at least without knowledge of the rules of the Fund, have arranged their retainers with their solicitor. This looks like a device to reduce the amount of compensation paid, rather than a means to ensure that compensation is made fairly and justly. 8. We disagree with the proposal that barristers should not be eligible to claim from the Fund. If a solicitor has been put in funds to settle a barrister's fees then those monies are held on trust for to the barrister. The barrister should be entitled to recover for such funds if misappropriated by the solicitor. The proposal seems to assume that barristers are not deserving of protection on the basis that they are not financially vulnerable and/or that they will not be caused hardship because of a solicitor's breach of trust. This assumption is obviously flawed. At the very least it must depend upon the circumstances of the barrister in question. 9. As to the suggestion that the SRA be allowed to attend conferences with counsel/experts examining cases where dishonesty is alleged and cover has been declined it is not clear how this would work given such conferences would be privileged if the only persons attending were insurers, their lawyers and experts retained by them. Conferences attended by those suspected of dishonesty for the purpose of answering questions put to them by lawyers acting for insurers have no formal status or significance under the MTC, but do take place. They would usually be regarded as confidential, but not privileged. We are not presently aware of any good or sufficient reason why the SRA would want to incur costs attending such conferences.

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

See answer to Question 13 above.

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: As set out above, we disagree with the proposal and the suggestion that the stated aim can be achieved by the means suggested. It is far better to ensure that the fund is open to all consumers, taking account of the fact that the fund remains discretionary and already has regard to hardship and prioritises some payments over others.

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

31. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

See our answers to Questions 13 and 15 above.

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

33. Please set out your suggestions and reasons for the change

See our answers to Questions 13 and 15 above.

34. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

35. Please explain why.

See our answer to Question 13 above.

36. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

We consider that, unless an individual applying for compensation knew a solicitor was dishonest or being used to lend superficial credibility a dubious scheme, the Fund should pay compensation. If someone has invested life changing sums in a scheme in which a solicitor has been involved it would be wrong to deprive them of compensation. It would also be contrary to the regulatory objective of protecting and promoting the interests of consumers (s 1(1)(d) of the Legal Services Act 2007). It is our experience that the involvement of a solicitor often gives credibility to what might otherwise be seen as an incredible scheme (for example, investment in so-called "prime bank guarantees" in relation to which at least one of us has acted in the defence of a number of claims against solicitors). Solicitors who get involved in such schemes are usually rightly the subject of drastic disciplinary sanction precisely because they have provided a cloak of respectability to a fraud. It would be quite wrong to deny compensation to those duped by their solicitors on the ground that they should have realised that a professional lawyer, regulated by the SRA, was in fact a crook. There is a good reason why a defence of contributory negligence is not available to a claim in fraud.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

40. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

ABI response to '*Protecting the users of legal services: balancing cost and access to legal services*'

The ABI

The Association of British Insurers is the voice of the UK's world leading insurance and long-term savings industry. A productive, inclusive and thriving sector, we are an industry that provides peace of mind to households and businesses across the UK and powers the growth of local and regional economies by enabling trade, risk taking, investment and innovation.

Founded in 1985, the ABI represents around 250 member companies, including most household names and specialist providers. The ABI's role is to:

- get the right people together to help inform public policy debates, engaging with politicians, policymakers and regulators at home and abroad;
- be the public voice of the sector, promoting the value of its products and highlighting its importance to the wider economy;
- help encourage consumer understanding of the sector's products and practices; and
- support a competitive insurance industry, in the UK and overseas.

We welcome the opportunity to respond to the SRA's consultation '*Protecting the users of legal services: balancing cost and access to legal services*'.

Executive Summary

The ABI and its members feel that, for the large part, there is insufficient evidence that the SRA's proposed changes will achieve its stated objectives of reducing premiums for solicitors, reducing the cost of legal services for consumers, and improving levels of competition in the legal services market. We set out our reasons for this view in response to the questions below.

We are, however, happy to support the SRA's proposal to allow greater flexibility around insurance cover for defence costs. We feel that there are circumstances in which this could allow lower cost solutions for solicitors, better alignment of incentives, and improved levels of consumer protection.

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Reduction of indemnity limit

According to the SRA's analysis, the proposed reduction of the minimum indemnity limit could leave a small minority of consumers who have experienced detriment without sufficient access to redress – particularly when combined with the proposed changes to the compensation fund. Even if these claims would be small in number, it does not mean that

this would be a price worth paying to seek to reduce costs for solicitors and their clients. We would argue this case for two reasons.

Firstly, even a small number of cases in which consumers are left without sufficient compensation for receiving poor legal service could have the potential to challenge levels of trust in the legal profession. By way of comparison, in most lines of insurance declined claims are relatively rare. However, a small number of declined claims then reported widely by the press and consumer groups create the false perception that insurers decline high numbers of claims as a matter of course. Partially as a result of this, consumers tend to believe declinature rates are multiples higher than they are[1]. This is one reason why the insurance industry struggles with issues around reputation and public perception.

A reduction of trust in the legal profession might have the effect of reducing the number of people seeking legal help when they require it. This runs counter to the stated aim of the SRA in its consultation paper.

Secondly, we feel that it should not be assumed that these changes will lead to lower premiums for all solicitors, and by extension lower costs for users of legal services. We will explain our case around this in our response to Question 8.

Flexibility around defence costs

The ABI is supportive of the proposal to allow insurers the option to charge an excess or put a cap on defence costs under the MTCs. Underwriters should have the ability to offer excesses or limits to their clients.

Where solicitors may not necessarily be able to fall back on unlimited defence costs, this may have the effect of improving their incentives to behave more responsibly, for example through greater investment in risk management. In addition, if there is a possibility that solicitors themselves may need to pay some of the costs of defending a claim, this could lead to some legitimate claims being settled more quickly.

Each insurer will take its own view on the cover it offers, and some insurers might decide that they would prefer to continue offering unlimited defence costs as part of their standard cover for legitimate commercial reasons.

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

ABI can see the intention behind this proposal. However, we have concerns about how it would work in practice.

For example, if these reforms are passed, there will be instances where solicitors may seek to engage new large clients on the basis that any claims against them will not be

[1] https://www.covermagazine.co.uk/cover/feature/3009716/claims-survey-17-of-consumers-say-insurers-always-try-to-avoid-paying-out

covered by their professional indemnity cover. However, if the solicitor has contracted with a large firm or financial institution pre-reform then they will need to maintain this type of cover in place for up to 15 years (on the basis of the longstop date under Section 14A Limitation Act 1980) before being able to stop buying this additional level of cover.

There may be instances where a sole practitioner could have trouble determining whether the end recipient of the work they are carrying out is a large business, corporate or financial institution.

Furthermore, it cannot be assumed that this will change how the market operates in practice. In a competitive market, large institutions might insist that any law firm carrying out work on their behalf would be insured up to a level equivalent to what is prescribed by the MTCs.

Question 4: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

We feel that a £1 million indemnity limit for conveyancing adds additional complexity to the system and reduces the level of protection for consumers.

Currently firms do not need to take active decisions regarding which types of work they are covered for, as the MTCs require all firms to be covered for every type of work. The confusion around taking this decision for the first time could lead to firms opting not to purchase conveyancing cover at the increased rate when they may require it. The result could be firms carrying out work that fits the SRA's definition of conveyancing while undertaking work in a separate area of practice, for example if a family law solicitor severed a couple's joint tenancy, while not having the required additional cover in place.

The effect of this change is therefore to create potential protection issues for consumers, which in turn could damage the reputation of the legal profession.

Question 8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

We feel that it should not be assumed that these changes will lead to lower premiums for all solicitors, and by extension lower costs for users of legal services because statistics show that historic changes to the minimum indemnity levels under the MTCs did not have a material effect on premiums. For example, in the renewal year 2005/06 the MTCs were doubled to £2 and £3 million, however the average premium for a PII policy barely changed[2].

There are generally a range of other more important factors that may affect market premium - not least claims costs which would not be impacted by changes to the

[2] Charles River Associates (2010) Review of SRA client financial protection arrangements

minimum limit of indemnity – and each insurer will take its own view on the premium it offers.

Question 9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

The ABI and its members do not see evidence that, under the current MTCs, a properly managed closure and run-off process is a barrier to solicitors retiring as is claimed in the SRA's consultation.

Furthermore, it should not be assumed that introducing a cap on run-off cover would have a significant impact on cost for solicitors, particularly if this does not impact on claims costs, for the reasons stated in our response to question 8. Again, each insurer will take their own view.

Question 10: To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Members have expressed the view that the legal services market is already highly competitive in areas of practice more frequently used by consumers such as family law and conveyancing. As such, we do not anticipate that any changes in PII requirements would result in a surge in new firms entering the legal services market, save for possibly in a few niche or specialist areas.

Association of Women Solicitors

Essential for Success

SRA Consultation

Protecting the users of legal services: balancing cost and access to legal services

Response by Association of Women Solicitors, London

About Association of Women Solicitors, London

Association of Women Solicitors, London was founded in 1992 and its aims include representing, supporting and developing the interests of women solicitors. Membership is open to women solicitors and trainees and associate membership to other women lawyers including barristers, chartered legal executives and paralegals. For further information please visit our website www.awslondon.co.uk

RESPONSE

Official statistics show that women solicitors are more likely to work in or for the smaller entities (niche, sole practitioner, small High St LLP) looking after vulnerable individuals.

Drawing on our specialist knowledge we have read the Response submitted by The (national) Law Society. We endorse everything they have said in particular in response to Question 11 on the Equality Diversity & Inclusion impact of the proposed changes to Public Indemnity Insurance namely that small firms will not benefit, premiums will not go down and insurance providers will leave the market. The momentum of small firms closing will therefore continue reducing the provision of legal services to the detriment of female solicitors and trainees as well as vulnerable and impecunious clients.

In response to question 22 on the EDI impact of the proposed changes to the Compensation Fund The Law Society has requested more quantification of impacts but our view on this is as above for the same reasons.

Association of Women Solicitors London
June 2018

Protecting the users of legal services: balancing cost and access to legal

Response ID:252 Data

2. About you

1.
First name(s)

John

2.
Last name

Bailes

6.
I am responding..

on behalf of an organisation

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)

596727

9.
Please enter your organisation's name

Bailoran Ltd t/a Bailoran Solicitors

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer
:

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
:

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

DO NOT WANT TO EXCLUDE PURSUANT TO RESPONSE 3

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: IT WILL BE DIFFICULT TO SPLIT THE LEVEL OF COVER AND RISK FOR ALL AREAS. IF IT IS ALL ENCOMPASSING IT WILL AVOID COVER BEING ASSESSED ON RISK FOR SPECIFIC AREAS IN THE ISOLATION AND WHEN ELECTING TO PROCEED WOULD BE ON COSTS OVERALL. PROBLEMS MAY ARISE WHERE INSURERS GIVE A LOWER FIGURE FOR SPECIFIC AREAS BUT HIGHER IN OTHERS AND THIS WOULD COMPLICATE RENEWALS AND COVER

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

NOT NECESSARY IF INCLUDED IN THE COVER

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

No

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree
Please explain your answer
: BUSINESS CHANGES AND IF THE COVER IS ALL INCLUSIVE. IF IT WERE SPLIT THEN THERE IS MORE CHANCE TO

ARGUE THAT ELEMENTS OF WORK CARRIED OUT MIGHT HAVE A PARTIAL CROSS OVER AND MAY RESULT IN REJECTED CLAIMS FOR TECHNICAL REASONS. THE SMALL PREMIUMS THAT MIGHT BE SAVED ARE NOT WORTH THE RISK OF A CLAIM BEING AVOIDED ON A TECHNICALITY OR THE OPTION TO EXPAND THE BUSINESS WITHOUT REVERTING TO AN INSURER AT EACH POINT OF INSTRUCTION

23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: LEAVE AS IT

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: THE PREMIUMS ARE CALCULATED ON THE MAIN AREAS OF WORK. FACTORS TO STOP START UPS ARE COMPLIANCE, APPROVAL, BUSINESS PLANS AND NOT PREMIUMS

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

I WOULD LIKE COVER TO BE EXTENDED FOR LONGER PERIODS. CURRENTLY IT APPEARS TO BE 18 MONTHS BUT I WOULD PREFER COVER OVER A LONGER PERIOD.

FURTHERMORE UNLIKE GENERAL INSURANCE THE LONGER YOU REMAIN WITH A PROVIDER THE MORE LIKELY THE COSTS WILL INCREASE DUE TO THE POSSIBILTY OF A NEGLIGENCE CLAIM. I WOULD LIKE THE EQUIVALENT OF A NO CLAIMS BONUS BEING ADDED TO PROTECT COVER GENERALLY AND TO PROTECT PREMIUMS FROM INCREASING ANNUALLY.

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: IF COMPENSATION IS DUE AND PAYABLE IT SHOULD BE PAID NO MATTER WHAT THE CLIENT EARNS. IT WOULD BE UNJUST TO ONLY COMPENSATE THOSE WITH NO MONIES RATHER THAN THOSE WHO CAN AFFORD TO RECOVER. THIS MAY DISSUADE INSTRUCTION FROM WEALTHIER CLIENTS AND EACH CLAIM SHOULD BE TREATED EQUALLY JUST AS EACH CASE AT COURT IS CONSIDERED WITHOUT BIAS OR KNOWLEDGE OF BACKGROUND OR WEALTH

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

:

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

31. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

PII COVER SHOULD BE IN PLACE FOR ANY CLAIM AND IF THERE IS A SHORTFALL THE COMPENSATION FUND STEPS IN. THE ABILITY TO PROVICE INDEMNITY COVER AND COMPENSATION MAKES SOLICITORS DIFFERENT TO THE ALTERNATIVE STRUCTURES AND WATERED DOWN AND POTENTIALLY UNREGULATED LEGAL ADVICE THAT MAY BE AVAILABLE. THIS SETS US APART AS CLIENTS MAY ELECT FOR PRICE INITIALLY BUT ALWAYS COME BACK TO SERVICE, PROFESSIONALISM AND PROTECTION AND THIS SHOULD REMAIN THE CASE. IT IS SOMETHING THAT SETS SOLICITORS APART FROM OTHER PROVIDERS OF LEGAL SERVICES AND SHOULD BE CHERISHED AND NOT SULLIED BY GOING FOR A CHEAPER ALTERNATIVE AT THE EXPENSE OF CLIENTS WHO WOULD HAVE HAD A VALID CLAIM UNDER THE OLD RULES BUT NOW FIND THEY ARE BEING MARGINALISED DUE TO A CHANGE IN RULES.

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

NOT SURE

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

39. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

MANDATORY ENCRYPTION OF COMPUTERS
MINIMUM VIRUS SOFTWARE COMPLIANCE
PII COVER FOR CYBERCRIME AND INSURANCE PROVIDER ASSISTANCE WITH TRAINING AND COMPLIANCE TO ACHIEVE A DISCOUNT ON PREMIUMS

Bar Council response to the Solicitors' Regulation Authority
'Protecting the users of legal services: balancing cost and access to legal services'

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to Solicitors' Regulation Authority consultation paper entitled "Protecting the users of legal services: balancing cost and access to legal services".[1]

2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB.)

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree

[1] Solicitors' Regulation Authority, "Protecting the users of legal services: balancing cost and access to legal services" (2018)

- Strongly disagree **[X]**

Level of cover

4. The proposal is to reduce the minimum level of cover required for each claim to £500,000 (or £1m for firms providing conveyancing services). This figure has been reached on the basis that the SRA's research shows that 98% of claims fall under the £500,000 level (p. 16 of the consultation paper). In fact, these conclusions appear to have been reached on the basis of data from about only 74% of the insurance market over the period 2004-2014. We consider that this data is both too limited and too old, for the following reasons:

a) No information is available about which insurers did not contribute their data and the likely claims experience of those insurers. Although we note that, according to Economics, Policy and Competition ('EPC') who has been commissioned by the Solicitors Regulation Authority to look into professional indemnity insurance requirements, the insurers whose data was excluded focused on small firms, there is no information about the type of work they were undertaking or their likely claims history. The firms may have been at the "risky" end of the market (e.g. small conveyancing firms). It appears that the 26% of the market that did not respond paid a total of over £400m of claims in the relevant period;

b) The claims have been adjusted by RPI only, without any analysis of whether this accurately reflects the inflation that has been experienced in claim size since 2016. There are many factors other than RPI which can increase claims sizes over a period, one example being the emergence of a new type of claim, such as "cyber fraud" thefts in conveyancing claims. This is a key example of a large type of claim which did not exist until recently and which we consider demonstrates a serious risk that the SRA analysis understates the number of claims that would exceed the new proposed cap.

5. Furthermore, there does not appear to be any analysis of the aggregation provisions that applied to the claims included in the SRA's information about claim size from 74% of insurers. In our experience, aggregation of claims is not uncommon in solicitors' liability insurance, particularly in relation to misappropriation of client funds or conveyancing frauds. Where claims are aggregated and exceed the level of cover this can have a significant negative impact on both consumers and solicitors alike.

6. In addition, the figures do not cater for defence costs. We note and comment on the proposal to have firms bear a larger proportion of defence costs below. However, from the insurers' perspective, defence costs can be a very significant part

of their outlay on a claim, as demonstrated by the fact that in the relevant period £1.6bn was paid out in claims and £400m in defence costs (i.e. defence costs add another 25% to the total amount paid out).

7. We therefore consider it likely that the SRA research underestimates the number of claims that would breach the levels of either £500,000 or £1 million, and along with that the risk of harm to consumers, and damage to the reputation of the solicitors' profession. It also fails to cater for the type of case that may well breach the £500,000 limit and the effect on the solicitors' clients. For instance, claims for catastrophic injuries (where a claimant has lost the ability to work) are likely to exceed this level of cover. If such a claim is negligently handled by a solicitor, the impact on the client (and the reputation of the solicitors' profession if there is inadequate insurance) would be very harmful.

Projected benefits of reducing the minimum level of cover

8. The research to support the conclusion that there is likely to be a reduction in premium cost is particularly scant. Neither the SRA consultation paper nor the EPC research reveals how many insurers or insurance brokers responded to requests for indications of likely premium level. The presentation of the information that does exist suggests that it is largely anecdotal or vague. The only figures referred to in the EPC report are an indication from one broker that an extra £1m of cover for solicitors' costs £600 to £1,000 for a small firm. There is no explanation of whether this extra £1m layer is in excess of the first £500,000, £1m or another figure. Nor is there any analysis of price changes in the market when minimum insurance levels were increased in 2005/2006 (or indeed the reasons why the increase was thought to be sensible at that stage). However, the indication given by one broker is used to provide the basis for concluding that there might be a 5-10% price reduction for a solicitor paying around £8,800 in PI premiums. A 5-10% reduction would mean an annual saving of between £440 and £880 and we take the view that these figures are likely to be overstated even in view of the anecdotal evidence about the cost of an additional £1m cover.

9. We are not convinced that reducing cover from £1m to £500,000 would lead to price reductions in the order hoped by the SRA. The first £500,000 is by far the most "risky" layer for an insurer. It is a non sequitur for the SRA to conclude on the one hand that very few claims will be affected by reducing the minimum level of cover to £500,000 and to suggest on the other that there may be noticeable premium reductions.

10. If solicitors are only required to have £500,000 of cover and it becomes less common to take out excess layer cover, this may hit overall profitability of insurance companies and either increase the costs of the primary layer or cause insurers to pull out of the market.

11. We take the view that the savings generated by reducing cover levels to £500,000 will not be sufficient to justify increasing the risk of consumers going uncompensated by the solicitors' profession. Further, the likely savings are so small that they are unlikely to make an appreciable difference to the costs of buying legal advice from a consumer's perspective. The changes are therefore unlikely to prompt further competition (and indeed may reduce it, because cautious clients will concentrate their legal work in large firms whom they assume will not be insuring at minimal levels).

12. We are not convinced that small changes to the costs of cover will stop firms from experiencing difficulties with renewal. It is more likely that these changes will lead to firms failing after a large claim, rather than as a result of being insufficiently prepared for a large claim.

Flexible defence costs cover

13. The proposal is that larger elements of defence costs cover would be included in firms' excess arrangements, in the hope that firms will take a more settlement minded approach to the costs incurred in defending claims.

14. There is no evidence at all to support the proposition that firms are incurring high defence costs because those costs are insured, or that greater scope for including defence costs in their excess would incentivise them to settle. It is our experience that large excesses can become an impediment in terms of handling professional liability claims because insureds stand in the way of costs being properly incurred to defend their claims. Further, increased excesses do not always remove overall costs from firms. They reduce insurance premiums but greatly increase the costs of responding to claims when they are suffered. Large excesses can cause serious cashflow difficulties in small firms and will increase the risk of firms failing.

15. We also have concerns that including large elements of defence costs in firms' excesses would lead to more firms wanting to handle the claims brought against them themselves, thereby missing out on the benefit of objective and expert advice.

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree **[X]**

Sophistication

16. The proposal is for the MTCs to exclude cover for liability to a client if the client's turnover in "the most recent financial year" exceeds £2 million. Firms would be permitted to make insurance arrangements for these clients "on significantly more flexible terms" (p.34 of the consultation paper). The justification for distinguishing these business clients from other clients is that they are regarded as "large business clients" who are "more sophisticated and should be able to assure themselves about the adequacy of insurance arrangements relating to legal services they purchase" (p.34 of the consultation paper).

17. We disagree with the characterisation of all commercial clients with turnover above £2 million as "large" and as sufficiently "sophisticated". We are not aware of any other generally accepted classification of business size which sets the qualifying threshold for a "large" business at this exceptionally low level. By contrast, the widely-used EU definition of SMEs (Recommendation 2003/361/EC) classifies businesses as Micro (with turnover of less than €2 million), Small (with turnover between €2 million and €10 million) and Medium-sized (with turnover between €10 million and €50 million). The UK Companies Act 2006 uses the same size classifications, with different turnover thresholds: Micro, with turnover not more than £632,000; Small, with turnover not more than £10.2 million; and Medium-sized, with turnover not more than £36 million.

18. We believe that these widely-used classifications convey the generally accepted understanding of what constitutes small, medium-sized and large businesses. We consider that establishing firms' PII requirements on the basis that business clients which would generally be regarded as "small" should instead be treated as large and sophisticated is unreasonable and wrong in principle. Whilst many medium-sized and all large businesses (properly so-called) might be expected to have, or have the resources to acquire, the necessary sophistication to assess their legal advisers' PII arrangements (subject to the important point about 'claims made' cover addressed under the next heading below), we do not think the same can generally be said of businesses falling within the Companies Act 2006 classification of a "small" business.

19. We also believe that turnover provides an arbitrary and unreliable guide to a business's sophistication in PII matters. An architecture practice with turnover of £2.5 million and experience of buying its own PII cover is likely to have a very different level of PII-relevant sophistication from a small manufacturing company with the same turnover and no experience of buying PII cover.

20. Paragraphs 32-33 of the consultation paper identify "better information" as a way of mitigating the risk of selecting a firm without appropriate PII cover (similar

points are made in paragraphs 80 and 85 of the Initial Impact Assessment). We cannot comment in detail without knowing more about the nature of the information referred to, but we question whether many small businesses (in the Companies Act sense) will have the ability to conduct an adequate assessment of this information – and, in any event, it is unclear how such information could resolve the issue about "claims made" cover addressed under the next heading.

"Claims made" cover

21. We believe there is a further flaw in the assumption that business clients will be able to make an accurate assessment of the adequacy of a firm's PII cover – one which derives from the "claims made" nature of PII cover. This concern applies to business clients of any size, but is likely to have a particular impact on smaller businesses giving instructions under a one-off retainer.

22. Because PII cover is written on a "claims made" basis, what matters to the client is not just whether the firm has adequate cover at the time of the instruction, but also (and particularly) that the cover remains adequate at the time when a claim is first made or circumstances are first notified – because it is the policy in force at this time which will be called upon to respond. Given the time it takes for claims to develop (often years after the date of the instruction), in many cases the relevant PII policy will not be the one in force at the date of the instruction, but rather a later policy which may be on different, less favourable terms.

23. Accordingly, even if a business client is able to make a reliable assessment of the scope of a firm's PII cover when instructing the firm, it cannot know whether the firm will maintain cover on the same terms in the future. This appears to us to significantly undermine the principal justification for the proposed exclusion in respect of clients with turnover above £2 million (i.e. that they "should be able to assure themselves about the adequacy of insurance arrangements relating to legal services they purchase").

Burden & reduction in competition

24. The intended effect of the exclusion is to place the burden of checking the adequacy of firms' PII cover on the client. For the reasons already given under the first and second headings above, we believe this is unrealistic: most businesses do not have the resources to obtain and conduct comparisons of the PII terms of the firms they are considering instructing, nor will it always be practical to do so (for example, where speed is required), and in any event such checks would not address the 'claims made' issue. But even setting aside these practical objections, we believe the proposal is flawed because it will reduce competition and increase barriers to firms entering this sector of the market.

25. As is recognised in the consultation paper and the IIA, larger business clients are likely to instruct fewer firms as result in order to control the cost of checking the level and scope of cover. More generally, we believe many businesses will be discouraged from considering changing their legal services supplier(s), given the cost of undertaking checks on new firms, and the risks of getting it wrong. We anticipate that businesses will also be disincentivised from instructing smaller and newer firms: it is likely that caution will dictate that checks on the PII cover of such firms are more rigorous and therefore more costly. The consequence is likely to be that larger, more established firms will attract a greater share of commercial work than they do already, reducing competition and making entry to the market in this field more difficult.

26. Firms will also face the risk that, faced with a claim or notification of circumstances, their PI insurers may dispute whether a business client falls outside the exclusion (i.e. has a turnover of less than £2 million). We suspect that, to address this risk, better-managed and more responsible small firms will end up buying additional cover 'just in case'. The proposed exclusion may therefore have the effect of increasing the insurance costs of the kind of small firm which ought to be encouraged, not discouraged, from practising in the commercial sector.

Underwriting and cross-subsidisation

27. The proposal to exclude liability to business clients with turnover above £2 million appears to be founded on a belief that the cost of obtaining PII cover for firms providing services to such clients is currently being cross-subsidised by firms which practise exclusively in other, lower-risk sectors of the market.

28. We question whether this belief is accurate: no justification is given for it in the consultation paper. In our experience, underwriters rate premium according to the type of business undertaken by the firm – firms with a greater weighting of business in higher-risk sectors, will pay higher rates of premium than firms practising wholly or predominantly in lower-risk sectors. If this is correct, then it is unclear whether introducing the proposed exclusion would have any significant impact on the premium paid by firms practising in lower risk fields. We believe this issue merits further investigation.

Inter-relationship between the exclusion and the proposed Indemnity Insurance Rules

29. Rule 9.1 of the proposed IIR requires firms and principals to supply a claimant with the insurance information identified in the rule. However, the rule only applies in respect of a claim which "relates to any matter within the scope of cover of the MTC". Since liability to clients with turnover above £2 million would be excluded

from cover under the MTC, it appears that, as currently drafted, Rule 9.1 would deprive such clients of the right to Rule 9.1 information. We can see no justification for this and assume it is an unintended consequence.

30. Rule 2.2 of the proposed IIR would oblige any firm which provides conveyancing services to obtain the extension of cover for such services. However, a firm which provides conveyancing services to commercial clients with turnover above £2 million would obtain no benefit from the extension of cover (save to the extent it also provides such services to clients below the £2 million threshold) and would require alternative cover for its conveyancing activities. We assume that this is an intended consequence, but we flag it as a potential trap for the unwary firm which believes that by buying the extension it has done all that is required, without taking into account the impact of the exclusion.

Comments on the definition of "Turnover"

31. "Turnover" is defined in the Glossary as "the amounts derived from the provision of goods and services in the most recent financial year, after deduction of (A) trade discounts, (B) value added tax, and (C) any other taxes based on the amounts so derived".

32. We believe that there are a number of potential problems with this definition:

(a) "goods and services" Further thought may need to be given to the description of the commercial operations from which turnover is derived. We assume that the description "goods and services" is intended to cover all types of business, but we doubt whether it does. For example, it probably does not cover businesses which receive their income from letting commercial property.

(b) "the most recent financial year" This begs the question: "most recent" from what standpoint? The answer is not clear from the proposed MTCs or the Glossary. The logical answer would seem to be the date of instruction, but there is no indication whether this is what was intended. One interpretation of Clause 6.3, where the same phrase is used, is: "most recent" as at the date liability is ascertained. But that cannot be what was intended: by that date, it would be impossible for a firm to obtain a non-MTC policy if it did not already have one.

(c) "trade discounts" It is unclear what purpose is served by including this. As we understand the phrase, it simply means 'reduction from list price'. If that is what is meant, we would have thought that the impact of trade discounts is already reflected in the phrase "the amounts derived from", and to refer to

them expressly is confusing. If something other than 'reduction from list price' is meant, we do not know what meaning was intended.

Please provide any additional comments on the alternative option that this could be at the election of the law firm.

33. This alternative option would not resolve the issues identified above.

Question 3: Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

- Yes
- No **[X]**

34. In our view, the exclusion is inappropriate for the reasons given in response to Question 2, where we also provide our comments on the drafting of the exclusion to the extent we consider appropriate.

Question 4: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover.

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree **[X]**

35. Although we can see that claims against conveyancing firms have a greater risk of being large (because of property prices) it seems to us too complicated to introduce separate insurance arrangements for firms undertaking conveyancing cover.

36. Some firms include conveyancing work as a core part of their business; others carry out work that would fall within the current proposed definition of conveyancing on a more ad hoc basis (as we explain below in response to question 5). As we understand it, unless firms obtain specific conveyancing cover they would be completely uninsured in respect of work classed as conveyancing. There would therefore be a serious risk of firms having no cover for some work. Given the financial importance of conveyancing transactions to solicitors' clients (they are often the largest transaction a client will ever undertake) we are very concerned about the consumer impact of solicitors having no insurance for conveyancing.

37. The SRA does not appear to have undertaken analysis of how conveyancing risks could be more appropriately dealt with by way of adjusting risk ratings on underwriting (to the extent that this type of risk rating is not already adequately done). This would be simpler than introducing a separate conveyancing limit of cover/insurance product.

Question 5: Do you think our proposed definition of conveyancing services is appropriate?

- Yes
- No [X]

38. The proposed definition is too wide. It seems to us that it would or might capture services that firms who do not habitually carry out conveyancing carry out as ancillary activities, for example:

(a) Dealing with the settlement of litigation between parties where one of the terms of the settlement is the transfer of a piece of land; or
(b) Solicitors dealing with enforcement, particularly charging orders and orders for sale.

39. Having too broad a definition of "conveyancing" will increase the risk of coverage disputes between insurers and insureds (with the attendant uncertainty for consumers).

Question 6: Do you think there are changes we should be making to our successor practice rules?

- Yes [X]
- No

40. We agree that the successor practice rules are not easy to understand. As a result, there is sometimes uncertainty as to whether a firm is a successor practice within the meaning of the MTC. At present, the question of whether a firm is a successor practice is determined only after a claim has been made. A firm may be reluctant to accept that it is a successor practice after a claim has been made because it has an adverse impact on the firm's claims history and may lead to an increase in premium. Similarly, an insurer may reject a claim on the grounds that a firm is not a successor practice. This can give rise to disputes between participating insurers or even to a gap in cover. A gap in cover may arise if there is no run-off cover, if there turns out to be no successor practice, and if the claim was notified after the end of the last period of insurance of the first practice and did not arise out of circumstances notified to insurers during any period of insurance prior to the first firm's closure.

41. We suggest that the SRA simplify the rules and/or develop a mechanism by which a firm which closes must either purchase run-off cover from its existing insurer or obtain the agreement of another participating insurer that any claims against the first firm will be covered under the policy of another, nominated firm. The first firm would need to register with the SRA either details of its run-off policy, or the agreement with the participating insurer. The agreement would need to bind not only that insurer, but also any other participating insurer of the nominated firm in subsequent years. This would require a change to the participating insurers' agreement. As this information would be available to insurers on renewal, we believe that participating insurers would be willing to accept this means of allocation of risk because they would be able to take it into account when making their underwriting decisions.

Question 7: Do you agree with the approach we are taking to bring the MTCs and PIA up to date?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree **[X]**

42. See the Responses to Questions 1, 2, 3, 4 and 5 above.

Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

43. See the Responses to Questions 1, 2 and 5 above. In addition:

(a) In Clause 1.1 of the proposed MTCs, we question whether the proposed references to prior practice and successor practice are adequate substitutes for the detailed provisions in Clauses 1.4 to 1.7 of the current MTC. Even if they are, we suggest you consider using the formulation "… including in connection with a prior practice and …", rather than "…including its prior practice…".

(b) Clause 2.1 of the proposed MTCs: see our Response to Question 5 above, which also applies to the drafting of the reference to conveyancing services ("arises from or is any way connected with") in Clause 2.1. Note too the inconsistency in language between clauses 2.1 ("*arises from* or is any way connected with") and 6.2 ("*in respect of* or in any way in connection with").

Question 8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree **[X]**

44. See the Responses to Questions 1 and 2 above.

Question 9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree **[X]**

45. The proposal put forward in the consultation paper is that, *for future periods*, run-off cover should be kept at six years but with overall caps of £3m for conveyancing claims and £1.5m for other claims. The rationale for the change is that:

(a) Run-off cover is too expensive, which creates a barrier to retirement, which is not in the public interest;
(b) This inability is a greater issue since those who cannot retire are often those engaged in work which generates high volumes of claims;
(c) Insurers are obliged to provide cover even where premiums are not paid, leading to increased premia for those who do pay; and
(d) The firms in question are often not managing closure properly, leading to increased costs of intervention, which in turn increases costs for the profession as a whole.

46. We do not agree that these proposals strike an adequate balance between users of legal services and solicitors. We reach this view for a number of reasons.

a. First, these limits of cover compare with the annual limits of £1m for conveyancing claims and £500,000 for other claims. Thus the cap would mean that a very limited number of claims might exhaust the mandatory cover. The consultation paper recognises that this might mean that those whose claims arise later might find that they were uninsured. A phased cap would change the profile of those who made recovery as against those who did not, but would not resolve the problem.

b. Secondly, whilst we sympathise with those practitioners who are finding it hard to retire because of the cost of run-off premia for which no provision was made during earlier years of practice, we do not believe that the current proposals are appropriate, both because they are unlikely to be efficacious and because they are inherently undesirable.

    i. First, we note that the proposal relates to future indemnity periods and not current periods. Thus, it will only be solicitors looking to retire in the future who will be impacted.
    ii. Secondly, as the paper recognises, the actual liabilities of these solicitors will remain unaffected. The difference will be that fewer of those liabilities will be mandatorily insured. Accordingly, either retiring practitioners will have to take out voluntary insurance (which will mean, in practice, that they will have to pay the very premia which it is said are preventing them from retiring) or they will run the risk that their own assets will be at risk. Whether they will choose to retire in those circumstances is surely doubtful.
    iii. Thirdly, in our view, if the underlying problem is that these practices are not making sufficient provision in earlier years of practice to cater for retirement liabilities, then we do not think that the solution suggested is an appropriate one. Instead, a solution based on ensuring that appropriate provision is made, via a programme of education or some form of mandatory savings fund, would be more appropriate. That would enable solicitors to retire in a timely fashion whilst protecting the users of legal services.

c. Thirdly, the evidence base for the suggestion that premia will be substantially reduced is very exiguous. Moreover, the amount of the reduction seems in fact to be relatively small.

Question 10: To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree **[X]**

47. See the Responses to Questions 1 and 2 above.

Question 11: Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

- Yes
- No **[X]**

Question 12: Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view.

N/A

Question 13: To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree **[X]**
- Strongly disagree

48. We believe that Question 13 takes as its starting point that the purpose of the Compensation Fund is to be a targeted hardship fund protecting the vulnerable who need and deserve it the most, and asking whether the proposed changes achieve this aim. We answer the question on this basis.

49. The consultation paper makes a number of proposals which are not covered by specific questions. Our response to those proposals, insofar as they impact on the reputation of the legal profession, access to justice, or barristers, is set out below.

We disagree in principle with the proposal that there should be a means test for consumers:

50. We do not think that imposing a means test for consumers is appropriate. The regulatory objective of 'protecting and promoting the interests of consumers' (s 1(1)(d)) applies to all consumers. A means test is not applied by the Financial Ombudsman Service or the Financial Services Compensation Scheme.

51. No data has been provided justifying the exclusion of what is described in the Initial Impact Assessment as "this small group" (at paragraph 95). The Initial Impact Assessment states (at paragraph 95) that: "Members of this small group will have to

make a judgement as to whether the service provider they select, along with the PII cover and likelihood of failure or monies going missing is right for them." There is no indication as to what this means, or how any consumer might be expected to do this. And in instructing a solicitor, consumers are likely to think that they are already making a judgment as to whether the service provider they select, along with the PII cover and likelihood of failure or monies going missing, is right for them. Consumers choose to instruct solicitors precisely because they think it is a safe course of action. Sending the message that it may not be safe, and that consumers must make a judgment for themselves, is likely to cause significant damage to the reputation of the legal profession.

We disagree with the proposed means test itself:

52. Both the proposed type of means test (financial wealth (net)) and the threshold of £250,000 are likely to give rise to arbitrary and unfair results. A consumer with modest savings and income might have reached the end of a repayment mortgage and be a few years off retirement age. They might then be required to relocate for work. If they sold their house for £250,000 and were living in rented accommodation while looking for a new home, they would be ineligible to claim losses of, say, £75,000 in respect of a lost inheritance. This would be a financial loss which might cause them significant hardship. But if the same consumer had a mortgage of £50,000, reducing their financial wealth (net) below £250,000, they would be able to claim the £75,000 losses. And a consumer who owned a house valued at £1.5m with a mortgage of £750,000, and had very high income but no savings, would be eligible to claim losses of £75,000 (or indeed losses up to the proposed new maximum of £500,000).

We disagree with the proposal that an estimate be provided with no verification unless asked:

53. The proposal that applicants "be asked to provide an estimate of their net financial wealth" without providing verification (unless asked) is open to abuse. Careful and honest consumers are likely to find themselves ineligible to claim, while those who approach the application form less conscientiously will benefit. The aim of "minimising the additional burden/cost of processing claims" could be met more effectively by allowing all consumers to claim.

We disagree with the proposal that the costs of making a claim be excluded:

54. A blanket exclusion on the costs of making a claim is unfair. The suggested justification is that "We are redesigning our process and the forms we use so [as] to make it easier for vulnerable people to apply for a payment potentially assisted by friends, carers or organisations like Citizens Advice, rather than paid professionals.

Citizens Advice, for example, already help people make claims to the Criminal Injuries Compensation Scheme."

55. Redesigning and simplifying the process and forms is welcome. But it is wrong in principle for the SRA, as the regulator of the solicitors' profession, to use the theoretical availability of pro bono advice to justify a proposal which aims to reduce costs for the profession.

56. Applicants to the Fund have already been badly let down by solicitors. It would also be damaging for the reputation of the legal profession for consumers and small businesses and charities to be denied the costs of legal advice and assistance at this critical stage.

57. In practice, excluding all costs of making a claim will have two consequences. Firstly, the cost of making a claim will be transferred to the free advice sector in those cases where applicants are able to obtain pro bono assistance. The burden therefore shifts from the solicitors' profession to the pro bono advice sector. This is contrary to the regulatory objectives of improving access to justice and protecting and promoting the interests of consumers.

58. Secondly, the proposal is unrealistic. Pro bono services are already unable to cope with demands for services. The Initial Impact Assessment states (at paragraph 99) that: "The data on areas of law that give rise to claims, for example, conveyancing, would suggest that applicants will have the capabilities to make a claim themselves or seek out free help. We recognise people have different levels of capability and knowledge to be able to obtain the necessary information to be able to make an application." The data is not summarised. We are therefore unable to form a view as to whether the data set is derived from claims which have been made, either with or without pro bono assistance. If it is, the fact that people may be unable to make claims themselves and unable to obtain pro bono assistance will self-evidently not be revealed by the data, because those people will not have made claims. If claim costs are excluded entirely, many people will be unable to make a claim because they cannot find pro bono assistance.

59. The Initial Impact Assessment recognises, as set out above, that "people have different levels of capability and knowledge to be able to obtain the necessary information to be able to make an application." But there is no indication that an equality impact assessment has been carried out in relation to a blanket exclusion on claim costs. We believe that such an assessment would conclude that a blanket exclusion on claim costs would have a disproportionate adverse impact on disabled people.

60. We accept that reducing costs is a legitimate aim. But other more proportionate means of reducing costs should be considered. For example, a cap on the legal fees which could be claimed. This would enable solicitors and barristers instructed on a public access basis to assist applicants to make a claim on the Fund in return for a fixed fee.

We disagree with the proposal that there be a limit for claims other than a per claimant limit:

61. The application and construction of the definition of 'one claim' in clause 2.5 of the current MTC (commonly known as an 'aggregation' clause) gives rise to difficult issues and is a source of significant disputes. Adopting any 'aggregation' provision other than a per claimant limit (i.e. that the amount paid to a single claimant in respect of a claim cannot exceed the maximum amount payable by the Fund) is likely to give rise, similarly, to difficult issues and significant disputes.

62. Specifically, the proposal that the maximum claim limit should apply per retainer is likely to give rise to arbitrary and unfair results. In some cases it will be a matter of chance whether there is a single retainer or multiple retainers. The second example on page 69 of the consultation paper illustrates this. B, C and D might be a widower and two children who inherit shares in a family company on the death of the spouse/mother. They might enter into separate retainers for the sale of the shares, or a single retainer. In the example, there are three retainers, three applications, and the Fund pays £400,000 to B and £500,000 to each of C and D. If there were a single retainer, the Fund would pay a single amount of £500,000 to B, C and D. There would then be an issue as to whether the Fund was paying this sum to B, C and D jointly, or whether it should make separate payments to each of them, and if so, in what amount.

63. Similarly, in the third example on page 69 of the consultation paper, a person (M) sells a portfolio of four properties. M is eligible for compensation of £1m because the properties are sold to four different buyers. If the properties were sold to the same buyer, there might be a single retainer, reducing M's compensation to £500,000.

64. Further, in cases where there is no written retainer, it may be necessary to resolve a factual issue as to whether there is a single retainer or more than one retainer.

We disagree that barristers should not be eligible to claim from the Fund:

65. We disagree that barristers should not be eligible to claim from the Fund. A barrister would need to make a claim where a client has paid fees to a solicitor, and the solicitor has not paid those fees to the barrister. Those fees are held on trust for the barrister, and they should be in the same position as any other small business whose

money has been taken by a solicitor in breach of trust. There is no justification for treating barristers differently from businesses with an income below £2m. The assumption which is implicit in this proposal is that barristers are not "the people that need the most protection" (see page 63). This is not supported by evidence. Barristers are self-employed, and we believe that the loss of fees for a sustained period of work would cause hardship in many cases. The Initial Impact Assessment (at paragraph 105) states that barristers can take steps to make sure that any monies due to them are protected by the firm and consider other avenues of redress that might be available to them. We do not know what is meant by this: barristers, like clients, should be able to assume that monies in a firm's client account are protected by the firm; and there are no other avenues of redress where monies have been stolen.

Our suggestions in relation to insurers' refusals to pay a claim under an insurance policy (page 79 of the consultation paper):

66. We suggest that the SRA include provisions in the MTC and PIA which require it to be sent decisions made in arbitrations between firms and their insurers, and between insurers under the participating insurers' agreement. The SRA should then publish suitably anonymised summaries of those decisions (similar to the case studies published by the Financial Ombudsman Service in Ombudsman News: http://www.financial-ombudsman.org.uk/publications/ombudsman.htm). This would reduce the number of contested arbitrations because a body of law and practice would emerge. It would also promote consistency of decision making by arbitrators. It would also prevent insurers from proposing or agreeing to the nomination of a particular arbitrator because his or her views are known to them from a previous arbitration, but not known to the other insurer. This is unfair on firms and claimants under the Third Parties (Rights Against Insurers) Acts 1930 and 2010.

67. We do not understand the suggestion that the SRA be allowed to attend conferences with counsel/experts that examine cases where dishonesty is alleged and cover has been declined. Such a conference would be privileged and in any event the suggested purpose and/or potential result of the SRA's involvement is unclear.

Question 14: Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

68. See our answer to Question 13 above.

Question 15: To what extent do you agree that we should exclude applications from people living in wealthy households?

- Strongly agree

- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree **[X]**

69. See our answer to Question 13 above.

Question 16: Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

- Yes
- No **[X]**

70. See our answer to Question 13 above.

Question 17: Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

- Yes **[X]**
- No

71. See our answer to Question 13 above.

Question 18: Do you think we have set out the right approach for assessing when a maximum payment has been reached?

- Yes
- No **[X]**

72. See our answer to Question 13 above.

Question 19: Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

- Yes
- No

73. We do not think that it is appropriate for us to answer this question, as barristers do not contribute to these costs.

Question 20: What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

74. Paragraph 126 of the consultation paper states that the proposed approach (of disallowing a claim for compensation on grounds that an applicant did not take reasonable steps to investigate a scheme/transaction and satisfy themselves that it is genuine before committing money to it), "will still recognise that some applicants will have sought legal advice 'in good faith' and will not know that the solicitor was either dishonest or that the firm was being used to provide credibility to dubious schemes. It also recognise[s that] some people will be vulnerable due to certain events or factors which means they may not make the best decision for their needs."

75. It will almost never be the case that the applicant did not seek legal advice in good faith, and knew that the solicitor was dishonest or that the firm was being used to provide credibility to a dubious scheme. In those rare cases where this is so, we agree that the Fund should not pay compensation.

76. But honest people routinely invest in schemes which, to an experienced solicitor or barrister, or to a regulator, bear the hallmarks of a dishonest scheme or scam. They often invest money which they cannot afford to lose, such as a lifetime's pension savings. Paragraph 122 of the consultation paper states that the SRA's view is that "the small number of people who engage in such risky matters should take steps to check the legitimacy of the high return schemes and products and the solicitors' involvement in them." But one of the reasons that the promoters of such schemes involve solicitors in them is to give them a veneer of legitimacy and put people off their guard. To deny consumers compensation in such circumstances would in our view be inconsistent with the regulatory objective of protecting and promoting the interests of consumers (s 1(1)(d) of the Legal Services Act 2007). It would also go well beyond the suggested principles (on page 74 of the consultation paper), with which we agree, that the Fund cannot underwrite investment schemes, and that the Fund takes account of the general principle that people are responsible for their own decisions and that they must act carefully. Similarly, we think that imposing a "reasonable steps" test which requires consumers to have taken steps to "check the legitimacy of the high return schemes and products and the solicitors' involvement in them" before they are eligible for compensation would be inconsistent with the suggested principle (at page 73 of the consultation paper) that the purpose of the Fund is to help people who need it the most when they have lost money as the result of a solicitor's actions by replacing some or all of that money.

77. The Initial Impact Assessment refers (at paragraph 98) to the Financial Ombudsman Guidance on applications that are likely to fail because the applicant failed to mitigate their loss. This is not relevant, and does not provide support for the proposal: mitigation of loss is a principle which applies after a loss has been suffered, not before.

Question 21: Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

- Yes **[X]**
- No

78. We think that this is self-evidently the case. But we think that the guidance materials would need to be more detailed in order to be useful to applicants and their advisers. See for example the "online technical resource" (www.financial-ombudsman.org.uk/publications/technical.htm) on the Financial Ombudsman Service website. This sets out the ombudsman's usual approach to the disputes that it sees involving financial products and services that are complained about most.

Question 22: Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

- Yes **[X]**
- No

79. The Initial Impact Assessment states (at paragraph 95) that: "The introduction of the eligibility criteria to exclude application from wealthy individuals will have less impact on applicants with some protected characteristics or from BAME backgrounds because they are more likely to be on lower incomes. We have estimated that this proposal will impact the top five percent of the wealthiest households." The data on which these statements are based is not identified or summarised in the Initial Impact Assessment or in the consultation paper. We are therefore unable to comment.

Question 23: Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

80. The SRA should lobby for a change to banking practice so that it is a requirement – at least for electronic payments over a certain amount – that an account name be provided in addition to an account number and sort code, and that the bank will not make the payment unless the account name matches the number and sort code.

For further information please contact
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Protecting the users of legal services: balancing cost and access to legal services

SRA consultation
March 2018

June 2018

Our questions in full

We are keen to hear your views on our changes to PII and the Compensation Fund.

An uninterrupted list of our questions is below.

Introduction

The Birmingham Law Society is the largest provincial local law society representing some 4,500 solicitors and is currently celebrating its bicentenary. This response has been prepared by the Society's consultation committee with input from the property committee. The consultation committee is a truly representative mix with a spread from a sole practitioner through to an international firm with multiple offices around the world and within the jurisdiction. The senior officers of the Society have read and approved the response which is the collective view of all those who have participated in the consultation.

To entitle this paper "Protecting the users of legal services" is disingenuous. None of the proposals in this paper increase or maintain protections for the users of legal services. The reverse is true – all of the proposals significantly reduce the protections available to clients and as a result damage the standing of the profession.

In relation to professional indemnity insurance, compulsory cover will be reduced for commercial clients from the current £2m (or £3m for incorporated practices) to nil. Compulsory cover for other clients will be reduced to £500,000 or £1m for conveyancing.

In relation to the Compensation Fund, clients will be excluded from making a claim on the Fund if their assets exceed £250,000 which could have perverse consequences. Also the maximum level of payments from the Fund would be reduced from £2m to £500,000.

The SRA consulted on a proposal to reduce compulsory cover to £500,000 in 2014 so this is a repeat of the same consultation. There has been no call from insurers or from the profession for any changes. Professional indemnity insurance has never been as cheap as it is now. To contend that premiums will be reduced as a result of the changes and that clients will benefit from costs savings is fanciful. The clamour for change is created unilaterally by the SRA in pursuit of its own agenda based upon internally generated ideas for the future structure of the profession.

Certainty and simplicity should be the key guiding principles here for the profession and for its clients. These proposals do nothing to enhance the reputation of the profession or protect its clients and should be abandoned as they were in 2014.

The Birmingham Law Society is vehemently opposed to the SRA's proposals and supports the representations made by the Law Society. The SRA is yet again seeking to sacrifice client protections upon its own altar of change.

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree

Somewhat agree

Neither disagree or agree

Somewhat disagree

Strongly disagree - **strongly disagree**

Please explain your answer

The present arrangement means that clients are guaranteed a minimum level of cover (£2m or £3m) from the date that the retainer is entered into until completion of the work and from completion of the work until the date that a claim is made upon the insurance within the relevant limitation period.

If these changes are made it means that the firm could have adequate cover at the date of the retainer but by the time the claim is made it could have reduced its cover significantly meaning that the loss is uninsured. How can such a change be in the clients' best interests? Firms would have to pay for top-up cover for all existing clients for some years to come which would defeat the SRA's stated aim of saving money.

The SRA figures do not withstand close scrutiny. For example, the consultation paper states that 98% of claims would be covered by £500,000 cover. In fact, it is 98% of the premium that comes within £500,000 so only a minimum saving could be achieved.

Also, the figures that the SRA uses to support the case for change do not include figures from insurers that have already left the market because of expensive claims. The figures are therefore distorted in favour of the SRA's proposals.

As stated above, the minimum cover of £500,000 is too low for most firms so top-up cover will need to be purchased. Any saving may therefore be illusory. The firms most likely to need additional cover will be the firms that fail to purchase that cover.

A small firm is not necessarily well run and is not necessarily a good risk. Making a case for change based upon the cost to small firms is intellectually disappointing.

In addition, there are more general questions over the data that has been used. It was provided anonymously and voluntarily by the majority of insurers currently operating in the market. It accounts for 75% of insurance policies over a 10-year period beginning in 2004. It therefore does not include figures from 2014 to date and therefore excludes the changing market over the last four years.

Also, the SRA is intending to eliminate the differential level of cover for incorporated practices (£3m for limited companies at present). The SRA appears to have ignored the

principle of limited liability. In our view this is further evidence of yet another reduction in client protection.

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree

Somewhat agree

Neither disagree or agree

Somewhat disagree

Strongly disagree **– strongly disagree**

Please explain your answer

At present, commercial clients can instruct any law firm in England & Wales confident that each firm would have minimum cover of £2m (or £3m for limited companies). Many of these commercial clients are financial institutions who instruct small firms to undertake lender work on behalf of conveyancing clients. Introducing this ill-conceived proposal would remove the confidence to instruct small firms and may result in a reduction of small firms on lender panels.

If, as we anticipate, additional cover is required to cover such clients, it will increase cost for small firms and cancel the perceived overall saving of 5-10% upon which the SRA is basing this entire consultation. The purchase of top-up cover on an occasional or "as required" basis is the most expensive way of securing such cover. It will prove far better to buy £1m cover at annual renewal than to add top up cover for one additional client half way through the year. Dividing up the client base in this way increases costs both for law firms and for insurers. It adds a level of complexity and cost that is unnecessary. This proposal adds to the administrative and compliance burden for firms especially the smaller practices in checking the turnover of clients before deciding the level of cover on a case by case basis. As well as the additional cost of undertaking such work which will be passed down to the clients, there is scope for mistakes and for clients being under insured or uninsured.

We cannot see any advantage to clients or to firms in omitting financial institutions and other large business clients.

Please provide any additional comments on the alternative option that this could be at the election of the law firm

Question 3: Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Y/N **No**

We do not agree with the proposal for an exemption – see response to question 2 above.

In regard to the definition set out in the consultation, this is as follows:-

The exclusion is to be based upon the turnover (exceeds £2m) of the client in the financial year at the time the act giving rise to a claim occurred.

This definition is entirely impractical. It is ex post facto. A law firm needs to assess the turnover of the client before the retainer is entered into so it can decide whether or not it needs to purchase additional cover – not at some point which could be up to 15 years in the future when the law firm no longer exists and the commercial client makes a claim only to find it is not covered by insurance. Likewise the commercial client needs to know in advance that cover is in place when it enters into the retainer.

If no, please provide an alternative way of drafting the exclusion definition.

The only possible date for assessment of client turnover is the date of the retainer. It would be a term of the retainer that the law firm would provide professional indemnity insurance at the figure contained in the retainer.

Question 4: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree

Somewhat agree

Neither disagree or agree

Somewhat disagree

Strongly disagree **– strongly disagree**

Please explain your answer

With the continuing increase in property prices, it would be unusual for a firm not to need higher cover than £1m thus negating the SRA's stated aim of reducing costs.

It also adds a level of uncertainty and complexity to the property market which in these days of money laundering and cyber-crime is not acceptable. More certainty, simplicity and trust are what is needed not less.

Question 5: Do you think our proposed definition of conveyancing services is appropriate?

Y/N **No**

We have no comment upon the definition per se. However, we disagree with the principle of separating conveyancing from the other legal services provided by firms. There is a risk that conveyancing within the scope of the definition could arise as part of other legal work. Most firms unless they were highly specialised would be better to obtain cover just in case one of its fee earners undertakes an element of conveyancing as part of other work which would be uninsured. There is a risk in separation which is not justified.

If no, please explain what you think should be an alternative definition.

Question 6: Do you think there are changes we should be making to our successor practice rules?

Y/N **No**

No separate comment – the Birmingham Law Society supports The Law Society response to this question.

If yes, please explain what these are and provide any evidence to support you view

Question 7: Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

Somewhat agree

Neither disagree or agree

Somewhat disagree

Strongly disagree - **strongly disagree**

No separate comment – the Birmingham Law Society supports The Law Society response to this question.

Please explain your answer
Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

Question 8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Somewhat agree

Neither disagree or agree

Somewhat disagree

Strongly disagree **– strongly disagree**

Please explain your answer

The insurance industry has described the idea that these reforms would lead to a reduction in premiums as “whimsical”. The Birmingham Law Society agrees with this assessment.

The increased administration and compliance burden required to implement these changes will far outweigh any savings that the SRA imagines will be present. Coupled to that would be the purchase of more costly top-up cover. Those costs will fall fairly and securely upon the smaller firms which are the very firms that the SRA is hoping to assist. “Flexibility” in this context will result in increased cost for firms, reduced consumer protection and uncertainty for all concerned.

Question 9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Somewhat agree

Neither disagree or agree

Somewhat disagree

Strongly disagree – **strongly disagree**

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

The current arrangement is based upon turnover in the final three years before closure of a firm. This is an arbitrary arrangement but is a reasonable guide to the amount of activity in the firm and therefore the risk. A cap bears no relation to the level of activity or risk within a firm pre closure. It reduces the protection available to the

clients. Cost is likely to be the most significant factor upon closure of a firm. A sole practitioner closing his or her firm will take out the cheapest possible cover without paying any heed to the risks to clients. The retiree will want to be out of the firm. The retiree will have no practising certificate and will be off the Roll of Solicitors so no sanction by the SRA could bite. The retiree could be abroad. Again, the SRA proposals result in reduced protection for clients and for what purpose?

Question 10: To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree

Somewhat agree

Neither disagree or agree

Somewhat disagree

Strongly disagree **– strongly disagree**

The SRA argument is a non sequitur. An entrant to the market has many different costs and expenses in addition to PI insurance. For example, the payments to the SRA for annual practising certificate fees and firm registration fees are often higher than the amounts paid for PI insurance.

We have not seen any evidence to support the SRA's claim that these changes will encourage new firms to enter the legal services market. The Law Society reports in its response to this question that an insurance broker has assisted with 60 new start-ups at an average premium of £3000 under the existing system. Such a figure seems entirely reasonable and again does not support a change to the present arrangements.

Also new entrants to the profession of the type envisaged by the SRA are in the market to make money not to act as a charitable supplier of legal services. It is naïve to think that savings will be passed down to the hapless clients.

We respectfully remind the SRA of the response that the Birmingham Law Society submitted in the 2014 consultation as set out below.

It is the Society's view that although some or, indeed, all the proposals might, as the paper points out, result in some practitioners seeing a saving in the level of premium whilst others might experience an increase, what the paper ignores is that the insurers collectively know what to expect by way of premium income (both under the compulsory cover and top-up provided) and what they are likely to have to pay out. The effect of competition, which already exists and the possibility of new entrants into the field of PII cover, is wholly speculative and capable of being exaggerated. PII is a very specialist area of insurance. If changes are effected it is more than likely that it will be more of a case (please forgive the analogy) of "rearranging the deckchairs on the Titanic". It is also questionable whether the practices who

gain by a reduction in premium are the ones most frequently used by consumers i.e. those intended to be the main beneficiaries. High Street practices who deal with the whole gamut of property transactions, wills and estates and litigation remain amongst the most vulnerable to claims which is reflected in their premiums. If there are to be any 'winners' out of this, it is likely to be small niche practices who restrict themselves to specialist areas of law not especially vulnerable to claims.

Please explain your answer

Question 11: Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Y/N **Yes**

No separate comment – the Birmingham Law Society refers to The Law Society response to this question.

If Yes, please explain what you think these impacts are

Question 12: Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

No separate comment – the Birmingham Law Society refers to The Law Society response to this question.

Question 13: To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Somewhat agree

Neither disagree or agree

Somewhat disagree

Strongly disagree **– strongly disagree**

Please explain your answer

The Compensation Fund was set up to compensate all clients of law firms without fear or favour. It has always been a selling point for our profession that everyone is compensated if they suffer loss as a result of a problem. Tampering with it will reduce the security available to clients and damage the reputation of the profession.

Question 14: Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Please explain why and provide any evidence that supports your view

No separate comment – the Birmingham Law Society refers to The Law Society response to this question.

Question 15: To what extent do you agree that we should exclude applications from people living in wealthy households?

Strongly agree

Somewhat agree

Neither disagree or agree

Somewhat disagree

Strongly disagree **– strongly disagree**

The proposed imposition of a bar to individuals from households with assets over £250,000 is likely to lead to irrational decisions as the Compensation Fund is intended to be a fund of last resort. It could also lead to unfairness. The Law Society has provided a number of examples in its response to this question.

Also of relevance is the increased administration cost to the SRA of determining eligibility based upon this financial criteria.

Please explain your answer

Question 16: Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Y/N **No**

We do not agree with the proposed change for the reasons referred to above.

If no, do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

Question 17: Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Y/N **No**

If yes, please set out your suggestions and reasons for the change

Question 18: Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Y/N **No**

If no, please explain why.

For the reasons set out by The Law Society in its response to this question i.e. lack of historical data the Birmingham Law Society is unable to comment further.

Question 19: Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Y/N **No**

Because of the forthcoming changes to the Accounts Rules e.g. third party managed accounts fewer firms will hold client accounts and therefore fewer firms will make an annual contribution to the Compensation Fund.

If the changes to professional indemnity insurance contained in this consultation paper are implemented we forecast that there will be more claims on the Compensation Fund caused by under insurance or lack of insurance.

The clients of all firms could potentially make claims upon the Compensation Fund whether the firms hold a client account or not.

There is therefore a simple yet powerful argument that all firms should pay into the Compensation Fund on an annual basis whether or not they retain a client account. We would support such a change.

If no, please explain you answer and any suggestions you have for alternative approaches

Question 20: What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

We cannot understand why this question has been included within a consultation concerned with professional indemnity insurance and the Compensation Fund. This is a question for the government with its Money Advice Service and for the Financial Conduct Authority not the SRA and the profession.

Question 21: Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Y/N **Yes**

Transparency in relation to decision making is always welcome. The SRA website should be updated in this regard.

However, the SRA should not mislead either itself or anyone else if it believes that a user of legal services i.e. a client or law firms will read and appreciate these Guiding Principles before they enter into a retainer. These Guiding Principles will only be considered at the point when a claim on the Compensation Fund is needed for a very unfortunate client. The client will assume from the outset of the retainer that because of the trusted reputation of the profession that he will be covered in the event that his solicitor is dishonest or he suffers hardship and a claim needs to be made on the Compensation Fund. The Compensation Fund is an integral part of the reputation of the profession. The client will not expect his rights to be curtailed in the way proposed by the SRA in this paper.

Please explain your answer

Question 22: Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Y/N

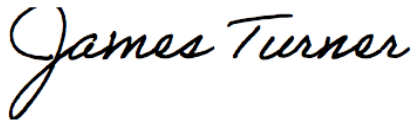
No separate comment – the Birmingham Law Society refers to The Law Society response to this question.

If Yes, please explain what you think these impacts are

Question 23: Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

No separate comment – the Birmingham Law Society refers to The Law Society response to this question.

15 June 2018



James Turner
President
Birmingham Law Society

Protecting the users of legal services: balancing cost and access to legal

Response ID:107 Data

2. About you

1.
First name(s)

Alexander

2.
Last name

May

6.
I am responding..

on behalf of an organisation

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)

626566

9.
Please enter your organisation's name

BladeLaw

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: The current level of cover is no more than commercial clients would expect.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: A reduction in cover is not only a reduction in cover for the client, it also reduced the cover and increases the risk for the firm. Additional optional cover would be more expensive.

15.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

The limit is too low.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: The definition of conveyancing is too broad and firms that deal on the fringes on an irregular basis would be strongly disadvantaged.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

It is far too broad and encompasses transactions that are very low risk as well as those that are very high risk.

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

No

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: The whole concept of run-off is wrong. An insurer should be required to indemnify risks based on when the basis for the claim arose, not when the claim was made. A premium should only be payable whilst the risk activity is conducted, not thereafter. This is the norm in other insurance markets.

22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Insurance costs are more likely to increase. You seem to forget that insurance cover benefits the firm as well as the client.

23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The whole approach to run-off is wrong as I have set out above.

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: If this does encourage any firms to enter the market, it will only be to provide consumers with a less professional and more risky service. That is not to be encouraged.

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

To improve the process for succession, the whole concept of run-off insurance should be changed fundamentally. Cover should be provided and premiums paid based on when work was done / risks arose, not based on when a claim is made.

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

: I am not sure that this is what the compensation fund should be. Clients should feel that dealing with a solicitor is certain and that if things go wrong, no matter who they are, they will be protected.

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Make the cover more comprehensive.

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: See above

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

31. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

See above

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

33. Please set out your suggestions and reasons for the change

See above

34. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

35. Please explain why.

See above

36. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

FCA registration check

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: The question answers itself

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

40. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Construct a list of approved suppliers

FAO Mr Crispin Passmore
Executive Director
Solicitors Regulation Authority

By email: protectlegalusers@sra.org.uk

15 June 2018

Dear Mr Passmore

Consultation - Protecting the users of legal services: balancing cost and access to legal services

Bristol Law Society have engaged with local members on the SRA consultation on Protecting the users of legal services and encouraged our members to also submit their own responses.

We have limited our response to the proposed reductions to PII cover.

Bristol Law Society is one of the largest local law societies in the country representing about 4500 members (not all solicitors). We also form part of the Joint V law societies of Birmingham, Liverpool, Leeds and Manchester and ASWLS (the Association of South Western Law Societies) comprising Devon & Somerset, Plymouth, Cornwall, Gloucestershire & Wiltshire and Monmouth. In total, we represent circa 15,000 solicitors through these associations.

We have recently hosted a seminar to discuss the SRA's proposed changes and have taken soundings from PII providers on the proposed changes (all of whom believe the proposals are flawed not withstanding that from a business point of view it would probably be advantageous to them as they believe the additional complexity would actually result in more work for them and higher premiums!).

We have disseminated information to our members from the SRA, The Law Society and PI Insurers and encouraged them to submit their feedback on the proposals.

The current PII market runs well – a relatively simple renewal process and benefitting from a competitive market. Given our concerns as stated below we believe any changes to the current system are unnecessary at this time.

We are deeply concerned that the SRA have fundamentally misunderstood how the PII market operates and that the changes proposed will not only reduce important financial protections for clients and solicitors alike, but will probably lead to an increase in the overall cost of insurance and compliance rather than their stated aims to reduce it.

We are also concerned that in the period since the SRA last consulted on this issue and were instructed to gain further evidence in support of their proposals that the data upon which they base their projected savings is flawed running from 2004-2014 and does not include the demised Quinn, Belva and Enterprise where claims payments contributed to

their demise; the rise of Friday afternoon account fraud and cyber fraud in general which has increased significantly since 2014; and the significant rising house prices since 2004.

It appears to us based on the estimated savings predicted by the SRA as against the % of turnover spent on PII that any savings to pass on to the client would be minimal and unlikely to have any effect on those looking to access legal services. In fact, one could argue the reduction in cover in the event of a claim is likely to be a far more significant consideration for them in choosing legal services.

The proposals in our view would almost certainly:

- Substantially increase the cost of insurance for many firms through expensive 'top up' options,
- Leave individuals exposed to uninsured claims for which they cannot buy their own cover,
- Exclude small firms from lender panels, increasing conveyancing costs,
- Expose firms and individual solicitors to liability where they have until now been prohibited from limiting liability below the minimum £2/3m cover,
- Make reliance on undertakings from small firms risky, and thus putting even more financial pressure on small firms in a difficult legal market
- Increase costs of run-off insurance for firms which are closing - even if they have a successor practice - assuming they can buy it at all,
- Result in more coverage disputes, and
- Make the purchase of insurance more complicated, particularly for smaller firms, where insurers may try and introduce more exclusions from cover and more onerous notification provisions.
- Would leave solicitors more open to insurers potentially seeking to rely upon an aggregation clause.

The consequences of these radical proposals may go far beyond matters of 'mere' regulatory compliance: they may adversely affect the pockets of many solicitors both while they are in private practice and after retirement.

Based on the SRA's own figures, most firms would be forced to buy top up insurance. The market for the lower levels of top up is contracting and this may become harder for some firms to buy; inevitably, it will cost more than the cover it replaces under the current requirements. The cover may also be less beneficial to law firms.

We would urge the SRA to take on board the significant concerns of the profession on this issue and reconsider their proposals on the basis that the evidence on which they base their proposals is flawed and would significantly impact the financial protections for both solicitors and clients alike with little if any financial savings and indeed most likely if implemented, increase costs for solicitors and firms.

It is our opinion that should these reforms be approved it will cause significant harm to the reputation of the profession.

We endorse the more detailed submitted responses of The Law Society and PII Broker, JLT.

Yours sincerely

Gary Lightwood
President

Protecting the users of legal services: balancing cost and access to legal

Response ID:254 Data

2. About you

1.
First name(s)

Peter

2.
Last name

Morris

6.
I am responding..

on behalf of an organisation

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)

401114

9.
Please enter your organisation's name

Burges Salmon LLP

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: There will be some firms for whom a minimum level of cover of £500,000 (or £1m for conveyancing services) may seem appropriate, given the nature of their work. However, we believe it is likely that most firms (or at least their clients) will require cover in excess of this amount and will therefore be obliged to purchase top up cover to obtain an appropriate level nearer to the current £2m / £3m threshold. This could be at an additional cost to that currently payable for the same level of cover. We have particular concerns as follows: 1 How the question of whether a firm has purchased adequate cover will be policed, and by whom; 2 How members of the public can be expected to assess whether a firm they intend to instruct carries a sufficient level of cover for their particular needs; 3 The present proposal does not account for the 'claims made' nature of PII cover. For instance, a firm choosing to carry £1m of cover in 2019 may in subsequent indemnity years decide to reduce this to the minimum level of £500,000. This could significantly impact clients who instructed that firm in 2019, believing the minimum level of cover available was £1m, in the event that acts or omissions giving rise to a claim are identified in subsequent years; and 4 Despite a firm assessing the nature of its client base / work as requiring a minimum level of cover of £500,000 / £1m, this does not take into account claims which may arise as a result of the loss of money from a firm's client account. Many firms advising on matters which in themselves would not require cover of more than £500,000 / £1m will have client account balances from time to time which substantially exceed these thresholds.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree

Please explain your answer

: We agree with the rationale behind this proposal but consider that, in reality, a significant number of these clients already seek confirmation that cover substantially in excess of the minimum required under the MTC is held by the firms they are instructing. Therefore, this proposal may make little practical difference to those firms undertaking work for these clients.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

If we are reading paragraph 53 of the consultation document correctly, the proposed turnover for excluded clients - "exceeds £2m" - seems far too low and would include many SMEs as well. The Companies Act 2006 includes qualifying conditions for small companies and medium-sized companies of turnover not exceeding £10.2m and £36m respectively. Therefore, at the very least the exclusion should reference the maximum turnover requirements set out in s465 Companies Act 2006 as amended from time to time, although many people would not consider a business turning over little more than £36m to be a 'large' business.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree

Please explain your answer

: We agree with the rationale behind this proposal but remain concerned as to how this will be policed. This proposal potentially poses a significant risk to members of the public in the event that a firm fails to declare to its insurers that it undertakes conveyancing work but continues to do so. In any event, we presume that firms which have historically undertaken conveyancing work will continue to need to purchase cover in excess of the proposed £500,000 minimum, even if they do not intend to undertake this work in future, in view of the limitation period(s) for any claims arising from such work.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

No

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: It makes sense to remove overlapping or duplicated requirements.

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Somewhat disagree

Please explain your answer

: Given that the SRA's evidence suggests that the majority of claims paid fall within the proposed minimum level of cover of £500,000, we think it unlikely that the proposed changes will in fact reduce costs for this primary level of cover. Further, as indicated above, we consider that a significant number of firms will need to continue to purchase cover in excess of this minimum level in any event, so we do not anticipate that insurance costs will be materially reduced if these changes are implemented.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Caps on run-off cover will be of no benefit to users of legal services. In our experience pursuing professional negligence claims against law firms, they close for a variety of reasons, not just because principals are retiring. If a firm has got into difficulties due to the acts or omissions of a partner or employee, this can lead to multiple claims for which the proposed caps on cover may well be inadequate. Why should users of legal services be better protected while a firm is in existence than after its closure?

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: On the basis that we do not think that the benefits anticipated by the SRA in terms of reduced PII premiums are likely to be realised, we disagree that these changes are likely to encourage new entrants to the legal services market.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

In the case of small law firms with say 4 or fewer partners, the SRA could mitigate the impact of closures without such firms paying for run-off cover by changing the accounts rules to require all such firms to provide for the cost of run-off cover. In theory this would ensure that this contingent liability is recognised in the firm's balance sheet although we recognise that this would not guarantee that the cash is available to pay for the run-off cover.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The fund is already much diminished in its scope and purpose. Whilst it may be affordable for the profession, it does not provide adequate compensation for users of legal services. Its diminished status undermines the standing of the solicitors' profession. We accept that the fund cannot "be a guarantee that all users of legal services are covered for any loss caused by solicitors or regulated firms", but its current scope is too narrow. The issue of dubious investment schemes could be dealt with by applying the concept of contributory negligence which in the case of the most risky schemes could be 100%.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No comment in view of our answers to other questions.

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Victims of solicitors should be compensated equally irrespective of their wealth. No such distinction is drawn by the FSCS in its compensation rules.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

We disagree with the principle but if there is to be a measure of wealth, net household financial assets, as defined, of £250,000 is far too low a measure and is likely to discriminate against older people despite excluding main residences, business assets, and pension savings (it is not clear from paragraphs 105 and 106 of the consultation paper whether state and/or private pensions are excluded for this purpose). Furthermore, we are concerned about who will assess eligibility criteria of this kind? The calculations in some instances will be complex and reliance on estimates, verification and random sampling is unlikely to be adequate.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

32. Please set out your suggestions and reasons for the change

We think the exclusions affecting businesses and charities are already unjustified. Aside from the issue of hardship, an income of £2m is not indicative of a large business or charity. In the case of a business, if there is to be a measure it should be based on profit after interest, taxes, depreciation and amortization, rather than on income/turnover.
We agree with the proposed restrictions on the range of payments.

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

We think a reduction from £2m to £500,000 is too great, although we think a reduction to £1m would be justified and easily understood, provided it is well publicised.
We do not think that the principle of aggregation should be applied to individuals because a) it is potentially unfair, b) the concept and consequences of separate retainers is unlikely to be understood except by sophisticated users of legal services, and c) the concept and application of aggregation is unlikely to be understood even by sophisticated users of legal services unless there is a requirement for it to be explained to them. So we do not think the concept of a 'single claim' should be included in the scheme rules.

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

36. Please explain you answer and any suggestions you have for alternative approaches

Contributions to the fund should reflect the risk which a firm represents to the fund, having regard to their internal controls and client base. If eligibility criteria of the kind proposed in the consultation paper are introduced, then many (larger) firms will not act for clients who are eligible for compensation.

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

We do not think it is possible to be prescriptive about this but clients do have a responsibility to look after their own interests and the principles of contributory negligence and causation should apply to those seeking compensation from the fund.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer
: This question is not capable of a clear Y or N answer. We agree that it is important to set out clear guiding principles but we do not agree with all of the proposed principles for the reasons set out above - particularly the eligibility criteria which are reflected in the first principle.

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

40. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

This is a topic in itself which we do not feel able to comment on in the context of this consultation regarding PII and the Compensation Fund.

Cardiff and District Law Society's response to SRA Consultation – 'Protecting the users of legal services: balancing cost and access to legal services – March 2018'

The Incorporated Law Society for Cardiff and District trades under the name Cardiff and District Law Society (CDLS). CDLS is the largest local law society in Wales. It has a membership of over 1,000, including solicitors, barristers, legal executives and academic lawyers.

CDLS appoints a number of specialist committees, including a Regulatory Issues Sub-committee. Through these committees CDLS responds to a number of public consultations on matters which affect the professional lives of solicitors in the Cardiff and District area. CDLS welcomes the opportunity to respond to the SRA's Consultation on Professional Indemnity Insurance and the Compensation Fund.

Introductory/general comments

In general, we do not agree with the SRA's proposals – we do not consider that the changes to the Professional Indemnity Insurance regime or to the Compensation Fund are needed or that they will achieve the outcomes envisaged by the SRA. At the same time the proposals will seriously undermine protections for both clients/the public and for solicitors.

We have also had the benefit of seeing the response of the Law Society of England and Wales, and we endorse the views expressed in the Law Society's response.

Question 1

To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly Disagree

Please explain your answer

We **strongly disagree** with the proposal to reduce the minimum level of cover to £500,000/£1million for conveyancing firms.

We understand that the SRA has provided statistical data in its proposals that claims that if the minimum level of protection was reduced to £580,000 then 98% of claims would be met. We have some observations on this claim which we believe casts serious doubt on the sense of the proposals to reduce the minimum level of cover.

1 Firstly, we have concerns over the validity of the data which the SRA says covers the period from 2014. The SRA's data does not include data from insurers who have left the market during that period. We understand that these insurers represented 26% of the total market. To the extent these insurers collapsed or left the market due to the extent of the PII claims that they had to cover under policies they had written (such as Quinn or Balva) these claims might be expected to influence the SRA's data, particularly as these insurers would be likely to provide cover to disproportionately greater number of the higher risk firms.

2 There is no data since 2014 and does not reflect changes that have taken place in the intervening period. Most significantly we feel that this period excludes the more recent instances of cyber-fraud which has become a significant risk for law firms. We understand that there are many instances in which claims for this kind of fraud exceed £500,000.

3 The £580,000 figure relied upon by the SRA reflects the settled cost of claims and does not include the total amount claimed nor defence costs. If firms took out the minimum level of insurance they would not be covered for their defence costs to the extent these took the overall level of liability to above £500,000.

Leaving aside our concerns over the validity of the data itself, on the SRA's own figures, a significant number of claims would fall outside the £500,000 minimum level proposed by the SRA. On that basis, unless firms elected to purchase top-up cover, a number of claims would be uninsured. It is also unclear what number of claims fall within the £500,000 to £580,000 range as these would also be potentially uninsured.

We have further concerns over the £1,000,000 minimum cover that is proposed for conveyancing firms. The figure seems arbitrary and does not take into account the wide regional variations in house prices. For conveyancing transactions in London, £1,000,000 of cover is likely to be hopelessly inadequate when considering the adequacy of PII cover.

Whilst we agree with the SRA's objective of reducing the burden of regulation, we don't believe that these proposals will achieve that aim. To the extent there are an increased number of uninsured claims (which seems likely just based on the SRA's own data as outlined above) there would be increased disruption for firms and their partners who face uninsured losses. That will lead to an increased number of failures of firms, an increase in the burden on the Compensation Fund plus an increase in the overall cost of regulation, with the SRA presumably having to undertake more enforcement action as a result. Firms engaged on matters having a value in excess of £500,000 will face an increased burden of having to assess the risk of dealing with another firm on the other side and whether they have adequate PII cover e.g. in being able to rely on undertakings, whilst the current arrangements give firms cover in knowing that there is a reasonable minimum level of cover without having to make that assessment. There will be a cost of having to make such

assessments, which will either have to be borne by the firms themselves or passed onto their clients. None of this would appear to be in the interests of clients.

We also believe that the market for top-up cover will become more complicated. In practice, responsible firms will purchase top-up cover and we are concerned that it will take longer to apply for, with potentially three different aspects having to be covered if a firm wishes to purchase general top-up cover as well as conveyancing cover and cover for large financial institutions and business clients. We also believe, having spoken to insurance brokers, that top-up cover will become more expensive to purchase.

We note the SRA's assumption that there is a potential cost-saving of 9-17%. However, we are dismayed to note that the SRA has not asked insurers to provide any indicative quotes for the minimum cover nor for top-up cover to evidence its claim and we would ask that the SRA do this before the proposals can be considered further.

Question 2

To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly Disagree

Please explain your answer

Firstly, we believe that the definition of what constitutes a large financial institution is too simplistic, as it is based only on turnover. We believe that a threshold of £2,000,000 turnover is wholly inadequate in assessing whether a business is a sophisticated purchase of legal services. Many relatively small businesses have a turnover in excess of this amount but they do not necessarily purchase legal services regularly.

Secondly, in practice, those financial institutions who truly are sophisticated are likely to require the firms that they deal with to have additional top-up cover. Those who aren't sophisticated enough to understand the implications of the solicitors' PII rules are unlikely to require firms to purchase top-up cover whereas these are exactly the kind of businesses who need the additional protection that the current rules afford.

Thirdly, we believe that the proposal will add to the regulatory burden for firms, as it will not necessarily be easy for a firm to determine what a client's turnover is at the time the work was done, and those records will need to be maintained for as long as it is possible

that a claim may be made. That burden will lead to increased costs, which will either have to be borne by the firm or passed onto the client.

Fourthly, we think this will add to the complexity and cost of obtaining top-up cover.

Finally, most firms who undertake conveyancing work will act for lenders alongside buyers. Many smaller firms undertake conveyancing work. Lenders and mortgage panels are likely to require top-up cover be purchased at a minimum level as a condition of instructing a firm. If top-up cover becomes harder and more expensive to maintain then it is these smaller firms who are likely to be priced out of the market leading to a reduction in competition for consumers.

Please provide any additional comments on the alternative option that this could be at the election of the law firm

We do not see how this will work in practice. Lenders and truly sophisticated purchasers of legal services will require top-up cover to be purchased taking this decision out of the hands of the firm. Those smaller businesses who don't require their law firms to purchase top-up cover are likely to be on the more unsophisticated end of the scale and are really the ones that require the protections that the Minimum Terms currently provide.

Question 3

Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

If no, please provide an alternative way of drafting the exclusion definition.

As stated above, using turnover on its own as a means of determining who is a large financial institution is too simplistic and bears little relation to how sophisticated a purchaser of legal services they may be. Other factors, such as number of employees, how regularly they purchase legal services, what type of legal services they purchase and their asset base, are also relevant. Clients may satisfy the turnover threshold with one property transaction whereas another business with similar turnover may have several employees and require employment law advice, debt or equity funding and so may require corporate and banking advice and have a number of commercial contracts which require advice. Their needs and degree of sophistication are very different.

If there is to be only one test for "large", and it is to be based on turnover, then we submit that £2,000, 000 is far too low.

Over 99% of businesses in the UK qualify as SMEs. Whilst there are several different definitions of a medium business, it will generally have up to 250 employees and a turnover of at least £10,000,000. This is significantly in excess of the SRA's proposal to define a large business solely by reference to turnover in excess of £2,000,000.

Question 4

To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly Disagree

Please explain your answer.

We do not believe there is any need to implement any changes for the following reasons.

Unnecessary Complexity

The current MTC's provide simple and robust protection to clients, lenders and law firms. By making the system of assessing what level of cover is required far more complex and entirely down to each individual law firm it is highly likely to have the opposite effect to which the SRA's proposals suggest:

- The complexity of assessing what level of cover required will mean that smaller law firms who in the past have dealt with conveyancing on an ad hoc basis will no longer do so. It will also put off potential new entrants to the market. This will reduce choice of the service provider for consumers and inevitably increase cost where there is less competition.

- There is a much greater chance that a law firm will not have sufficient insurance cover. Owners of law firms who deal in conveyancing do not have the expertise or knowledge to assess what level of risk they should be covering against. It is likely that a claim relating to a property under £1M will result in compensation of over £1M being paid. The law firm owner would have assumed they were complying with the new proposed requirements but still find themselves under-insured. This will

have a disastrous effect on the law firm, the client and the perception of the profession in general.

There will be a much greater risk to consumers and clients of engaging a law firm who are unwittingly under insured for the work they are carrying out.

- The added complexity of assessing and arranging layers or tiers of additional PII cover will add an extra administrative burden on law firms as well as increase the premium and administrative costs of carrying out all levels of conveyancing transactions.

  These additional costs and administrative expenses will no doubt result in law firms increasing conveyancing fees for consumers. It is also likely that the increased cost and administrative burden will result in less law firms engaging in conveyancing work, reducing competition which will increase cost to the consumer and stifle innovation.

  The increased costs for dealing with conveyancing will put off new entrants into the conveyancing market which will hinder future choice for consumers as law firms currently engaged in conveyancing retire, merge or close down. There will be no incentive to innovate as the firms left in the market will have less competition and be able to charge higher fees to the consumer.

<u>Mortgage Lender issues</u>

It is already common place for mortgage lenders to exclude sole practitioners and sub-4 partner law firms from their conveyancing panels.

The uncertainty as to whether a law firm is sufficiently covered would likely result in the following:

- All but a few large law firms, who can be efficiently assessed and monitored by the lender, being removed from lender's conveyancing panels.

- Lenders requiring law firms to have much higher levels of PII cover than the newly proposed amounts and higher even than the current PII level to ensure that any potential risk to the lender is covered by insurance.

- Increased costs to law firms to cover the fees of panel management companies employed by lenders to assess a law firms' suitability for joining or remaining on each lender's conveyancing panel.

- Where lenders reduce their conveyancing panel, far greater instances of those lenders being separately represented by firms remaining on panel, doubling cost to clients.

- As mortgage lenders fall within a category of entities not covered by the proposed minimum terms they would require additional insurance to be taken out by a law firm as a pre-requisite of them being admitted to the lender's conveyancing panel.

The consequences of these actions for smaller, conveyancing-centric law firms will be catastrophic. When a law firm is no longer on a lender's panel it is inevitable that they will lose clients to firms who are on panel. With fees already squeezed in conveyancing this will result in the disorderly closure of very many law firms on financial grounds.

There will be less choice for the consumer in who carries out their conveyancing and due to the lack of competition, cost for the consumer will increase while innovation flounders.

By far the most widely used legal service by consumers is conveyancing. If the SRA wish to increase suppliers of conveyancing whilst protecting consumers and reducing costs then there are far more effective ways of doing so rather than changing the whole PII market.

An example would be requiring all mortgage lenders to include each and every law firm who is regulated by the SRA and has the minimum level of PII under the current system on their conveyancing panels. This would increase the number of conveyancing providers, attract new providers to the market and reduce cost to the consumer through increased suppliers of the service whilst retaining the 'gold-plated' indemnity insurance cover currently offered by the profession.

This, together with stricter controls on non-declared referral fees paid to estate agents or mortgage brokers, would do far more to achieve the SRA's proposed goals rather than these current ill thought-through PII proposals.

<u>Conclusion</u>

It is clear that if you follow through the rationale of imposing greater PII administrative burdens and expenses on conveyancing practices the result will be an increase in costs of

insurance premiums, fees to PII brokers and internal administrative time, all of which will result in an increase cost of conveyancing to consumers.

The most likely outcome is that due to the increased cost to a law firm and the likely stance of mortgage lenders should these changes come about there will be much less competition in conveyancing service suppliers. This would have a detrimental effect on consumers at the same time as increasing the risk that the law firm they engage is under-insured in the event of a property claim.

Question 5

Do you think our proposed definition of conveyancing services is appropriate?

No

If not, please explain what you think should be an alternative definition.

We believe that the inclusion of the words '…and other service ancillary to…' is too vague and far reaching. An alternative suggestion would be:

"Dealing with transfers, conveyances, leases, contracts, deeds, grants, mortgages, charges, licences and other documents in connection with the disposition, acquisition or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in land."

Question 6

Do you think there are changes we should be making to our successor practice rules?

~~**Y/N**~~

If yes, please explain what these are and provide any evidence to support you view.

On the basis that we do not agree there should be amendments to the MTCs or PIA, it would be our view that the successor practice rules do not need to be amended.

However, if the proposed amendments to the MTCs or PIA are approved, there must necessarily be some changes to the successor practice rules. In the event that the proposed amendments to MTCs or PIA are approved, it is highly unlikely that any firm would be able

to risk becoming a successor practice to another firm as they will be unable to know with any certainty whether their own level of PII cover would be sufficient for the work undertaken by the firm to be succeeded. It would also mean that a retiring party would likely have to obtain their own insurance because they would have also have no way of knowing whether the successor practice was providing adequate protection under their own policy. Given that one of the professed aims of the proposals is to make retirement from practice easier, it would be our view that it would in fact cause the opposite.

Question 7

Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer.

Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

We do not believe there is any need to implement any changes. The evidence produced by the SRA is out of date and therefore should not be relied upon to make a change of this magnitude. We understand that the evidence is only accurate up to 2014 and that there have been significant increases in cyber fraud since that date which all agree is one of the largest risks facing our profession at the moment. Unless more up to date evidence is obtained, we firmly believe the status quo is preferable to any change.

In respect of the proposals to amend the MTCs, the evidence we have seen from information prepared by insurance companies and brokers would suggest that in all likelihood there will be a nominal reduction in premiums for some insured but in the majority of cases there will be an increase in premiums for most firms who would wish (and need) to maintain their current level of cover. Even on the evidence provided by the SRA in respect of reduced premiums, the levels are relatively small and would not encourage new entrants to the market and would not see costs savings to individual clients, to that end, it would not increase access to justice as intended. Indeed, we believe it would see the end of general practitioners who cover a variety of areas of legal work and it would likely lead to further “advice deserts” in rural or low populated areas.

As the data the SRA is working on was obtained from 90% of the insurers in the market and therefore did not include data from insurers who left the market, i.e. Quinn, Lemma, Balva etc., who have left the market because of insolvency caused by claims pay-outs, the evidence provided by the SRA to justify a change is significantly incomplete. If a change is contemplated, additional data is required.

Question 8

To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

At first blush the SRA proposals appear to be reasonably sensible. However, a little probing makes them look rather less attractive.

1. The jewel in the Law Society's PII crown is the MTC. Once it is gone or fractured it will be difficult (if not impossible) to re-create it. As we understand it, the current MTC provides protection for members of law firms and the public far greater than any other UK profession. It is important for the regulator (SRA) to appreciate that well run and competent law firms will ensure appropriate levels of indemnity cover for their work as protection for both the owners of the firm but also their clients. It is the poorly managed or incompetent firms that need to be protected, as well as their clients, and this obvious point seems to be overlooked in the SRA paper, which largely seeks to reduce the cost of PII by reducing the protection for both lawyers and clients. Reducing the level of cover to £500,000 (£1m for conveyancing firms) will expose clients of 'low cost' firms to uninsured loss claims. The SRA figure of £500,000 is based on settlements achieved (i.e. payments) and not the amounts actually claimed at the outset. It is not hard to envisage a scenario where a claim is for £1m and the insurer (wishing to limit its costs outlay + time exposure) agrees to pay £500,000 early on in order to avoid involvement in litigation. It is the 'under insurance' potential which is of great concern to us.
2. We understand that the figure of £500,000 has been arrived at on the basis of numbers of claims settled at £500,000 or less (96%), whereas that amount by reference to amounts actually paid out by PI insurers the figure represents 56% of the total value paid, a rather different and disturbing statistic. Obviously this is an aspect which the SRA must check before proceeding with the minimum £500,000 indemnity figure.
3. We question the evidence that the SRA has that the proposals will encourage the insurance market significantly to lower premiums. Our enquiries suggest that whilst there may be some minor saving initially the insurers will make up any perceived 'shortfall' by increasing premiums for top up insurance (which is likely to be required by most (if not all) well run competent law firms). During the past 18 months (i.e. after the SRA's analysis) the cost of excess layer cover has increased, largely because of several large losses which breached the current mandatory levels of cover. As a consequence, some top up insurers have left the solicitors' market, including Brit Insurance and Channel Syndicate, while others have raised their premiums. Only a

handful of PI insurers now offer cover for £3m over £2m or £2m over £3m, i.e. up to £5m maximum. It is therefore fanciful to assume that lowering the primary level of insurance will result in overall premium reductions. The reality is that most (i.e. prudent) firms will seek cover considerably higher than the suggested £500,000 minimum cover and that by implementing its current proposals the SRA will cause increased costs to law firms and not reduced cost as its Consultation Paper suggests. There is also the danger of 'dodgy' PI insurers entering the 'low cost' market with obvious unwanted outcomes – see Quinn and Enterprise as examples.

4. In our view a better proposal is for the SRA to provide specific waivers on request from firms that want to conduct low risk work only, such as crime and housing claims. In this way a full and proper assessment can be made (as to waiver) and PI insurance cover + premium obtained as appropriate for that firm.
5. We should add that PI insurance is 'claims made' and so law firms with 'legacy' work will need run-off cover for any 'old discipline' work. We suggest that the SRA is looking the wrong way through the telescope by trying to develop a one-size-fits-all solution, when in fact a bespoke solution (for waiver applicants) is a better option.
6. As for under insurance/lack of cover, it is not difficult to imagine scenarios where law firms are inadvertently underinsured. The writer is aware of a property investment fund which had c.£5m stolen by a law firm partner where the firm's indemnity level was only £2m (i.e. under insured). Alternatively, a small law firm (sole proprietor ?) might take on a low value RTA injury claim which (through inexperience) is settled prematurely. Following settlement the client's medical condition deteriorates significantly, which would have been detected if the right discipline of medical adviser had been instructed: such a claim could easily exceed the £500,000 limit.
7. Finally, we have seen data from JLT, specialist PI brokers which queries the extent to which savings may be achievable. Since January 2018 they have placed PI cover for 38 start-up law firms where the average annual premium has been £3,000. It has been suggested in the SRA paper that (1) PI premiums are stopping new entrants coming into the market and (2) that the proposals will result in premium reductions of c.10%. We do not think it credible that new entrants to the legal market would be dissuaded by a £300 differential. If they are, then we question their financial model and suitability to practice as law firms.

Question 9

Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

There is little evidence to show that premiums would be more affordable and it is our belief that in due course, the proposed changes are likely to lead to higher premiums for many who wish to remain insured at the current minimum level. Whilst it is appreciated that there will be some who are able to benefit from the lower cap, it is likely that those practitioners would have already had the benefit of significantly lower premiums in any event due to the low risk work undertaken. It is likely that those who have at some point been involved in the provision of higher risk services would see no reduction in a run-off premium.

Question 10

To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

If PII premiums are potentially lower it might encourage new firms to set up in practice. What is currently unclear is an understanding of the number of solicitors who would be willing to set up a new practice because of the potential of lower premiums. We understand the cost of PII premiums is a major factor taken into account by solicitors considering setting up in private practice, but it is one of a number of factors.

If the SRA's assumption is correct and new firms are encouraged to enter the legal services market, if any of the new set-ups are in locations based in more rural areas, it would provide much needed access to justice. This is particularly an issue in Wales.

As previously stated, a more effective way of achieving this would be for new firms to apply for a waiver under the SRA's existing powers rather than implementing the proposals in relation to the MTC.

As with a number of the suggested proposals, solicitors will need to be under a clear regulatory duty to ensure their clients are made fully aware of any limits to their indemnity protection.

Question 11

Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

If yes, please explain what you think these impacts are.

Based on the information in the Consultation Paper, the EDI impacts appear to be identified. However, as a number of assumptions have been made in the consultation, it is unclear at this stage if there are any further potential EDI impacts.

We agree the proposals have the potential to open up the market for solicitors to set up on their own or in partnership, if there is a positive impact on PII premiums. This may in turn encourage for example, a higher number of solicitors from a BAME background, to set up in practice.

However, what the paper does not appear to have considered is any negative diversity implications the proposals may have, on for example, the BAME community.

Question 12

Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further?
Please explain why and provide any evidence that supports your view

The current proposals concern us, as it would appear that they do not serve the purpose of protecting the public or encouraging new entrants into the market. The public will have less protection and there is a danger that it will undermine public confidence in the profession. We also understand, from leading PII brokers, that there will only be marginal savings on premiums for those seeking the minimum insurance. Further, it would also penalise firms who choose to retain their current level of cover above the minimum figure, as their premiums are likely to rise.

With there being no persuasive case for change, we favour the option of no change at all to our PII requirements.

We believe that the way to achieve lower premiums is to have fewer claims. To do so, we must improve the claims record of all solicitors. SRA resources should be directed towards assisting law firms with risk management, as ultimately prevention has to be the best solution.

Question 13:

To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

The proposed changes do not clarify the existing purpose - they seek to reclassify the Compensation Fund as a hardship fund. We do not believe the SRA has the power to change the purpose of the Fund.

Its purpose is to be a fund of last resort, as a safety net for clients who are victims of dishonesty of solicitors or hardship due to a solicitor's failure to account for monies, or to provide compensation in respect of the civil liability of a defaulting practitioner who does not have a policy of qualifying insurance policy in place.

We are also concerned that the £250,000 household asset bar could have perverse and unintended consequences, which will lead to deserving victims not being eligible for payments from the Fund.

Question 14

Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Please explain why and provide any evidence that supports your view.

As payments from the Fund are discretionary, we suggest that the SRA publish guidelines showing that the Fund is not a source of redress for investors who have suffered a loss, purely due to the involvement at some point of a solicitor. There has to be clear causation between the work undertaken by the solicitor, or advice given, and the loss suffered by the investor.

As part of exercising its discretion, the SRA should refuse claims by investor clients who have not sought pre-investment advice from an FCA authorised IFA. For those investor clients, the Compensation Fund could avoid paying compensation for dubious investments, as any

financial liability for losses will be that of the IFA who recommended/approved the investment.

We agree with the view of the Law Society of England and Wales that the SRA should seek to reduce the costs of interventions on the Compensation Fund, or even to remove the cost of interventions from the Compensation Fund altogether, with the costs of interventions being paid for out of the SRA's general funds. It cannot be right that the percentage of the Compensation Fund being used on interventions should have risen from 2.2% to 27.7%, as this is not the purpose of the Compensation Fund. If the SRA considers that it needs more general funding to meet the costs of interventions then this should be properly costed (and justified) so that an appropriate financial settlement can be reached on the SRA's funding.

Question 15

To what extent do you agree that we should exclude applications from people living in wealthy households?

Strongly disagree

Please explain your answer

We do not agree with the proposal that applications from persons living in wealthy households should be excluded, because we do not agree with the proposal that the Compensation Fund should become a 'hardship fund'.

Question 16

Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

If no, do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

We do not agree that the Compensation Fund should be re-purposed as a 'hardship fund', but if it were, we do not believe the proposed measure of wealth is appropriate.

If the Compensation Fund is to be a 'hardship' fund, then we do not see the rationale for excluding certain types of wealth and assets. Whilst we can see a case for excluding a claimant's own home in most cases, what is the justification for excluding homes worth several million pounds? What is the justification for excluding second homes and

investment properties, or very substantial business assets? A focus on net financial wealth could lead to unfairness between claimants, depending on the nature of their wealth.

Although there is the need to value certain forms of assets (real and personal property, business assets), this should not be a reason for excluding them entirely from a consideration of a person's means. Otherwise, there is too much emphasis placed on financial assets. There is also the risk that claimants could restructure their asset portfolio immediately prior to making a claim, in order to ensure that their net financial wealth dipped below the suggested £250,000 threshold.

Question 17

Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

If yes, please set out your suggestions and reasons for the change.

Payments from the Compensation Fund are already discretionary.

The SRA should be able to refuse to make payments, or to make smaller than requested payments, in respect of claims which appear to be unmeritorious, particularly where there is an element of culpability or 'contributory negligence' on the part of the claimant.

The SRA discusses the position of dubious investment schemes later in the consultation document, and we agree that the Compensation Fund should not make payments to disappointed or defrauded investors, simply because a solicitor was involved at some point in the process. There should have to be a link between the default of the solicitor and the claimant's loss. With regard to investment schemes, there should be an expectation that an investor obtains appropriate advice from a suitably qualified financial advisor or other expert in the type of proposed investment.

Question 18

Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

If no, please explain why.

We think it important to recognise that the Compensation Fund is intended to protect law clients from dishonesty and/or under/lack of PI insurance. We think the £500,000 cap is arbitrary and is unlikely to be accepted by the Legal Services Board, Parliament or the media, who will regard this as an attempt by 'fat cat' lawyers to avoid their responsibility to victims of unacceptable behaviour/incompetence by fellow members of their profession. As in insurance, the many pay for the few.

We also think it more likely that the SRA's PII proposals will result in more claims (for under- or no-cover insurance) than at present, as the insurance protection for the vulnerable wronged client will be sharply reduced.

It is difficult to see (from the quoted examples) on what basis the clients should suffer losses of c.£500,000 (example 1), £300,000 (example 2), £500,000 (example 3) and £400,000 (example 5) when the losses were not caused or contributed to by the *bona fide* clients/beneficiaries. We think the SRA's time would be better spent educating vulnerable firms on business management and competence (cover and indemnity levels) and policing them for signs of possible dishonesty within the business.

Question 19

Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

If no, please explain you answer and any suggestions you have for alternative approaches

As we have just commented, the Fund (as with insurance) operates on the basis that 'the many pay for the few' losses caused by dishonest or incompetent law firms. It is not possible to protect against dishonest acts by individuals, which is usually prompted by greed or financial mishap, sometimes both. Either the profession as a whole accepts responsibility for the losses caused by the (thankfully) small number of dishonest/incompetent law firms or it does not. A 'half-way house' as suggested by the SRA is not satisfactory. We should add that the Fund has considerable discretion at its disposal and we regard this as a better way of

dealing with the problem than imposing arbitrary limits which are likely to cause public outrage.

Question 20

What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

In our view the claimant on the Fund should show that independent professional financial advice was obtained from an FCA regulated individual/firm before committing money to the investment scheme. In this way the Fund will be protected from cold-calling scam claims and/or the investor will have rights of recovery from the IFA and/or FSCS. It occurs to us that this is the level of discretion that the SRA can (and should) be adopting now.

Question 21

Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

Yes. It seems to us that the Compensation Fund already has set out reasonably clear explanatory notes on the current SRA (SCF section) website. If these can be improved/enhanced by Guiding Principles for the benefit/better understanding of potential claimants then we see no downside to this approach.

Question 22

Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

If yes, please explain what you think these impacts are.

As indicated by the Law Society of England and Wales in its response, without a more detailed quantification of impacts, it is unclear.

Question 23:

Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

As regulator, it is clearly important that the SRA has an effective communication strategy in place to ensure the profession is updated in a timely manner on cybercrime issues. If there are any significant cybercrime updates the profession needs to be aware of, we would suggest timely emails are sent to COLP's of all firms to help ensure the messages are communicated. The SRA may also wish to consider seeking the agreement of firms who have been the subject of a cybercrime attack, to allow the SRA to share the relevant details with the profession for the benefit of all. This could of course be done on an anonymous basis, depending on the facts.

This is one of the main risks affecting the profession today. We agree with the Law Society's suggestion in their response to this Consultation that developing a sector-wide approach (with the SRA and the Law Society working with the government and other relevant bodies) is a useful approach to try to combat cybercrime.

Cardiff and District Law Society

15th June 2018

Response to the SRA Consultation - Protecting the users of legal services: balancing cost and access to legal services

A submission by
The Chartered Institute of Legal Executives (CILEx)

June 2018

1. **Introduction**

1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.

1.2. The majority of our members are employed with SRA-regulated firms. The focus of our main points below is driven from that perspective. They cover:

- Evidence and data and, related to that;
- Suggested outcomes from the reforms;
- Unforeseen consequences.

2. **Main points**

2.1. <u>Evidence and Data</u>

As an evidence-based regulator, the SRA has rightly based many of its proposals on the analysis of 10 years' worth of PII claims data. From that data, a number of key conclusions have been drawn, including that the majority of claims are under £580,000 in value. This informs proposals to reduce the minimum level of compulsory cover to £500,000 (and to £1m for firms offering 'conveyancing services).

2.2. CILEx's concern is that the data on which this rationale is based may be flawed. Firstly, it is historic data: the value of PII claims develops over time based on evolving claims history; the dataset used by the SRA it does not take into account developments in the market since 2014 which has seen, for example, an increasing incidence of cybercrime and online frauds on the one hand and, on the other, significant increases in average house prices particularly in London and the south-east of England.

2.3. Secondly, the data does not take into account the claims collected by insurers who have since left the market, notably Quinn, Balva and Enterprise whose claims experience in large part contributed to their exits. If the data evidence creates a shaky foundation, this begins to undermine the rationale that the reforms will lead to the outcomes suggested.

2.4. Suggested outcomes from the reforms

CILEx believes that it is by no means certain that firms will make savings through falling insurance premium costs as a consequence of these reforms, nor therefore, that those savings will passed on to consumers.

2.5. Firstly, it remains a regulatory obligation for firms to have an 'appropriate' level of PII in place. Some may take the view that they wish to maintain their current level of cover by purchasing top-up cover. The Minimum Terms and Conditions (MTCs) will not apply to that cover so firms may either have to pay more for it, eating into any saving they may have made on the level of minimum cover, or may not be able to afford to buy quite the same level of cover. This may disadvantage small firms in particular or, at worst, price them out of the market, with adverse consequences for consumer choice.

2.6. Secondly, even if there are firms who do see a saving through reduced premiums after the reforms, data suggests that some firms might only achieve a 10% saving but receive 25% less cover than they had before; this outcome starts to look of questionable value. It is important for the SRA to listen to what insurers say about the PII market here too: many say they already take a 'whole market' view and already reduce premiums; others say that their ability to make a profit from the market is tight or non-existent already. Their ability to reduce premiums following these reforms also therefore appears questionable.

2.7. Thirdly, CILEx is concerned for the effect on consumer protection and awareness: given the above, it does not seem certain that any savings will be passed on to the consumer. There is research to indicate that general consumer purchasing decisions remain motivated by 'recommendations/ word of mouth'. In other words, level of PII cover from a firm is not a factor in their buying decision. That firms have PII cover is assumed, the level of that cover not known nor influenced by them. Clients could be exposed if it is found retrospectively that firms did not have the right level of cover in place. Again, if some of the rationale for the proposals is flawed, the potential for unforeseen consequences appears heightened.

2.8. Unforeseen consequences

CILEx is concerned that the SRA proposals to lower the minimum indemnity limits could increase the likelihood that solicitors and their employees will be sued in a personal capacity to make good losses that are no longer covered by the current comprehensive levels PII cover.

2.9. Currently, the level of cover through the present MTCs seems high enough to cover most firms in most circumstances. If that is no longer the case with the lowering of indemnity limits, the regulatory requirement for firms to purchase an appropriate level of cover may create an additional responsibility for senior staff within law firms to purchase a level of top-up cover that meets the particular requirements of their firm.

2.10. There are those within the PII insurers market who also believe that this could create an additional obligation for principals to take out Directors &Officers insurance as a protection against underestimating their liabilities. Even that is unlikely to protect employees given, for example the Court of Appeal in Merrett v Babb in which the Court held that, in a situation in which the firm in question had gone bankrupt and its PII cancelled, a house purchaser could pursue the defendant chartered surveyor valuer for damages in a personal capacity (even though the purchaser had not actually seen the valuer's report and was unaware, at the time of purchase, of his identity).

3. **Conclusions**

3.1. Many of the SRA's present proposals are revisiting those that it first consulted on in 2014 but which did not get LSB approval mainly because of a lack of evidence.

3.2. The SRA has sought to provide a greater volume of evidence this time but CILEx remains concerned that:

- The data and evidence used is flawed and out of date;
- The outcomes expected by the SRA will not therefore result;
- There will be adverse effects and/or few benefits for both consumers and for solicitors and their employees.

For further details

Should you require any further information, please contact;

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Solicitors Regulation Authority

Protecting the users of legal services: balancing cost and access to legal services

A response by
CILEx Regulation

15 June 2018

Introduction

1. This response represents the views of CILEx Regulation, the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx Practitioners are authorised by CILEx Regulation to provide reserved legal activities. CILEx is the professional body representing 20,000 qualified and trainee Fellows and is an Approved Regulator under the Legal Services Act 2007 (LSA). Fellows and CILEx Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEx members.

2. As an Approved Regulator CILEx can award practice rights in litigation and advocacy, conveyancing and probate. It regulates immigration services. CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities.

3. CILEx Regulation and CILEx provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice. With the implementation of the practice and entity rights, CILEx Regulation has opened up opportunities to CILEx's diverse membership, and more importantly for regulatory purposes, it has expanded the diversity of service providers available to consumers.

Protecting the users of legal services: balancing cost and access to legal services

4. We welcome the opportunity to contribute to the discussion around how the user of legal services is protected in the future.

5. We believe that this current debate is very timely given that innovation is now starting to impact on the way that legal services are delivered by firms and the models under which they operate will be changing. Clearly regulators need to respond to these changes in both facilitating innovation to enable the delivery of benefits to the consumer, but also in ensuring that appropriate protections remain in place to those consumers using regulated firms.

6. In addition, all regulators are seeking to respond to the needs of users of legal services in providing transparency information about redress as part of the implementation requirements following the Competition and Markets Authority report. If the market starts to see greater variation in the minimum levels of coverage on offer to the consumer, then this clarity on exactly what services are covered and in what way becomes even more important to the consumer.

7. We believe that this will be particularly relevant at a time when the market is starting to allow firms to move between regulators and we believe that it is important that whilst a change of regulator may benefit a law firm, it should also not be to the detriment of their clients and consumers.

8. This consultation seeks to focus on balancing public protection when things go wrong with the need to have proportionate costs for firms delivering legal services to the public on the basis that reducing costs to the firm may provide cheaper and therefore more accessible legal services to the consumer.

9. In relation to Professional Indemnity Insurance (PII), the SRA considers that its one size fits all approach is too rigid in that some firms will have PII cover in excess of the minimum needed to meet their needs, particularly small firms working in low risk areas. The one size fits all approach may also be preventing new entrants to the market. The rationale in relation to access to

legal services is that lower PII cover should lead to lower premiums and therefore lower fees for legal services.

10. In relation to the Compensation Fund, the SRA considers that the availability of the fund is currently too wide and that in future access to the fund should be limited to claims based on hardship, thereby protecting the most vulnerable from exhaustion of the fund from claims made by wealthy people and organisations.

11. We support the position that there is a need to be able to set different levels of consumer protection, as appropriate, for each regulator.

Our response to the consultation questions

12. We have not responded to the individual questions as laid out in the consultation but have made some general observations on the rationale for and potential outcomes of the proposed changes to the PII requirements.

13. We have not commented on the questions relating to changes to access to the Compensation Fund.

14. In considering the data provided to support the reduction in minimum terms, we have reflected upon whether there is significant benefit to consumers through a firm seeking to reduce their PII cover by 75% to achieve a reduction in the premium of up to 17% as quoted.

15. There may also be a perception that arguing for a reduction in cover is to the benefit of the client as any PII cost savings will then be automatically passed on to the client. However, we are unsure as to whether the perceived reduction in cost, if achievable, spread across all clients in a year, is sufficient to warrant a reduction in consumer protection provided.

16. There is also an acknowledgement in the consultation that these savings may not be passed on to the consumer which is at odds with the rationale in relation to increasing affordability and therefore access to legal services.

17. There may also be a question around whether these proposals, which would span the largest sector of the market, may effectively cause the opposite to the intended action; namely an increase in premiums for reduced cover and an impact potentially on the rest of the PII market. As this has broader consequences outside of just the solicitors market, we would be happy to engage with stakeholders, including other regulators, to ensure that there is minimal impact on the other legal markets. We would hope that these discussions would include the premiums and coverage that will be available to all firms across the legal services market.

18. Concerns have been expressed that for firms seeking to maintain the current levels of PII cover, then the overall price may rise as there may be a need to purchase additional cover to protect against personal liability. Again, we would like to seek more detail on this point, so consumers can be confident that the cost of the current protections they enjoy will not rise. We would hope that the market can provide assurances that a firm seeking a 300% increase in cover (from the minimum proposed level of £500k to £2M) would be able to achieve this for a quoted increase of up to 17% in premium, currently quoted as the potential saving.

19. As the legal services market comprises predominantly a large number of smaller firms, we would hope they will not be detrimentally affected, either through being priced out of the levels of cover that they may desire to protect themselves or coverage not being available at all. This will be important to ensure the market remains open and accessible to new entrants.

20. Changes to accessibility to PII cover may also impact on conveyancers' ability to access lender panels and whilst access to the conveyancing quality scheme (CQS) mark may provide some comfort to lenders and therefore mitigate the risk, access to this mark is limited to SRA regulated firms. Should the changes proposed by the SRA impact on the access to PII across the

legal sector, whilst mitigation may be available to SRA regulated firms, such action could have unintended consequences elsewhere.

21. We support the SRA in their desire to see more work being done across the sector to ensure consumers are aware of the level of protection available when they use legal services. We have already expressed that this will be a key part of the communication process for any firm looking to switch regulator to CILEx Regulation. With the SRA having made the positive policy decision last year of enabling firms to choose between regulator services, we would hope that the potential impact of these proposed changes will not mean that firms feel that their choice is restricted.

22. Although it is correct that insurance arrangements are not intended to replace regulatory oversight of professional standards, they do play a key part in the protections that a consumer may seek when engaging legal services from a regulated firm. This can be even more important for areas where the distinction between regulated and unregulated legal services is less than clear, for example, estate administration and probate.

23. Other parties have raised further issues with the proposed changes to run off cover and we would hope that these can be explored more fully, especially around the areas of personal liability for partners, directors and individuals. Again, that is a consideration for regulators where a firm has switched from the SRA and then seeks to put in place run-off that will cover work the firm undertook whilst it was regulated by the SRA.

24. We hope our observations will be of value.

Conclusion

25. We have concerns regarding the impact on consumers and whether there are going to be unintended consequences on the market as a whole, that will be to the detriment of consumers.

26. We would welcome greater clarity from the insurance market on the proposed changes and how they believe the provision of PII cover may be impacted.

27. Conscious of the impact these changes may have at a time when firms are switching regulator, we would welcome the opportunity to participate in stakeholder discussions on the potential impacts of that these changes could bring to the PII market, particularly with consumer representatives.

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15th June 2018

(*By post and email: consultation@sra.org.uk*)

Dear Sirs

Response of the CLLS Professional Rules and Regulation Committee to the SRA's Consultation paper "Protecting the Users of Legal Services" (the "Consultation Paper")

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 to the Consultation Paper has been prepared by the CLLS Professional Rules and Regulation Committee. For further information see the notes at the end of this letter.

The SRA started a consultation on this topic in 2014 and in September 2015 we responded to the SRA's Discussion Paper of July 2015. We refer to that earlier response and refrain for setting out again all the arguments then made, though we believe them to continue to be substantially valid.

The questions and answers are inter-related, and it is impossible to compartmentalise, so to the extent relevant each answer should be considered as being applicable also to other questions.

Our response is:

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

We have reviewed the response of The Law Society dated 6th June, setting out their analysis and arguments at length, and substantially concur in its contents on this and the other consultation questions.

We would add or emphasise the following points:

1. We query whether the SRA's statement that 98% of all claims settle for under £500,000 has taken into account sufficient historic claim data, given that it does not include settlement figures from insurers who exited the market in recent years and who faced large losses.

2. Even if it is right that most claims settle for under £500,000, insurers will still be exposed to where the bulk of the risk lies (because the new minimum terms are going to be £500,000, or £1m for conveyancing matters) in which case it is difficult to see that premiums would reduce.

3. Clients' agreement to limit law firm liability to the £500,000 or, as the case may be, £1m level (or theoretically nil for commercial clients, but that is not realistic), would have no effect on third party claims, for example, as under the *Dreamvar* decision or in respect of undertakings to the other side.

4. It will be problematic to rely on another firm's undertaking as we could not be sure that their insurers will deal with a claim, and in more instances we need to enquire about the level of cover.

5. As one commentator has pointed out, sometimes there may be uncertainty as to which insurer would be responsible for a claim, where circumstances were first notified to one insurer in one year, but the claim crystallises in a subsequent year with a different primary insurer. Insurers may dispute whether the claim arises from the circumstances previously notified or not. Currently each insurer is obligated by the Participating Insurer's Agreement with the SRA so one or other insurer must 'conduct any claim, including paying defence costs, and seek reimbursement later. If the majority of claims (commercial claims) faced by CLLS member firms are to be excluded from compulsory cover, this provision will be of no effect, and firms may be forced to defend themselves and pursue claims for reimbursement against insurers.

6. Over recent years failed large firms include 3 UK firms, 6 US firms with London offices and the London office of KWM. Partners in firms which fail will no longer have certainty that there is insurance cover - compulsory successor practice cover would not cover the commercial claims.

7. Those small firms that choose to be content to insure only at the new minimum cover levels, taking the risk for future work, will be exposed as regards past work where clients will, at best, have agreed to limit liability to £3m or, as the case may be, £2m - so the law firm will be exposed to such claims until the end of the limitation period. Therefore, many firms, even small firms, on a prudent basis, are likely to secure

more than £500,000 or, as the case may be, £1m cover, but, in our opinion, there is a risk that they may end up having to pay higher premiums overall than at present.

8. MTC provides the most comprehensive scope of cover, with minimal exclusions, for PII in the world. Of concern even for City firms is the proposed removal entirely of the MTCs for work done for financial institutions and other large business clients (those with turnovers of more than £2m). This impliedly creates a de-regulated market, and may allow insurers to reduce scope of cover or impose higher premiums in return for the current (and comprehensive) protections under the existing MTCs, but which they will no longer be obligated to offer.

9. If a firm seeks to reduce its PII cover to the low levels proposed, then given the claims made nature of PII, previous clients, who have not yet made a claim, but may do so in the future, could be prejudiced and/or the law firm have an uninsured exposure. Clients may have instructed a firm in the knowledge of its then PII cover levels, but at the time of a claim find they are now substantially reduced.

10. We point out one particular difference compared to the liability position outside the legal sector (a professional services sector). In the case of a regular Companies Act company, a director rarely has personal civil liability, absent wrongful trading. In the case of an LLP, the LLP Act left open whether or not the partner (member) giving advice would have personal liability to the client in negligence on the basis of assuming a duty of care; it is certainly arguable.[1] Therefore potential inadequacy of level of PII insurance protection, which could be the consequence of the proposals, is of greater concern in the legal sector than the general commercial sector.

11. The SRA's paper is entitled "Protecting the users of legal services…" As mentioned in our September 2015 response, however, the SRA also has a statutory duty under section 37 of the Solicitors Act 1974, in relation to professional indemnity, to have regard to the protection of solicitors and their staff.[2] Thus, protection of clients is not the only concern; to the extent that the proposals increase risks of uninsured claims or costs for partners and employees, those increased risks or costs must be taken into account, as well as benefits (if any) to clients.

12. So, we do not concur that the change would benefit:

    - Solicitors' firms – any reductions in premium are likely to be minor in effect;
    - Clients, who would need to make enquiries as to cover levels of competing law firms – and without assurance that levels quoted (above £500,000 or, as the case may be, £1m) would remain in force; or
    - Law firm partners, who would be exposed to a greater degree to liability above insured levels and/or run off liability, including after retirement and/or after a firm has ceased to exist and/or have to bear additional insurance premiums.

13. If the proposals are designed to make small High Street practice more affordable, we wonder if, in fact, the consequence could be the reverse with either increased costs for similar cover as present or, if cover levels reduce, then a flight to quality away from small High Street practices.

Please bear these points in mind in relation also to the remaining questions.

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[1] In the case of a general partnership the partner advising would have personal liability to the client in negligence, and fellow partners would have joint and several liability.

[2] See HL judgment in *Swain v The Law Society* [1983] 1 AC 598, quoted in the TLS 2014 Response para 19.

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Apart from private client work and employment advice, most work of CLLS member firms is for financial institutions and other large business clients.

CLLS member firms currently take out PII for a cover level substantially exceeding the MTC level and would continue to do so for the firm's (and partners') protection and because clients are increasingly enquiring on level of PII cover and setting minimum levels.

Making the distinction is likely to cause complications as The Law Society points out.

There is simplicity in the current PII market: MTC applies to all clients (commercial or individual) and the MTC conditions apply all the way up the excess layers tower and to run off in the event of a cessation of business. The SRA's proposals, even if individually attractive (which is not our view) risk upsetting those arrangements to the detriment CLLS member firms and their partners.

Question 3: Do you think our definition for excluding large financial institutions corporations and business clients is appropriate?

No

Though, in practice, CLLS member firms will obtain appropriate top-up cover in excess of the proposed MTCs, reflecting the nature and value of work undertaken, we concur in the opinions and arguments of The Law Society.

In addition, the definition of "large business clients" being those with a turnover of £2m is too low when considered in the context of relevant guidance: for example, the EU's Recommendation 2003/361 defines a "medium-sized business" as having a turnover of less than 50m Euros and a "micro business" as having a turnover of less than 2m Euros. Consequently, the SRA's proposals would classify as "large business clients" many small and medium sized enterprises, many of whom may not be sophisticated users of legal services.

Further to the above, there is apparent confusion between the SRA Consultation Paper (at page 53) which states that turnover will be assessed *"in the financial year at the time the act giving rise to a claim occurred"* whereas the draft MTCs at 6.3 state that the relevant assessment is of a client's turnover for its most recent financial year. If the assessment of turnover (and therefore application of MTCs) is intended to apply retrospectively, rather than on a claims-made basis, this might cause a client to be outside the scope of the MTCs entirely if, at the time the relevant act or omission took place, their turnover was more than £2M but where, at the time the claim is actually made, it is not. Moreover, the effect of this approach is that cover under the MTCs may be excluded for an act or omission which took place years before the new MTCs are actually introduced.

Question 4: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Though, in practice, CLLS member firms will obtain appropriate top-up cover in excess of the proposed MTCs, reflecting the nature and value of work undertaken, we concur in the opinions and arguments of The Law Society.

In addition, under the requirement to obtain separate additional MTC cover for conveyancing work, firms which intend to obtain only the minimum cover (which approach the SRA argues will be cheaper and is a primary motivation for the proposed changes) will need to negotiate and put in place separate insurance arrangements. This will have to apply to both the conveyancing and non-conveyancing aspects of their business, which will add time and costs. This is not necessary under the current arrangements, since the current minimum cover of either £2m or £3m applies to all legal services.

Question 5: Do you think our proposed definition of conveyancing services is appropriate?

No

Though this would not, in practice, arise for CLLS member firms, we concur in the opinions and arguments of The Law Society.

Any attempt to limit liability to correspond to the MTC level of cover would have no effect on third party claims, for example, as under the *Dreamvar* decision or in respect of undertakings to the other side.

Question 6: Do you think there are changes we should be making to our successor practice rules?

Yes

We concur in the opinions and arguments of The Law Society; in particular, regarding increased risks should the current proposals be implemented.

Question 7: Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

We concur in the opinions and arguments of The Law Society; in particular, regarding claim amounts asserted far exceeding actual settlements, loss of confidence in firms and increased risks on a sale of a practice.

Question 8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

We concur in the opinions and arguments of The Law Society; in particular, we concur with them in their view that the proposals will not save firms money overall.

Like The Law Society, the CLLS disagrees with the proposed changes which will increase complexity, reduce protections for the public, and could increase costs for firms due to the need for various types of top-up cover and administrative costs.

Question 9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree nor agree

We concur in the opinions and arguments of The Law Society that this is an important subject and that further research and analysis is required. Also, retiring solicitors who will need to consider purchasing top-up cover for their run-off period in order to cover former clients who expected to be covered by the existing MTCs levels.

Question 10: To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Given that City of London commercial firms insure for far more than MTC require, the proposals will have no effect (positive or negative) on firms entering the City market, whether non-City firms opening in the City, foreign law firms opening in the City or break- aways from existing firms.

However, we concur in the opinions and arguments of The Law Society; in particular, we concur with them in their view that the potential savings, if any, would be small and could be illusory. In the case of small firms nationally doing low risk advisory work, different remedies could be targeted at them, without overhauling the entire market.

Question 11: Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

Though the effects highlighted by The Law Society are likely to be felt only outside CLLS member forms, we concur in their opinions and arguments.

Question 12: Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

We concur with The Law Society that this is an important subject and that further research and analysis is required.

Question 13: To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree nor agree

The Compensation Fund is not a topic in which the CLLS Professional Rules and Regulation Committee has any particular expertise. However, the analysis and arguments of The Law Society on questions 13 – 22 look persuasive. Accordingly, we do not specifically address **Questions 14 to 22**.

Question 23: Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

This is a separate and very important topic in its own right.

It should be borne in mind that currently, PII under MTC covers all civil liability arising from legal practice (subject to specified exceptions), so client losses (including client money) arising from the firm's negligence, for example, in lack of preparedness against hacking, are covered by the PII insurance. So only the firm's first party losses are uninsured without cyber insurance.

In outline:

- Further efforts should be made to raise clients' awareness of the risks and how to navigate them – here efforts can be targeted at individuals and small businesses, as large businesses will have deployed their own resources to buying in IT security expertise;
- Any proposal to weaken the protection under MTC (or law firm PII policies generally) should be resisted; and
- We concur with The Law Society in the merits of a sector-wide approach, and the merits of Cyber Essentials or ISO 27001.

The CLLS would happily contribute to a wider debate on cyber risks.

If you would find it helpful to discuss any of these comments then we would be happy to do so. Please contact me initially on +44 (0) +44 207 427 3033 or by email at jonathan.kembery@freshfields.com in the first instance.

Yours faithfully

Jonathan Kembery
Chairman
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 membership of the CLLS Professional Rules and Regulation Committee are found here:

http://www.citysolicitors.org.uk/index.php?option=com_content&view=category&id=151&Itemid=469

COUNTY SOCIETIES GROUP

SRA Consultation: Protecting the users of legal services: balancing cost and access to legal services - Deadline for submission of responses is **15 June 2018**.

Preamble

The County Societies Group represents over 5000 solicitors from across England & Wales. Its constituent members are Cheshire & North Wales, Devon & Somerset, Kent, Leicestershire, Newcastle and Surrey law societies. The views expressed are shared by all the member societies.

Executive Summary

We believe that the proposed changes will not deliver on the SRA's set objectives – in particular the proposals will further increase confusion for clients and will not ultimately reduce costs.

The paper unfortunately demonstrates a fundamental misunderstanding of the insurance market for the legal profession. The reality is that insurers assess premiums on risk.

The consultation seriously undermines the existing ethos of the legal profession where all clients are fully protected.

While we support the robust assessment of the Compensation Fund, the introduction of a Hardship fund is nonsensical and we believe wrong in principle. To implement such changes would, in our opinion, be likely to only serve to damage and undermine the reputation of the profession.

Question 1

To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

- Strongly disagree

Please explain your answer.

The situation is perfectly dealt with as things stand through the insurance policies that firms have to hold.

Question 2

To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

- Strongly disagree

Please explain your answer.

The position must remain the same with cover for all clients including financial institutions and other large business clients.

Please provide any additional comments on the alternative option that this could be at the election of the law firm.

Question 3

Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

- No

If no, please provide an alternative way of drafting the exclusion definition.

It is not necessary or appropriate to change the existing system.

County Societies Group 15 June 2018.

Question 4

To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

- Strongly disagree

Please explain your answer.

Firms routinely buy top up cover according to the legal services they sell.

Question 5

Do you think our proposed definition of conveyancing services is appropriate?

- No

If no, please explain what you think should be an alternative definition.

Makes no sense as many conveyancing transactions are well over £1 million pounds in many areas of the country.

Question 6

Do you think there are changes we should be making to our successor practice rules?

- No

If yes, please explain what these are and provide any evidence to support you view.

Run-off cover is an area preventing people from smaller practices to retire. We would welcome changes to reduce run-off cover.

Question 7

Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

- Strongly disagree

Please explain your answer.

Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

Question 8

To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

- Strongly disagree

Please explain your answer.

This is already built-in in the existing systems.

Question 9

Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

- Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

Reducing the cap will not necessarily reduce the premium. The SRA should instead assist firms to close down properly. More importantly this would be better in the long run for clients.

Question 10

To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

- Strongly disagree

Please explain your answer.

New firms will not have the risk profile that will reduce their premium.

Question 11

Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

- No

If Yes, please explain what you think these impacts are.

Question 12

Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further?

Please explain why and provide any evidence that supports your view.

The current system works reasonably well and should therefore be left alone.

Question 13

To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

- Strongly disagree

Please explain your answer.

The SRA are trying to redefine the Compensation Fund that protects legitimate claims. The changes do not make sense – if the firms are unable to get adequate cover, they should not be selling legal services.

Question 14

Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Please explain why and provide any evidence that supports your view.

No – there is no need to change. The Fund should remain as the Compensation Fund not a hardship fund.

Question 15

To what extent do you agree that we should exclude applications from people living in wealthy households?

- Strongly disagree

Please explain your answer.

This is irrelevant if you have a legitimate claim.

Question 16

Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

- No

If no, do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

Again this is irrelevant.

Question 17

Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

- No

If yes, please set out your suggestions and reasons for the change.

Question 18

Do you think we have set out the right approach for assessing when a maximum payment has been reached?

- No

If no, please explain why.

Firms performing high risk business will have cover just in case something goes wrong.

Question 19

Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

- Yes

In addition we are of the view that the Compensation Fund should sit with The Law Society and not the SRA.

If no, please explain you answer and any suggestions you have for alternative approaches.

Question 20

What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

The protection that the client already has should not be taken away. Clients can trust that solicitors will take all reasonable steps in the knowledge that they are protected.

Question 21

Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

- No

Please explain your answer.

We believe that not many clients will read such guiding principles.

Question 22

Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

- No

If Yes, please explain what you think these impacts are.

Everyone should have the same protection.

Question 23

Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

No comment as the question is unrelated to this consultation.

We have not completed the online consultation response because much of the content of the consultation relates to matters that we have no relevant knowledge of - hence, supplying our response by email.

Our comments relate entirely to representation in criminal cases and those exceptional cases where a wrongful conviction has occurred. Whilst they are rare, and we also understand that representation in criminal cases is generally assessed as low risk by insurers, when things go wrong the impact is high. The Government's arrangements for compensating victims of this type of miscarriage of justice is extremely restrictive and, as you probably know, two relevant cases are currently in the Supreme Court amounting to a challenge of the Government's position. That can drive the individuals affected to pursue civil claims against those involved in the criminal case process. Whilst it seems unlikely that solicitor activity/failure will often be solely responsible for a miscarriage of justice, the possibility remains. Arguably, if solicitor negligence/misconduct gave rise to a miscarriage of justice and the person then spent many years in prison as a result, there's an argument for more than £500K to be available for high impact cases. The Government caps payments at £500K unless the person has been in prison for more than 10 years, in which case the cap is £1m.

Sally Berlin

Sally Berlin (Mrs) | Director of Casework Operations | Criminal Cases Review Commission | 0121 233 1473

Protecting the users of legal services: balancing cost and access to legal

Response ID:304 Data

2. About you

1.
First name(s)

Mathew

2.
Last name

Rutter

6.
I am responding..

on behalf of an organisation

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)

440774

9.
Please enter your organisation's name

DAC Beachcroft LLP

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: All of the available evidence shows that a minimum £500,000 of cover (£1 million for conveyancing claims) will be inadequate for most regulated law firms. The SRA consultation paper (on page 47) indicates that, even with the current £2 million / £3 million minimum cover, some 22% of 2-4 partner firms buy top-up indemnity cover, rising to 68% of 5-10 partner firms and 90% of 11 to 25 partner firms. Given the number of firms that already consider the £2/£3 million minimum cover to be insufficient, we believe the number of firms for which the proposed new minima are adequate would represent a very small percentage of practices. In addition, the proposed exclusion of cover for all business clients with a turnover of more than £2 million (which would also therefore exclude lenders in the context of conveyancing transactions, for example) would be likely to mean that proposed minimum level of cover would not be appropriate for many regulated law firms, including some which currently do not buy top-up cover. A number of the insurers and brokers we have spoken to who specialise in this area also questioned the accuracy of the data relied on by the SRA, including whether it included data from a number of the former participating insurers that have become insolvent. If it did not, it may significantly understate the level of claims, particularly the claims experienced by the smaller firms identified by the SRA as being most likely to benefit from its proposed reforms. We also understand that the data related only to paid claims, and did not take account of the reserves participating insurers were holding against notified claims. Again, this would be likely to result in an underestimate of the level of claims currently being experienced by law firms.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: We would question the proposed threshold of £2 million. The suggestion that any business with a turnover of more than £2 million can be described as "large", or is necessarily a sophisticated buyer of legal services not deserving of protection under the MTCs is, we believe, misguided. It is significantly out of line with other, well-established measures of what constitutes a large or a sophisticated business. According to EU Recommendation 2003/361, a medium-sized enterprise is one with fewer than 250 employees, turnover of ≤ €50 m or a balance sheet total of ≤ €43 m. A micro-enterprise is defined as one with fewer than 10 employees and turnover of ≤ €2 m. On this definition, this proposed change would exclude not just "large corporations", but many small and medium-sized businesses. Most UK SMEs with 10-49 employees do not have a financially-qualified person looking after their finances (BDRC SME Finance Monitor, Q4 2017 data). It therefore seems difficult to justify the exclusion of such businesses from protection under the MTCs on the grounds that they are "sophisticated" and "should be able to assure themselves about the adequacy of insurance arrangements relating to legal services they purchase", and we note that the SRA provides no evidence to support this assertion in its consultation paper. It is worth noting in this context that the Financial Conduct Authority is currently consulting on extending the scope of the Financial Ombudsman Service, covering not just "micro-enterprises" (as defined above) but "small businesses". The proposed definition would include businesses meeting all of the following criteria: ⁼ annual turnover of less than £6.5m ⁼ annual balance sheet total of less than £5m ⁼ fewer than 50 employees. These are also the criteria used in the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014, and in that context represent the size of business considered sophisticated enough to be able to opt out of the protections afforded by the bank ring-fencing regime. Seen in this light, it is hard to understand on what basis the SRA has decided to refer to any business with a turnover of more than £2 million as a "large business", with the implication that it is financially sophisticated. In practice, we would expect many firms would be required to buy cover that extended to financial institutions, for example as a condition of the firm being on a lender's conveyancing panel. This may mean that more than one policy is required, which would be unlikely to result in any cost saving for the firm. More complicated policy arrangements could also lead to greater exposure for the firm, its principals and employees, coverage disputes, etc.

15.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

No, for the reasons given above, we believe that the turnover threshold of £2 million is set too low. We also believe that the criteria for determining what size of business is excluded should at least extend to a balance sheet test, in conjunction with the

turnover test. Otherwise a large, sophisticated holding company could be covered under the MTCs, but a small trading company excluded.

Furthermore, paragraph 53 of the Consultation Paper states that the SRA's proposed approach is to base the exclusion on turnover "in the financial year at the time the act giving rise to a claim occurred". However, this is not the effect of the exclusion as drafted in clause 6.3 of the proposed MTCs, which refers to cases where the client's turnover "for its most recent financial year exceeds £2 million".

In a claims-made policy, such as a solicitors' PI policy, this turnover test would be applied when the claim was first made or circumstances notified by the insured firm to its participating insurer. It would not apply, as currently drafted, by reference to the size of the client's business at the time the act or omission giving rise to the claim occurred. One effect of this would be to exclude cover in relation to commercial clients who bring claims arising from acts or omissions that occurred even before the MTCs were amended to permit this exclusion.

This leads on to a further misunderstanding that is apparent from the SRA's Consultation Paper. It proposes "the use of regulatory logos and provision of checklists" which "could help people better understand how they are protected when they choose a SRA regulated firm". However, because of the claims-made nature of solicitors' professional indemnity insurance, it is impossible for a client to know to what extent, if at all, they will be protected by professional indemnity insurance in the event of their bringing a claim against their SRA-regulated firm in the future. By the time they come to bring a claim, the cover taken out by that firm could have changed significantly, meaning that the client's claim is not covered by the current policy of insurance at all.

The idea that information can be provided to clients when selecting a firm "that indicates whether the firm is under or over-insured" completely misses this point, and any such information could therefore be highly misleading. Far from ensuring that clients were better informed, it could easily lend them a false sense of security.

Finally, the way in which this exclusion is being introduced will mean that business clients, including financial institutions, will have no way of ensuring that there is cover in place should they need to make a claim against a law firm. This may lead to smaller law firms simply being excluded from conveyancing panels, leading to a reduction in consumer choice and competition – the very opposite of the outcomes that the SRA is seeking to achieve.

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17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree

Please explain your answer

: We do not have an objection in principle to different policy limits for different types of legal practice, but we can see practical issues with the current proposal. The most obvious difficulty lies with the fact that solicitors' PI policies are written on a claims-made basis. The firms that will need the additional cover for conveyancing services will therefore be not just those who are currently providing conveyancing services but will include firms that have previously provided conveyancing services – the SRA does not indicate for how long it thinks firms should continue to buy such cover after they have ceased to provide conveyancing services, but we imagine most firms would want to do so for at least six years, and probably up to 15 years, assuming that they appreciate the need to do so. The suggestion in the consultation paper that the additional, separately identifiable, cost of insuring for conveyancing services may cause firms to decide to specialise in other areas of work seems to overlook this point. However, the position is more complicated than that. The MTCs provide cover not just for the firm, but also for its individual current and former principals and employees, and for firms to which the firm is a successor practice. Even if a firm itself had not provided conveyancing services during the previous 15 years, therefore, it would still have to consider whether the same was true of any firm to which it was a successor practice, and of each of its current or former principals or employees (including as a result of any conveyancing services provided by those current or former principals or employees at any other practice). A firm would also need to make this assessment before it took on any new employee or principal during the policy period. All of these individuals are required to be covered under the MTCs, and a failure to purchase the additional conveyancing cover could therefore mean that, as well as the claim being uninsured, the firm is found to have failed to achieve Outcome 7.13 (you assess and purchase the level of professional indemnity insurance cover that is appropriate for your current and past practice, taking into account potential levels of claim by your clients and others and any alternative arrangements you or your client may make). We would be interested to see the SRA's plans to explain this to firms so that they understand the need to take into account all of these considerations. As the EPC report notes, there will need to be a significant transitional period before this change yields any reduction in the cover required or a material reduction in the premium charged. The SRA says that it will take a robust stance in ensuring that firms buy appropriate cover, but it is hard to see how the SRA can accurately assess this, given the difficulty that firms themselves will face in making this assessment. The

other consequence will be the potential for coverage disputes as to what does and does not constitute a conveyancing claim, particularly given the proposed wide definition of conveyancing services. An example is given below, but it seems to us that this is an inherent risk with this proposed approach, which may give rise to disputes.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

Our concern is not so much with the definition of "conveyancing services", as with the drafting of the exclusion in clause 6.2 of the MTCs, which excludes "any liability of the insurer … in respect of or in any way in connection with conveyancing services". So it is not just conveyancing services that are excluded under the MTCs, but any liability in any way in connection with conveyancing services that is excluded, and whether or not it is the insured firm providing those conveyancing services. For example, if a firm is instructed purely in relation to estate planning, but in the context of their client's imminent house purchase, would a failure to advise appropriately on whether the house should be held by the client and their spouse as joint tenants or tenants in common give rise to "a liability … in any way in connection with conveyancing services", which is therefore excluded from cover if the firm has not bought additional conveyancing cover?

We would suggest that, at the least, the exclusion in clause 6.2 should refer to "conveyancing services provided by any insured" to make the position clearer in cases such as the one cited above.

We also note that draft rule 2.2 of the SIIRs imposes a requirement on an "authorised body that provides, or has provided, conveyancing services" to take out the extended cover for conveyancing. Although there is no definition of what amounts to "providing" conveyancing services, this appears to be us to be narrower than the wording of the exclusion, meaning that a firm that has not "provided" conveyancing services will not be required to take out cover for "any liability in any way in connection with conveyancing services". Since the latter appears to be wider, this creates the potential for a gap in cover, the justification for which is unclear to us.

The wording of draft rule 2.2 also does not apply the requirement to buy conveyancing cover to firms which have not themselves provided conveyancing services, but are a successor practice to one which has, or for which a principal or employee works who has provided such services at a previous practice. Again, this would create a worrying gap in cover which would leave innocent clients completely unprotected, and could be exploited by firms seeking to reduce their insurance liabilities.

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

21. Please explain what these are and provide any evidence to support you view

[Our answer is in fact "no", but in order to explain why we have to answer "yes" to generate the dialogue box.

The obvious risk is that any change could cause a firm that was previously a successor practice to cease be one, meaning that its associated liabilities are therefore uninsured, so any change would need to be drafted to avoid that outcome. This would risk making the definition even more complicated that it is currently.

While we are aware that this definition has caused problems, it is of course an inherently difficult area. We have sympathy for a wish for greater clarity, and the desire to avoid multiple successor practices and uncertainty, but we have concerns as to how a rule requiring one firm to confirm it is the successor practice would operate in practice. Many of the problems that arise in practice occur, in our experience, as a result of the firms concerned not addressing the question of succession when a firm closes its doors. This suggests that the problem may lie not so much in the definition, but more in the behaviour of firms in such circumstances. Requiring a firm to confirm its position as a successor practice leaves open the question of what happens if no firm does so.

Likewise we have concerns that the repositioning of incurred but unknown liabilities (before claims are made) towards run-off cover may be equally problematic, particularly should costs of run-off insurance increase as one would expect in such a scenario. Such a rise would of course be inconsistent with one of the aims of the consultation. It could also open up a new,

unwelcome dynamic of potential disputes between run-off insurers and the insurers of the "successor". Such matters could make transfer / closure of practices even more difficult.
We wonder whether the better option in practice might be to maintain the current definition but include in the Participating Insurer's Agreement express reference to disputes as to successor practices being referred to arbitration, and how claims are to be conducted in the interim. This could be achieved by a minor addition to the current wording, by way of clarification and confirmation.

22. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Given that no draft PIA has been provided, it is not possible to answer this question in full. As regards the MTCs, we have the following comments. 1. We note the changes to the scope of cover, deleting clauses 1.4 to 1.7. We assume this is intended to be a simplification, but under the amended wording, it would appear that the policy will no longer be required, for example, to cover a former employee of a prior practice. This is more than just a simplification, and we would urge the SRA to review these amendments which appear to have been made without a proper consideration of their effect. 2. Clause 3.2 refers to an "excess deductible", whereas elsewhere the MTCs simply refer to an "excess". 3. Clause 3.4 refers to the insurer being liable to pay the excess, but since an excess can now apply to defence costs, clause 3.4 needs to be amended to make it clear that it is referring to an excess under either 3.1 or 3.3, or both (assuming that is the intention). Similarly, we assume that the aggregation provision in clause 3.5 should also apply to an excess under clause 3.3, but as drafted is limited to an excess under clause 3.1. It is not clear to us why clause 4.10 (conduct of a claim pending dispute resolution) has been removed. Clauses 5.1 and 5.2 now refer to extended cover "complying with the MTC", but this does not make it clear whether, for example, such extended cover would have to included cover for conveyancing services if the original policy included that cover (since cover excluding conveyancing services would still be complying with the MTC). The previous wording in the now deleted 5.3 made it clear that the limits, exclusions etc of the original policy apply to the extended cover. We comment in our response to question 9 below in relation to clause 5.4. We have also commented above in relation to clause 6.3. In addition, the definition of "turnover" differs slightly from that given in section 474 of the Companies Act, in that it omits the words "falling within the company's ordinary activities". This would seem to leave potential for an argument as to whether turnover as shown in a company's accounts was the relevant figure for the purposes of applying this exclusion. We cannot see why the SRA should want to propose a definition of turnover that differs from the Companies Act definition. In addition, businesses of this size will often not have audited accounts, so there is scope for dispute as to whether a business is covered or not. We note that the MTCs would no longer require that a policy of qualifying insurance is subject to the law of England and Wales (although the MTCs themselves are). It is not clear why this change is proposed, or how a policy could be consistent with the MTC if the policy was subject to a different law, but an explanation of the thinking behind this change would be welcome. It is difficult to see what can be gained by greater uncertainty in this regard.

23. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: DAC Beachcroft acts for the leading participating insurers and many of the major insurance brokers in this area. We have had discussions with a number of our clients about the SRA's proposals. There is widespread scepticism about the ability of these proposed reforms to lower insurance costs to any material degree. None of those who we talked to agreed with the SRA's suggestion of a reduction in premium of anything near 9 to 17%. Many also identified the potentially increased cost (for firms that currently buy only the minimum cover) of buying top-up cover; we note that the SRA Consultation Paper does not appear to have considered this additional cost and time burden on firms. The principal reasons for this scepticism are that: ⁼ most claims are below £500,000 in value, so limiting cover to that level (except for conveyancing claims) will do very little to reduce the financial exposure of the insurer ⁼ insurers already take into account the risk-profile of a firm's practice when assessing premium, so, for example, the proposed conveyancing exclusion will be of limited value, and may be eroded by the costs of negotiating and agreeing individual top-up cover ⁼ the claims-made nature of professional indemnity insurance means that even if a law firm were to cease providing conveyancing services, a considerable period of time would need to

pass before that firm could, if ever, safely exclude conveyancing services from its PI cover ⊏ most firms of solicitors already purchase top-up cover, even above the current minimum levels of protection, and will presumably continue to do so, so their insurance costs are unlikely to fall as a result of these changes ⊏ many firms which might accept lower indemnity cover will still need to buy top-up cover for business clients with a turnover in excess of £2million, including financial institutions which are likely to insist on such cover ⊏ while the cost of insurance may come down, to some extent this pushes the risk onto firms who in effect will be self-insuring; if they suffer higher levels of uninsured claims, this will result in higher costs to firms which may result in higher fees for clients. It is worth noting that, on a premium of £5,000 (30% of firms pay an annual premium of up to this figure according to the Law Society's most recent data), the possible savings identified by the SRA range from at most £450 to £850 a year. It is easy to see how, even if these nominal reductions in premiums could be achieved, they could easily be absorbed by the additional costs in arranging top-up cover. We would also note that it is not our experience that the current provisions governing defence costs results in claims being unnecessarily defended, and insurers already have mechanisms in place to prevent that from happening.

24. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: As the SRA Consultation Paper itself acknowledges, there is no robust data available on the value of total settled claims for firms during the six year run-off period. It is therefore hard to say whether this cap would provide adequate protection. The absence of robust data also makes it impossible to say whether premiums would be reduced as a consequence of introducing this cap. We also find it difficult to reconcile the SRA's proposed approach to run-off cover, when the reason given by the SRA for not introducing a sideways aggregation cap generally into the MTCs is that it "could lead to arbitrary impacts on the users of legal services once the cap was reached". Similar arbitrary impacts could arise in the context of run-off cover, and as a matter of policy it is difficult to understand why the SRA seems willing to countenance them in one context while avoiding them in another. We also note that, unlike the way the proposed exclusion for conveyancing services in clause 6.2 of the MTCs is intended to work (which would exclude cover in relation to conveyancing services unless the extension had been purchased), the proposed cap for run-off cover would extend to £3 million whether or not the extension of cover had been purchased. Insurers may therefore choose to treat this as a £3 million cap in all cases. Indeed, the exact intention behind clause 5.4(b) is unclear. Would the £3 million cap apply to all claims, or would the additional £1.5 million of cover apply to claims relating to conveyancing services only? If the former, why should clients of a firm which has provided conveyancing services (perhaps on a single occasion) benefit from twice the protection compared to clients of a firm which did not? This seems entirely arbitrary. Also, the drafting of clause 5.4(b) does not work. It says that the minimum cover is extended to £3 million, but does not require the exclusion in clause 6.2 in cases where the extension of cover was not purchased to be overridden. The effect of 5.4(b) in such cases, as written, would therefore be to double the run-off cover to £3 million but still to exclude claims relating to the provision of conveyancing services. Clause 5.4(b) also refers to cases where "the insured firm … has at any time previously … provided conveyancing services". However, this is inconsistent with the terms of the exclusion in clause 6.2, which excludes cover for liability of "any insured" (i.e. wider than the "insured firm") and "in respect of or in any way in connection with conveyancing services" (i.e. wider than providing conveyancing services). So the run-off cover would not be extended to £3 million in cases where, say, a prior practice had carried out the conveyancing services, or the insured firm had not "provided conveyancing services" but had provided a service "in connection with conveyancing services". Assuming this is not what is intended, clause 5.4 should be rewritten to address these defects.

5. Questions continued

25. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: We have seen no evidence that this would be the effect, and for the reasons given in our previous answers have no reason

to think that this would be an outcome of the changes.

26. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

27. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

28. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

: Our comments in relation to the Compensation Fund are limited in scope, as our main focus has been on the implications of changes for our insurance clients. However, we note that reducing the scope of the Compensation Scheme has the potential to increase the number of claims made on firms and their insurers, and the potential interaction between the two does not seem to have been considered by the SRA in its consultation.

29. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

30. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: We do not see why the wealth of an individual, still less the wealth of their household (the definition of which is highly problematic) should automatically determine a person's entitlement to apply under the Compensation Scheme. Everyone should be equal before the law, and we think that the discretion should remain, when considering an application, to determine eligibility based on hardship, recklessness or any other appropriate factors that seem appropriate on a case by case basis. Wealth does not automatically equate to ability to absorb loss, particularly at the levels being contemplated by the FCA.

6. Questions continued

31. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

32. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

33. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

34. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before

committing money to it and that it is genuine?

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer
:

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

39. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:49 Data

2. About you

1.
First name(s)

Neil

2.
Last name

Brown

6.
I am responding..

on behalf of an organisation

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)

626329

9.
Please enter your organisation's name

decoded:Legal

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Somewhat agree

Please explain your answer

: decoded:Legal agrees with the high-level principle that it is appropriate to treat consumers and businesses differently in ascertaining the level of protection afforded to them. We welcome the SRA's proposal to differentiate on this basis in terms of minimum PII requirements. We do not agree with the SRA's proposal that the minimum PII requirements should be disapplied only for "financial institutions and other large business clients". It is our view that the requirements should apply only to consumers, and that businesses, of whatever size or sector, should be free to negotiate whatever level of insurance cover they wish their solicitors to have.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree

Please explain your answer

: We do not agree with the SRA's proposal that the minimum PII requirements should be disapplied only for "financial institutions and other large business clients". It is our view that the requirements should apply only to consumers, and that businesses, of whatever size or sector, should be free to negotiate whatever level of insurance cover they wish their solicitors to have. For example, we are a small law firm, and our turnover is much lower than the level proposed by the SRA as the definition of "large business client". It is unclear why we should bear the cost of insurance for clients who are much bigger than us (but still with a turnover of less than £2 million), and it would be more appropriate for them to decide what, if any, insurance they wish their solicitors to have in place, and to negotiate this as part of the overall contract for the provision of legal services. Providing businesses with guaranteed minimum insurance levels disadvantages smaller law firms, and does not reflect an appropriate apportionment of risk in the context of a commercial environment.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

The qualifier of "large" should be removed, and the minimum insurance volumes should apply only to those in receipt of legal advice in a non-business capacity.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree

Please explain your answer

: The proposal appears to be a sensible reflection of where risk lies. However, it is unclear to me whether the proposal would cover only domestic conveyancing, or would also include conveyancing for businesses. For the reasons above, we do not consider that business activities should fall within the minimum insurance requirements.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

No

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the

MTCs?

:

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

: Solicitors' PII cover appears to command a significantly higher premium than non-solicitor PII cover. While inevitably we will have to see how any change plays out, if providing solicitors with PII cover is a lucrative model for insurers, it is unlikely that they will simply accept lowered premiums.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: As above, we do not consider that the minimum insurance requirements should apply to business clients. As a logical follow-on from this, there should be no requirement of run-off cover for firms which have serviced only business clients.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

:

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

As above.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

: Question not answered.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Question not answered.

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

: Question not answered.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

Question not answered.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

32. Please set out your suggestions and reasons for the change

Question not answered.

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

Question not answered.

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

36. Please explain you answer and any suggestions you have for alternative approaches

Question not answered.

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Question not answered.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

: Question not answered.

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

40. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

More advice to solicitors on practical steps — for example, encouraging firms to use content encryption for email, rather than plain text email, and to improve their operational security measures (such as not spreading client files out on tables on trains...).

Protecting the users of legal services: balancing cost and access to legal

Response ID:99 Data

2. About you

1.
First name(s)

Colin

2.
Last name

Rimmer

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative consumer group

8. Please enter the name of the group

Ecohouse Victims Group

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: If 98% of the claims made against insurers are below £500,000 , there is absolutely no necessity to change the minimum indemnity cover limit from £3 Million. Although the SRA state that the change would affect a minimum number of victims of misconduct, the SRA is further eroding protection for consumers and is instead pandering to the needs of insurers (who the SRA has no obligation to protect or guard against financial loss). What the SRA are failing to recognize here, are the effects of insurers aggregating claims. Let's say for instance that the insurers on the Ecohouse case had not declined cover owing to the two partner's dishonesty and support of a dubious investment scheme (fraud). A total of £33 Million went through the solicitors escrow account, yet their indemnity cover limit was only £3 Million. If the insurer had been permitted to aggregate claims, then those affected by the fraud would only stand to receive back 1/11 th of the sum they had invested, due to aggregation of separate claims into one. The SRA's viewpoint is very narrow here; it serves the insurance industry well, but is a betrayal of consumer protection. If the existing limit of £3 Million minimum indemnity cover is presently failing to reimburse losses owing

to aggregation, then clearly a £500,000 limit would be an unmitigated disaster for victims of solicitor misconduct who suffer loss through misappropriation of their funds. The effect of a £500,000 limit on compensation offered by an insurer after aggregating claims would be that the victims of a fraud like Ecohouse would stand to receive only 1/66 th of their losses. The figure of 1/11 th is totally unacceptable as things stand. There is considerable confusion regarding insurers being able to aggregate claims. This is demonstrated by the protracted contest in relation to the AIG vs Ors case which has dragged on for several years now, causing intolerable uncertainty for those who have suffered loss - this is all down to inept MTC policy terms. The definitions and situations under which claims can be aggregated need to be clarified and defined more succinctly, because they are so ambiguous that not even the High Court Judges can agree on them. The SRA cannot permit aggregation clauses in the MTC's to persist at the same time as reducing indemnity limits. It is also abundantly clear that a limit of £500,000 would not cover the losses incurred owing to misappropriation of client funds in conveyancing and commercial conveyancing situations. The proposal is completely preposterous and would not be fit for purpose. I think that the SRA would find that any saving and improved prospects of survival by insurers would not result in reduced insurance premiums owing to insurers passing on the savings. Insurers would simply pay their shareholders larger dividends.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: This would necessitate making a specific distinction for financial institutions and large business clients. This is yet more work and responsibility for solicitor firms because they would then have an onus to assess and financially categorize their clients and purchase additional cover for certain types of clients with levels of turnover exceeding £2 Million. Too much responsibility and trust is being placed with solicitor firms to purchase the appropriate level of indemnity cover or to arrange additional cover under certain circumstances - it very much appears to be a recipe for disaster. Whilst it might seem justified to reduce insurers exposure to loss owing to indemnifying large business clients (in the hope that they could seek redress through other means), it would just add another layer of confusion and complexity, when the SRA's overall objective appears to be an underlying desire to simplify MTC's & PIA's, not further complicate them.

12.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

13. Please provide an alternative way of drafting the exclusion definition.

I don't agree with the proposal to exclude certain firms, so there is absolutely no point in defining exclusion terms. The SRA shouldn't be penalizing charities in any way by removing their prospects for redress.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: The proposal relies too heavily on solicitors correctly declaring their non engagement in conveyancing transactions. This means that if they subsequently engage in conveyancing transactions, then their clients will not be covered for their losses when things go wrong. This is an unacceptable risk.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

16. Please explain what you think should be an alternative definition.

I don't agree in the proposal for solicitors to have to purchase "bolt on" cover for conveyancing work because it is open to abuse, misinterpretation or simply neglect by solicitors to ensure that they have adequate levels of cover for the transactions they are engaged in.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

18. Please explain what these are and provide any evidence to support you view

The successor practice rules are clearly causing confusion and leading to firms closing in a disorderly fashion.
Perhaps an option to pursue would be the concept of an "End of life" plan for a firm - that is an agreed structured approach to shutting down a firm. That plan could include the firm gradually reducing its scope of activities, so that it is involved in fewer areas of practice towards the end of its sustainable life. Part of the "End of life" plan could incorporate selling off its ongoing business and client base in certain disciplines or areas of specialty that the firm engages in. In effect the firm would be providing its own run-off cover for areas of service that it ceased to provide at the start of the 6 year plan. If a firm makes a 6 year "End of life" plan and gradually sheds certain specializations, then the run off cover needed when they finally close would presumably be minimal.

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: The consultation doesn't make it clear what version of the rules are listed in the Annex. If they are the proposed draft rules, then state that. If the MTC's listed are the draft proposals, why does the header mention 2013 ? Don't lump compensation rules with insurance rules in the same Annex - use a separate one for better clarity. The MTC's in Annex 3 assume that there will be agreement to the SRA proposals that impact the MTC's and PIA's. This is a dangerous assumption because hopefully most people will find the proposals the SRA have suggested are totally unacceptable.

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: I don't consider that the proposed changes will bring any benefit whatsoever, especially to consumers. They will just add complication and any lowering of risk for insurers (whom the SRA have no duty or responsibility to protect) will sacrifice protection provision for consumers whom the SRA does have a duty to protect. The SRA's suggestion that savings might be passed on to consumers is pure conjecture and is not worth sacrificing protection for. Insurers are highly unlikely to pass on any savings. Changes to PII requirements would ultimately only serve insurers and help stem the indemnity crisis that exists in the solicitor profession. If the SRA wish to do something useful to reduce insurers risks, they should prevent solicitors from accepting funds into their client / escrow account that wold exceed their level of indemnity cover. The SRA could regard that as a breach of regulatory principles - subjecting clients to risk knowing that their indemnity insurance can't possibly indemnify them. It can be no surprise that there is an indemnity crisis when the SRA takes no steps to limit this avoidable risk. It is pointless the SRA issuing notices and warnings to solicitors on the SRA website or trusting rogue solicitors to purchase the appropriate level of insurance cover - they will simply ignore the warnings (as they did in the Ecohouse case) or treat them with contempt - thereby exposing consumers to greater risk.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Placing a cap on run-off cover is just another erosion of consumer protection that will be realized after a firm has ceased operations. Why does every suggestion that the SRA makes have to compromise consumer protection ? The SRA's remit is to provide protection to consumers, not insurance companies. Why the obsession with lowering the cost of solicitor's indemnity insurance ? It represents a mere 5% of their overheads, so is nothing to be at all concerned about. Inflicting loss on solicitor clients as a result of inept policy is something to be concerned about. The SRA is approaching the insurance indemnity crisis completely inappropriately. Instead of reducing the incidence of claims by stamping out misconduct, they SRA is reducing the number of claims that insurance companies have to indemnify; i.e. lowering their exposure to claims and penalizing consumers in the process by leaving them uncompensated.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: I don't think that the SRA should be meddling with the rules and the indemnity cover purely as a means of attracting new insurers into the market. I believe that the benefit of other insurers joining the market would be minimal. Let's be realistic here, insurance costs only represent 5% of a law firm's outlay, so there is little prospect of slightly reduced insurance costs having any impact on consumer prices, especially given that insurance firms are unlikely to pass on any benefit of reduced risk through a reduction in policy fees. The whole concept of reduced insurance premiums resulting in reduced service costs and greater choice of services is pure speculation with no basis or factual evidence - conjecture is not something that is worth sacrificing consumer protection for. There is absolutely no guaranteed benefit in terms of choice or reduced costs to consumers, so there is consequently no argument for exposing consumers to greater risk.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

24. Please explain what you think these impacts are

The consultation mentions that ethnic groups make up a considerable proportion of sole practitioners and that this group has most incidence of closures due to financial difficulties. If PII insurers do not meet the costs of defending claims and also expect the sole practitioners to pay an excess for a claim up-front, then this would have significant impact on this group.

Another way in which this group would be affected adversely is due to the overhead of having to determine whether they had financial services clients, corporate clients with a certain turnover, or whether they had any intention to engage in conveyancing work. Determining whether their clients might fit into certain SRA categories would create a significant workload for small firms to have to bear - something which would put them under increased pressure because the significant workload would be imposed on a minimal number of partners that are likely to be wearing several hats as it is, e.g. Compliance officer.

I doubt that the SRA gives a second thought to the impact their inept policy changes have on small firms and the onus of additional processing that it necessitates on small businesses that might already be struggling to survive. It is not just EDI impacts that the SRA needs to consider.

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

One important option for PII would be to unpick the changes that the SRA have made to PII policy in consultations in recent years because the policy changes have not brought any consumer benefit, have compromised consumer protection, and

have left gaping indemnity deficiencies when PII cover is declined. The SRACF is not a viable source of fall-back protection, so the SRA needs to think again about how best to protect consumers when PII cover is declined. That is the SRA's remit and responsibility. The SRA suggests that it puts protection "Front and centre" in it's considerations, but then completely contradicts itself in terms of policy implementation by destroying protection.

Historically issues surrounding dishonesty and fraud might have had minimal impact on the industry, but now it is rife. The SRA has not taken sufficient preventative measures to stamp out misconduct that results in clients suffering loss due to misappropriation / fraud. The SRA has made it too easy for insurers to abrogate their responsibilities to indemnify claims, especially claims involving dishonesty. The SRA has provided (in their PIA's) a means for insurers to make indemnity decisions behind closed doors in private arbitrations with no accountability and apparently no means for either consumers or the SRA to determine the detailed reasoning for a declination. The PIA's also remove any rights that might have been afforded to 3rd parties under the Third Party Insurance Acts. The SRA has given the insurers too much power and privilege and this needs to be reversed. The SRA should not be leaving it to victims of misconduct to struggle to attempt to contest insurer decisions - the SRA has made the rules too easy for insurers in the MTC's and PIA's, so should take responsibility for challenging insurers so that victims of misconduct are not left uncompensated.

One very simple action by the SRA could drastically reduce both insurers and the SRA's exposure to claims - all the SRA has to do is to prevent firms from accepting submissions into their client accounts that in total would exceed their liability cover. In the Ecohouse fraud, the solicitors concerned permitted funds to pass through their client account which exceeded their liability cover by a factor of 11. Had the solicitor firm been limited to £3 Million in account submissions, it is clear that the impact of the fraud would have been a mere fraction of the actual impact of £33 Million. This is such an obvious basic preventative measure to take, that it defies belief that the SRA has so far shown no interest in implementing it.

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26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The SRACF is far too difficult to claim from as it is. This is confirmed by the fact that out of 850+ victims of the Ecohouse fraud, only 78 have made a claim against the compensation scheme despite having no other form of redress. The SRACF is failing the most vulnerable as the existing rules stand, so introducing further onus for information exchange and submission of exacting and invasive personal financial information to effectively means test claims is totally unacceptable and would result in even worse statistics for the SRA to be ashamed of. The existing barriers to making SRACF claims are already insurmountable for the majority of claimants, and ironically the very people in society who are in most need of the compensation are unable to battle their way through the malaise of rules, regulations and onus to provide extremely detailed and personal financial information. The existing rules are designed to dissuade victims of misconduct from attempting to claim - this saves the SRA funds. This is confirmed by the fact that 91% of the victims of Ecohouse gave up all hope of making a claim against the SRACF, despite encouragement, assistance and multiple reminders. The SRACF is tenaciously defended by the SRA to the extent that it is not possible for a mere mortal to challenge the SRA's defence of claims. This means that claimants have no choice but to gamble on engaging a solicitor in the hope that they can assist them with making a successful claim, but even then its extremely convoluted and uncertain - the SRA is already making totally unreasonable impositions on claimants, whether intended or not. The SRA has to realize that those that have suffered a devastating loss due to solicitor fraud have limited means to pay a solicitor to make a claim, prove that other avenues to compensation are exhausted, or to provide the onerous requirements for information necessitated by the SRA. The SRACF is presently failing abysmally to make up for the shortfall in indemnity when an insurer has declined cover due to dishonesty or fraud. There is absolutely no scope whatsoever to make the rules or limits of payment from the scheme any more stringent or onerous to claimants. As the scheme stands, the vast majority of victims of frauds such as Ecohouse (which was perpetrated entirely by the SRA's member solicitors, plus one other individual who had also studied law) are being left uncompensated. This does not fit well with the SRA's regulatory requirement to act in the interests of consumers, protect consumers, and provide swift redress when things go wrong. The SRA is failing in its regulatory remit - there is no question about that. The SRA is conflicted and rather than wanting to bring redress to victims of misconduct, it is instead attempting to avoid claims any way possible through the use of deception (e.g. Neglecting to intervene or to allege dishonesty when it clearly applies in the case of fraud, so that claims can't

be made under dishonesty terms against the SRACF even despite fraud being proved - completely outrageous and scandalous behaviour for a regulator, and a demonstration of the SRA's complete lack of morals and integrity).

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Yes. The rules against the SRACF need to be relaxed so that the SRA can once again claim to be protecting the interests of consumers, providing viable fall-back protection, and providing redress when it is most needed. At present the SRA is failing to fulfil its obligations under the Legal Services Act 2007 to protect the public, apply proper due process and provide swift redress when things go wrong in order to maintain public confidence in the legal profession.

If the public were aware of the huge risk they are being subjected to when using solicitor services, especially in the case of misappropriation of client funds, they would be horrified. Consumers understandably expect those in the profession to act with integrity and to be totally trustworthy. The SRA has such a twisted view of the World that it is mitigating allegations against solicitors in order to evade claims against the SRACF - this means that the solicitors can't be struck off and so remain free to practice in the profession putting consumers under unacceptable levels of risks and totally undermining due process and justice. If the regulator itself can't even be trusted, how can the public be expected to trust solicitors ?

The SRA should be pulling out all the stops to restore public confidence in the profession and ensure that consumers NEVER suffer loss when they place their trust in a solicitor to protect their interests. Fraud is no exception - a solicitor has the capability and capacity to protect their clients against fraud. If a solicitor turns rogue and decides to offer legitimacy to a dubious scheme or assist in defrauding their own clients, there must be serious consequences for the perpetrators, as well as a straightforward route for their clients to obtain redress. The SRA should be championing consumers efforts to receive redress as opposed to defending it's own position, defending it's members, acting in the interests of insurers and obsessively defending its pathetically inadequate compensation scheme.

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: The SRA has broken consumer protection and the SRACF is not making up the shortfall in indemnity when PII cover is declined. Putting further impositions on claimants is completely unacceptable and will further penalize the most vulnerable victims of misconduct who do not possess the wherewithal or means to fight against the unconscionable SRA's defence of its compensation scheme. The irony of such an inane proposal is that is likely to be the wealthy who could reconfigure their individual wealth and qualify for a claim against the scheme, rather than those in most need. The most needy would simply give up attempting to satisfy the SRA's onerous rules and qualification criteria which are beyond the comprehension of mere mortals. The Solicitors Journal ran an article about the SRACF being too difficult to claim from a few years back, but matters have become considerably worse since then. Taking the Ecohouse case as an example, with some 91% of claimants completely giving up all hope of obtaining redress through the scheme, then just imagine what a severe effect it would have if the latest draconian SRA proposals were agreed and authorized? The result would perhaps be that 99% of victims of misconduct would be left uncompensated. The figure of 91% of claimants giving up all hope on the Ecohouse case is totally unacceptable and is a damaging indictment of the SRA's failure to protect consumers and failure to fulfil its remit under the Legal Services Act 2007 - a total betrayal of consumers by the body that is purportedly acting in their interests - nothing could be further from the truth. I would like to think that this is gross incompetence, but by all accounts it appears to be a completely intentional betrayal.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

I am totally opposed to the SRA using someone's wealth as an argument for not compensating claims. It is abundantly clear that the net effect of this is that the onerous tests applied and onus to provide intrusive personal financial information results in the most needy victims of misconduct giving up all hope of making a claim against the scheme. Where victims of the Ecohouse fraud were concerned, many couldn't even afford to scrape together £240 to pay for a group claim against the SRACF via a solicitor. The scheme is simply not serving the most vulnerable and needy as things stand because the rules and onus to prove other routes to compensation have been exhausted are simply too onerous, especially to those who have been left devastated by a solicitor scam. In short the SRACF is a total failure and action needs to be taken to reverse this.

Moreover, it would be considered discriminatory behaviour by the SRA if victims of the same fraud were treated differently according to their wealth, after suffering a financial loss under identical circumstances due to the dishonesty of the same solicitor firm. There is no justification for solicitor clients to suffer ANY loss as a result of tainted elements in the solicitor profession engaging in fraudulent schemes. The SRA's remit is to protect consumers and it is the SRA's responsibility to ensure that preventative measures, safeguards and routes to redress are in place to guarantee protection and compensation.

The reputation of the SRACF is gaining notoriety for all the wrong reasons - consumers deserve and insist upon the SRA providing viable fall-back protection without strings attached. Any further demonstration of the SRA's inability to compensate victims of misconduct will serve to confirm that the SRA is defunct as a regulatory body because it is consistently failing to fulfil its remit under the Legal Services Act 2007. Instead of introducing yet more destructive change and compromised protection, the SRA needs to be seen to be unpicking the SRACF rules to make the scheme straightforward to claim from and to restore any meaningful notion that it offers any degree of viable protection.

Some of the destructive policy changes to the SRACF in recent years resulted in compensation payouts dropping by as much as 42% in a single year. These destructive changes need to be reversed.

If the SRA fails to take action to restore viable consumer protection, it will inevitably be derided and berated for doing the complete opposite of its remit under the Legal Services Act 2007.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

32. Please set out your suggestions and reasons for the change

The SRA need to relax the eligibility criteria to minimize the barriers to victims of misconduct making claims. The SRA's onus on claimants to demonstrate that other routes to compensation have been exhausted is not acceptable. This imposes yet more financial loss on those who are already victims of misappropriation - the SRA couldn't be more mercenary in it's approach if it tried. The SRA agrees the MTC's and PIA's with insurers, so is wholly responsible for the obstacles and lop-sided arrangements that exist with insurers - arrangements that seriously undermine any possibility of redress for consumers. The SRA is therefore best placed to tackle an insurer when they refuse to indemnify a solicitor's clients. If insurers are escaping liability too easily, the SRA needs to tighten up the rules in order to avoid being left with the burden of settling claims through the SRACF. This is clearly not possible until the SRA can reverse the upward trend in misconduct which has led to an indemnity crisis in the profession and is understandably preventing new insurance firms from joining the market. The SRA needs to place more emphasis on preventative measures as well as introducing far harsher penalties for misappropriation of client funds. e.g. Automatic strike-off, criminal conviction for theft / fraud, large fines and custodial sentences (especially for assisting or giving legitimacy to fraudulent schemes). Solicitors are well aware of their actions and the choices they make - when they choose to betray their clients and misappropriate their funds instead of protecting them, there should be no mitigating factors permitted when bringing them to account for their treachery. This is the only way to truly resolve the insurance indemnity crisis. Once the SRA start to bring meaningful prosecutions and penalties, misconduct will decrease, and the insurance market will become considerably more attractive to new entrants.

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

Absolutely not. The concept of a maximum payment against the SRACF is obscene. The SRA is attempting to put in place a similar arrangement to that of aggregation terms in insurance policies which have caused untold uncertainty and ultimately result in those that have suffered a loss being left uncompensated (or receiving back a mere fraction of what they have lost).

Aggregation is a complete dog's breakfast and results in years of uncertainty as insurers battle through the courts to be able to lump several claims into one in order to restrict their liability on a group of claims to the insurance indemnity limit of £3 Million (or £500,000 if the SRA's new draconian proposal was ever implemented). When all is said and done, the purpose of liability insurance is to protect consumers, not to permit insurers to escape their obligations to indemnify loss. Who gives a damn whether the transactions that gave rise to loss are interconnected or interrelated ? Those who have suffered a loss due to negligent or dishonest acts DESERVE to be compensated, no question.

It is insanely immoral of the SRA to even suggest this or attempt to implement a similar mechanism to aggregation specific to the SRACF. This is just another selfish effort by the SRA to reduce its exposure to claims to the detriment of consumers. Victims of misconduct would undoubtedly lose out if this heinous suggestion was permitted to happen, especially if multiple victims had been affected by the same act of misconduct through a solicitor firm.

This is a further example of the SRA attempting to further tighten it's rules and reduce payouts from the SRACF when the scheme is already grossly inadequate in it's existing form.

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

36. Please explain you answer and any suggestions you have for alternative approaches

It is the SRA's responsibility to ensure that the compensation scheme is properly funded. The SRA should not be resorting to interfering with the rules to reduce its exposure to claims (as it has also done in previous policy change implementations).

If the SRACF is coming under increased pressure due to insurers refusing indemnity, then the SRA must rethink the MTC's and PIA's so that insurers pay a greater proportion of compensation claims.

As mentioned earlier, the solution to the indemnity crisis is to stamp out misconduct and stop regarding solicitors like some sort of elite sector of society who virtually immune to prosecution despite inflicting loss on their clients. For the SRA to fail to strike-off solicitors after they have committed fraud defies all comprehension. The SRA is simply maintaining a vicious cycle of self perpetuating misconduct in the profession when it fails to adequately penalize solicitors on account of its conflicted position and desire not to allege dishonesty or be subject to a large compensation claim.

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Taking the Ecohouse fraud case as an example. The fraud was so complex that the Metropolitan Police are still struggling to put the evidence together for CPS after 3.5 years of investigations into the case. When determined professional qualified solicitors who are motivated by greed and have detailed knowledge and experience of the law decide to abuse their position and utilize their advantageous experience to exploit weaknesses in the regulatory system in order to perpetrate an immense fraud which they believe will go undetected, and so present an alternative facade of an investment company that has got into difficulties (much like the SRA Chief Exec did in parliamentary briefings), there is no extent of due diligence that an investor could possibly or reasonably undertake in order to detect that the scheme might be fraudulent.

A solicitor's client appoints a solicitor to conduct the required due diligence to protect them financially. When the solicitor turns rogue and are themselves involved in perpetrating a fraud, it is completely unreasonable to suggest that there might be steps that their client might reasonably take to detect it. This suggestion is preposterous because the solicitor's function is to provide

the required due diligence service for the client, not betray them by lending legitimacy to a fraud. In short it would be unreasonable to impose ANY onus by a solicitor's client to undertake due diligence which is in all likelihood completely beyond them, and is hence the reason why they appointed a solicitor in the first instance.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

: The SRACF was brought into existence by statute - it was never intended to be discretionary. It is not claimants against the SRACF that have the wrong impression regarding its use, it is the SRA that has misinterpreted its intended purpose, and as such, if it fails to provide a legitimate and viable means of assuring fall-back protection, then the SRA is failing in its remit to protect consumers. The SRA must take responsibility for properly funding the SRACF instead of interfering with the rules of the scheme in order to lower it's exposure to claims which are part and parcel of it's responsibility to provide protection under the Legal Services Act 2007. If the SRA cannot provide meaningful protection via the SRACF, it needs to think carefully about how it can resolve the serious indemnity shortfall when PII is declined due to acts of solicitor dishonesty. It is not acceptable for the very worst even that might be imposed on a solicitor's client (misappropriation of their funds) to result in them being left uncompensated, irrespective of whether fraud was involved or not, and irrespective of the size of the fraud. This is a conundrum that the SRA has to resolve itself in order to come up with a viable solution. The SRACF is NOT a viable solution - the SRA must either relax the rules and fund it properly, or come up with a proper solution that doesn't leave thousands of solicitor clients uncompensated each year.

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

40. Please explain what you think these impacts are

Yes. The SRACF is already discriminating between the most needy and those who have the means to employ a solicitor to make a claim on their behalf. Should the SRA be permitted to introduce tests for wealth, this will further discriminate against the most vulnerable and needy because they will simply not have the wherewithal to battle through the SRA's pedantic questions concerning wealth , or indeed the SRA's tenacious arguments defending against claims. Placing an onus on claimants to prove other routes to compensation are exhausted is unacceptable and results in further loss and the most needy giving up any attempt to make a claim because they can't afford a solicitor to prove that other routes to compensation have been exhausted (or indeed attempt to challenge the insurer for declining indemnity). The SRACF is not fit for purpose as it stands and is failing those who most need compensation. The SRACF rules are an intentional barrier to put claimants off - this argument is reinforced by virtue of the fact that 91% of victims of the Ecohouse fraud gave up all hope of making a claim against the SRACF. That is a shocking and shameful statistic and something that the SRA should feel justifiably ashamed about.

41. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Better communication with clients using traditional methods (i.e. over the phone) rather than being completely reliant on electronic communication which is open to interception, infiltration and impersonation. Taking measures to identify clients over the phone (and for them to identify that they are in fact dealing with their solicitor) at the point that they are submitting funds will undoubtedly reduce the risk and effects of cybercrime. Sending secure information, such as solicitor's client account information via the post on headed paper and following up with a courtesy call to confirm that the source of the account information is legitimate would also undoubtedly help.

Protecting the users of legal services: balancing cost and access to legal

Response ID:86 Data

2. About you

1.
First name(s)

james

2.
Last name

maxey

6.
I am responding..

on behalf of an organisation

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)

326770

9.
Please enter your organisation's name

express solicitors

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: The public need a consistent min level of cover which should be no lower than present level.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree

Please explain your answer

: so long as limitations are clear to this class of clients fairness is achieved. This class of client are able to negotiate cover v price of service with Law firms.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree

Please explain your answer

:

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

there is no logic in current posistion where eg caseloads are sold perhaps in insolvency process and purchaser firm may be caught by outdated spr.

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: vast majority of premium is for first 500k anyway-- pointless exercise in the real world.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: lower cover to say 500k will make virtually no difference in premium to nearly all start up law firms.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

:

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer

:

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:197 Data

2. About you

1.
First name(s)

Adrienne

2.
Last name

Edgerley Harris

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Hampshire Incorporated Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: Whilst the proposal at first sight appear attractive, we are concerned at the increasing complexity and uncertainty it will generate both for firms and their clients. We question whether the amount of cover proposed for non-conveyancing firms and for conveyancing firms is sufficient: in the case of the latter, the majority of properties in London and the South East are well over the £1m threshold for example. There are also emerging risks such as those shown by the imposition of liability in the Mishcon de Reya and Owen White & Catlin cases (imposing responsibility for ID checks) and the rising threat and impact of cyber attack and fraud. These show an increased appetite to hold solicitors liable for loss. To reduce the amount of cover (in value and/or minimum terms and conditions (MTC)) at this juncture seems shortsighted. We note at this point also that the same proposals were put forward and rejected in 2014. This followed adverse feedback on the proposals from the Legal

Services Board and the Council of Mortgage Lenders (CML). We cannot see that the proposal have substantially changed or that the objections raised then have been in any way addressed. Further, we cannot see that the environment has changed so much since 2014 that the objections and arguments made can be said to be inapplicable now. This would be a difficult argument to sustain in any event, bearing in mind the consultation is relying on historic data. We also note that the consultation refers to the losses being higher for probate and personal injury cases so it is unclear why conveyancing should be nominated alone to carry higher premiums. The proposal states that conveyancing claims are 51% by value: the proposals are not a proportionate response to this. It is hard to see how the proposals will preserve or increase access to justice, uphold the integrity of the profession or maintain public confidence in the profession- in short, how they will uphold the Principles in the Handbook. We would like to take this opportunity to advise that since drafting this response, we have read the Law Society's own response to this consultation. We thoroughly endorse the well presented points that have been made. We also note that the consultation refers to the losses being higher for probate and personal injury cases so it is unclear why conveyancing should be nominated alone to carry higher premiums. The proposal states that conveyancing claims are 51% by value: the proposals are not a proportionate response to this. It is hard to see how the proposals will preserve or increase access to justice, uphold the integrity of the profession or maintain public confidence in the profession - in short, how they will uphold the SRA Principles in the SRA Handbook. We would like to take this opportunity to advise that since drafting this response we have read the Law Society's own response to this consultation. We thoroughly endorse the well presented points that have been made.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: We can see that it might be useful to say larger businesses can afford to pay more. However, even if a clear definition of these institutions and businesses is attempted, our concern is that it could leave loopholes and that it does not address risk from legal work. Many entities now do a mix of legal and other work, so some forensic analysis would be required to identify turnover and risk. In all, it seems a complicated proposal that does not address risk. We doubt that clients, however commercially aware or sophisticated, will want to analyse a firms insurance cover and therefore the likelihood is that client protections would be eroded. We also draw your attention to a prior consultation by the SRA on similar proposed changes to the terms of PII cover. This did not find favour and was not implemented. We refer in particular to the response of the Council of Mortgage Lenders (CML) dated 18 June 2014. The CML against proposals to remove compulsory cover for financial institutions seeing no reason why corporate clients should be excluded from redress. They also noted that solicitors all owe a duty of care to their clients and potentially could be left without cover under the former proposal. The CML went on to identify a list of unintended consequences, which we will not repeat here but are validly made, including the worry that individual solicitors would have to determine their own level of cover and requirements which may not always be realistic-a view with which we agree. We cannot see that the situation has altered since to allow any endorsement of this proposal.

12.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

13. Please provide an alternative way of drafting the exclusion definition.

Please see comments above. We suggest that the definition is too restrictive- for example, it should include capital values. Also, is turnover of £2m sufficiently high for the definition of a large institution? Setting it at this level may result in exclusion of entities that the proposal was not intended to reach with unintended consequences and increased risk to consumers.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: We think the impact of this proposal will have the effect of increasing premiums for conveyancing firms and the consequential increase in the cost of conveyancing services to the consumer. Conveyancing services are very price sensitive

and competitive. Firms may seek to pass on the extra premium to clients. It presents its own risk: (a) we doubt if this could be done safely, without infringing the Solicitors Accounts Rules (by it's inclusion as a "disbursement") unless some charge is made instead for professional services in arranging insurance cover; (b) the extra cost is likely to make a quote non-competitive; and (c) it might be added later and become a "hidden" charge.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

16. Please explain what you think should be an alternative definition.

We are concerned, as already indicated, that conveyancing services should be singled out so we are not keen to propose a definition. However, we can see the advantage of it covering a wider sphere than just the reserved elements. The suggestion of adding in businesses with large property interests is interesting but there do not seem to be clear proposals as to how this would work in practice.
The change in definition may draw in other entities and any impact on mortgage lender panels is not addressed. We agree that a wider definition is probably advisable, to include for example fraud and errors and omissions in searches. Our concern is that another definition will lead to confusion: the more carefully it is defined however, the higher the risk that some areas of "conveyancing" will be left out and therefore excluded. This needs further review.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

18. Please explain what these are and provide any evidence to support you view

it is clear that closing a practice presents significant challenges to firms because of the cost of run-off cover and any reduction would, in principle be welcome provided client protections are preserved. As the period for making a claim is not changing, we cannot see how the period of run-off can safely be reduced- as is acknowledged in the consultation. We suggest that further analysis of premiums charged in this area is needed and whether there is any variation when conveyancing services have been involved. The cost of run off cover is likely to be high on the agenda for negotiations of any merger/ take over talks so may not present so much of a barrier to exit as indicated in these cases.

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Anecdotal feedback suggests that participating insurers are not welcoming the proposed changes. This has been confirmed by sight of the responses given to this consultation by Aon UK Ltd and JLT. Our own view, which some of them share, is that we have one, if not the, best MTCs in the world. This sets us at the forefront of professionals and underpins the profession's integrity. We are concerned at any increase in complexity which changes or variations of the MTCs would bring. We doubt that the proposals will benefit consumers or make legal services more accessible. It seems right that all solicitor entities should have the same MTCs. To do otherwise opens the door to individual interpretation of the extent of cover required for a particular practice (which may be honestly held but incorrect, unrealistic or simply deliberately misinterpreted) and, for the future, lead to claims that this decision itself was negligent. The suggestion of appointment of a QC to resolve matters seems to indicate unclear thinking of the impact of the proposals at this stage and will only serve to increase costs.

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree
Please explain your answer

: We anticipate that the level of top up insurance required to cover potential claims/ losses will increase. There is no evidence to suggest that changing the MTC's or level of cover will lead to lower premiums. On the contrary, the evidence appears to indicate that due to "the date of claim" basis of our policies, the vast majority of firms will need to purchase top up cover which will be far more expensive than the cover currently available. The proposal form for PII cover already requires detail of work areas and enables premiums to be adjusted to the risk posed and our understanding is that this happens. Conversely, we also cite the example of firm which hold Lexcel accreditation- known to be a reliable risk management tool- who were given to understand that their premiums would be lower. However, there is no evidence available to suggest that this has occurred. We cannot see that the proposals necessarily lead to a reduction in risk or to a reduction in premiums. The consultation is based on historic data (2004-2014) which is therefore far too out of date to form the basis of a forward looking policy. Several of our members have reported that premiums are in fact increasing (with no underlying substantive changes in areas of work)- and not just because the insurance premium tax has increased.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: As claims are payable against the policy in force at the time of the claim (not when it arose), we consider that there is a risk of inadequate cover arising if the MTC's are reduced. This of course does not protect the consumer or future-proof the entity against whom a claim is made, leading to the potential for increased claims on the compensation fund or individual solicitor. It should be remembered that there is already an adjustment of premiums made by insurers based on the work type proportions disclosed on the proposal form. We are concerned at the lack of evidence provided to support the changes proposed, despite this issue being of longstanding.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: There is no substantial evidence to show that the cost of PII is a barrier to entry. The responses from Aon and JLT to which we have already referred suggest otherwise. We are unclear as to how this proposition was establishied. Consumers will expect their professional adviser to be insured adequately and it does not help consumers to have some solicitor entities with different levels of cover.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

24. Please explain what you think these impacts are

We have answered "yes" to this so that we have the opportunity to make the point that there seems little or no evidence to support an impact either way. it appears that an assumption has been made that the proposals will benefit BME firms but there is no evidence provided to substantiate this.

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Unless the SRA is able to highlight a particular problem in practice with the MTC's or an area that is not covered then we favour leaving them as they are.

It should be borne in mind that cover for Cyber fraud/ attack was reduced significantly in the PII standard cover a few years ago and unless this is addressed, we anticipate that many firms will not arrange cover (whether from a cost point of view or oversight) and this will lead to its own problems in the future.
Some firms now also arrange separate cover for their compliance officers (COLP & COFA) particularly to cover the costs of dealing with a regulatory hearing and this might be an area that could usefully be included.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The proposal to identify a payment according to the wealth of an individual seems back to front (in that it does not address the risk that is covered) and will lead to inconsistent outcomes. It is hard to see how "hardship", "need" and "deserving" can be defined or indeed, whether it is relevant in this context. The current proposal undermine in our view the principles of client protection and trust in the profession.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

There may well be room for making changes to make the Fund's operation more consistent but due to the lack of evidence provided we are not able to consider the detail or impact.

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Please see our objection to using wealth as a means of deciding a claim. If a solicitor has been dishonest then an individual, whatever their financial status, should not be declined redress.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

We do not support this proposal so have not made any suggestions for alternative measures.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

32. Please set out your suggestions and reasons for the change

In order to comment, we would have liked to have more data to support the proposals such as the size of claims and the type of claims that the Compensation Fund has had to meet. Without this, we do not feel able to make any suggestions.

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

We are against the principle of wealth assessment. We do not think that the current evidence supplied is adequate to support the proposals.

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

36. Please explain you answer and any suggestions you have for alternative approaches

Please see our earlier comments re emerging risk, such as cyber fraud.

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Establishing what is a risky scheme is usually done with hindsight by the SRA, HMRC or other oversight body. Asking the firm concerned to assess the risk of a scheme for insurance purposes probably is not realistic. However, we firmly believe that if a solicitor has acted improperly, the Compensation Fund is there to protect and to provide compensation to the aggrieved client.The adviser works for the client and any doubts the adviser has at the point of giving advice should be given to the client then. A firm should be asked about their involvement in advising on "risky" schemes in the PII proposal form and the premium can then be adjusted accordingly- albeit retrospectively.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Anything that aids transparency, without compromising quality and the Principles, is welcome.

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

40. Please explain what you think these impacts are

We have answered "yes" to enable the opportunity to comment. Unfortunately, we do not have enough information/evidence to comment either way on this.

41. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

There may be a requirement for regular cyber awareness training of staff : staff are the strongest but also the weakest link in falling victim to an attack. However, this is prescriptive and does not fit with the new format of regulation around Principles and the removal of CPD requirements. An alternative may be for the SRA / TLS to provide guidance on the topic.

howden

Consultation: Protecting the users of legal services: Balancing cost and access to legal services

Response by Howden UK Group Limited

Preliminary comments

Increasing access to justice is one of the main drivers for the consultation proposals. The SRA believes that the changes will achieve premium savings that could be passed on to consumers. They also argue that lower premiums could remove barriers to entry to the legal profession and encourage new firms, increasing competition and the opportunity for people to access more affordable legal services.

Howden does not agree that the changes will result in any meaningful reduction in premium. We are also concerned that the proposed changes will:

- Compromise public protection
- Compromise the protection of solicitors and law firms.
- Create uncertainty.
- Lead to claims that will not be covered either in whole or in part, compromising the "solicitor brand" in the legal services market place.
- Increase the incidence of coverage disputes, which will increase costs.
- Create a two tier profession as sophisticated buyers move their business away from smaller practices that reduce their cover, or are more likely to do so in the future.
- Make the PII purchase more complex.

We urge caution in relation to the changes that are proposed and remind the SRA that public protection was the cornerstone of the current arrangements when they were established in 2000.

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Somewhat agree
Neither disagree or agree
Somewhat disagree
Strongly disagree

Please explain your answer

a) We do not consider that a minimum limit of £500,000 will provide an adequate level of cover for law firms. Nor will it provide adequate protection for consumers. Based on the SRA's own analysis there will inevitably be a gap in cover in relation to a number of claims. This will leave consumers without the protection they need and undermine

confidence and trust in the legal profession generally. It will also put firms at risk of insolvency when they do not have the resources to meet claims that exceed the cover they have.

b) We are also concerned that the potential for a gap in cover has been significantly understated in the consultation. The SRA's evidence to support the reduction in limit comes from claims data that was collected from insurers in 2015. Claims data covering the ten year period from 2004/5 to 2013/2014 was analysed by a third party and a report provided to the SRA. As a result of the agreement that was struck with insurers to provide information, the report is not publicly available and it has not been provided to insurers either. This is of concern as it means that those with the best experience in relation to solicitors' PII have not been able to test and assess the findings, that are now relied on by the SRA to support their proposed changes. We have been able to identify a number of concerns and shortcomings without reference to the raw data or original report. This leaves us with a question as to the further issues that would be identified upon analysis of the raw data. The issues we have identified to date are as follows:

   i) The SRA's initial commentary on the report (www.sra.org.uk/sra/news/sra-update-issue-59-insurance-data.page) stated that 98% of claims were under £580,000. The consultation document claims that 98% are under £500,000. There is quite a considerable gap between the two that would be uninsured for firms that only purchase £500k. We need to understand more about these figures.

   ii) Claims data was not supplied by all insurers involved in solicitors' PII in the 2004/5 to 2013/14 years. A separate report issued with the consultation and completed for the SRA by EPC Ltd entitled "Potential Options for SRA PII Requirements" (The EPC report) now tells us that data was provided by insurers with a total average market share of 74%. We anticipate that the list of insurers that did not provide data is likely to include those that experienced significant claims and left the market having suffered an insolvency-related event. We therefore caution that the claims data is likely to be considerably under-stated as a result of this.

   iii) The SRA has confirmed to us that the data only contains "paid" amounts. It excludes all reserves that insurers were holding against open matters. This is a very significant shortcoming in the analysis and in our view the data is wholly unreliable without the inclusion of the reserve figures. In our experience insurers take a prudent and measured approach to reserving. It is critical that these figures are included to properly assess the scope and

quantum of claims and the real cost of PII. There is no justification at all for the failure to include these figures and this must be done before any decisions are made.

iv) We understand that no allowance has been made for IBNER (incurred but not enough reserved) in the data analysis. Again this is critical, particularly with reference to solicitors' professional indemnity which is recognised as being "long-tail" business in the insurance market. Many notifications develop slowly and can often sit dormant for some years before action is taken and a matter pursued. When considering losses in the legal sector, insurers therefore recognise the importance of an adjustment for IBNER, particularly with reference to the more recent years. We urge the SRA to engage with insurers on this issue – particularly those who have been in the market for some time. They will be able to give the SRA an indication of the extent of the deficit in their numbers as a result of this issue.

v) The data covers the period 2004/5 to 2013/14. It is now 2018. The EPC report tells us that RPI was applied to the figures to update them as at 2016. In the insurance world it would be claims inflation that is applied. The level of this varies from insurer to insurer and again we urge the SRA to engage with insurers on this. It is likely that we will be at least four years on from the original data collection before any changes are likely to become effective. We need to understand the impact this has on the potential number of claims that would fall above the £500,000 threshold.

vi) The last year of the data collection was 2013/14. This was prior to the development of "Friday afternoon frauds" that have been the source of considerable loss in the solicitors' PII market. In our experience cyber related frauds of this nature frequently involve sums that are significantly above £500,000. We believe the claims position could look very different if this exposure is taken into account. If the SRA intends that this cyber related exposure should remain covered under the MTCs, then it would be prudent for higher limits to be maintained.

vii) It is also important to note that the figures focus on the final amounts paid. Claims are often made for sums that are considerably higher than what they ultimately conclude at. On this basis there will be significantly more than 2% of claims where, at least for a period prior to conclusion, solicitors are faced with the uncertainty, stress and the potential for failure of their business where there is a risk that part of the claim will not be met.

viii) The market reports that there has been an increase in high quantum claims generally in the last two years. There are significantly more claims above £1m and more claims that are impacting the excess layer market where rate increased at the April 2018 renewal. Again this supports the view that limits should not be reduced.

c) Our final point in relation to this question is to note that even low risk areas of practice can result in claims of significant quantum and associated claimant costs which must also be met within the limit of cover. By way of example an aborted jury trial, or requirement for a re-retrial involving more than one defendant, due to the negligence of a solicitor for one of the parties could exceed £500,000. Aggregation of claims can also cause the limit to be exceeded in relation to low risk work.

d) We comment more specifically on our concerns regarding the £1m limit for conveyancing in our response to question 4 below.

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree
Somewhat agree
Neither disagree or agree
Somewhat disagree
Strongly disagree

Please explain your answer. Please provide any additional comments on the alternative option that this could be at the election of the law firm

a) If we review the history of the open market, the most significant issue with regard to claims by this sector of client is the exposure that insurers had in relation to lender claims in the buy-to-let market following the recession. Insurers were faced with claims amounting to millions of pounds despite the fact that poor decisions and practices on the part of the lenders was a significant contributing factor. Solicitors paid the ultimate price with an increase in the rates that insurers had to apply to conveyancing work as a result of those losses. In the Republic of Ireland this situation was met with a permitted exclusion in the MTCs to remove cover for their equivalent of these claims. In our view this is the exclusion that should be the subject of the consultation. It does not need to be broader than that. The ability to exclude claims by financial institutions would help address a catastrophe in relation to solicitors' PII as happened following the last two property recessions. It would also focus the spotlight on the need for review and reform of existing conveyancing practices in an effort to reduce claims.

b) The fact that solicitors' PII is written on a "claims made" basis creates a fundamental issue with reference to this proposed change. Clients will not have certainty. Even if a firm has cover at the point the work is undertaken, this could change over the course of the next 15 years during which time a client could potentially make a claim (subject to a successful date of knowledge argument). At the very least, consideration needs to be given to a transitional period, so that work undertaken prior to any exclusion being adopted by a firm remains covered. This issue has not been addressed by the SRA.

c) We question the assertion that a turnover threshold of £2m would involve businesses where the individuals involved are sufficiently sophisticated to understand the definition, implications and operation of the exclusion. In contrast, we maintain that there will be businesses that fall within the exclusion where the individuals involved will not fully understand the position, and particularly the impact of the cover being on a "claims made" basis.

d) If a claim is subject to the exclusion, this will not necessarily assist the position of the insurer. While they will not need to meet that claim, they could be faced with providing the firm with six years of run-off cover, without payment of premium, if the loss causes the firm to fail.

e) We also have a concern with the drafting of the proposed exclusion in that it does not detail when the assessment of turnover is to be made. We address this in question 3 below.

Question 3: Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Y/N

If no, please provide an alternative way of drafting the exclusion definition.

a) The definition in the draft MTCs is quite simple and provides as follows:

Any liability of the insurer to indemnify any insured in respect of or in any way in connection with the provision of services to an insured's client if that client's turnover for its most recent financial year exceeds £2 million.

However there is a significant problem in that the above does not provide a reference point for the "most recent financial year" – is it the most recent and complete financial year prior to the claim being made, the original engagement or the mistake being made? This detail is critical to the drafting of the rule.

b) There is a one line reference in the consultation document itself (page 38, para 53) to the assessment being at the time the act giving rise to the claim occurred. This is not reflected in the draft rule change and is problematic in any event. Firstly, what is the position in the event of a continuing breach that covers two financial years, with one year having a turnover above £2m and the other a turnover below £2m? Likewise if there was more than one head of negligence and each occurred at a different point in time, then a rather perverse situation could arise whereby cover will depend upon the particular head of argument that succeeds.

c) A further problem arises where a client's turnover in the last financial year is close to the £2m threshold. Where such a client is mid financial year at the point of instruction then there will be uncertainty of cover. It will fall to the lottery of what the final turnover is for that year – or possibly the next depending on when the act of negligence occurs, if that is the date of assessment.

d) If the client is a corporate then accounts will be available via Companies House to verify turnover and whether the insured firm has cover – on whatever the relevant date is. However, what if the client is a partnership or a sole trader? While they could be amenable to providing information at the time of engagement, they might not be inclined to do so when matters have gone wrong and they are making a claim. They will not be under any obligation to provide information regarding turnover so that the position regarding cover can be established. They will have an interest in doing so if a law firm could not meet the claim from its own resources – but that will not always be the case.

Question 4: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree
Somewhat agree
Neither disagree or agree
Somewhat disagree
Strongly disagree

Please explain your answer

a) As in the case of the exclusion for financial institutions and business clients, there are practical difficulties with this proposal. If a firm has undertaken conveyancing in the past it will need to maintain cover. The consultation paper acknowledges that the cover would need to continue for a period, but no time frame has been proposed. In our experience there are many conveyancing claims that take advantage of the date of knowledge extension under section 14B of the Limitation Act 1980, subject to the 15 year long stop. If the cover is not maintained for a significant period, then some claims will be uninsured. There will be cases where consumers relied on the existence of cover at the time of the transaction, but then find it does not exists at the point they make a claim. This undermines the whole concept of public protection. It is inevitable that cases where an innocent consumer does not receive any redress will also attract media attention and the "solicitor brand" will be impacted accordingly.

b) If a claim is subject to the exclusion, this will not necessarily assist the position of the insurer. While they will not need to meet that claim, they could be faced with providing the firm with six years of run off cover, without payment of premium, if the loss causes the firm to fail.

c) To the extent that claims are not covered by insurance and the firm cannot afford to pay, then the loss will be picked up by the Compensation Fund. The cost then falls to the rest of the profession by way of increased contributions to the Fund. Not only will this additional cost potentially negate premium discounts (if any), but it will also mean that the rest of the profession is "picking up the tab" for their competitors who do not maintain appropriate cover.

d) The table at page 16 of the consultation document suggests that 79 claims will be at risk if the new limit of £1m is introduced. We challenge this analysis for the following reasons:

(i) It does not take into account the claims that will not be covered at all, in circumstances where firms have not opted in and purchased the additional conveyancing cover.

(ii) As noted above, the data has only been assessed with reference to claim payments, not reserves. Many of the more recent claims in the 10 year period (that will reflect increased property values) will have been open and subject to reserves only. These have not been included. Likewise higher quantum claims are generally more complex and take longer to settle. Again, those that were open and reserved at the time of the data collection will not be included in the numbers.

(iii) We question why the limit has been proposed at £1m. This is out of step with licensed conveyancers where the minimum limit is £2m, which is a more appropriate minimum level in our view. The recent cases of Dreamvar and P&P demonstrate that losses up to the extent of the full value of a property do happen. Given the level of current property values, a figure of £1m is not adequate, and this amount must also meet claimant costs.

(iv) We also query whether lenders will consider a limit of £1m to be sufficient. We cannot find any reference in the consultation document to engagement with lenders on the issue. We expect they will not be satisfied with a limit of £1m and will require firms on their panels to purchase a higher limit in any event. Firms would then be faced with the choice of either purchasing the additional cover or being removed from lender panels.

(v) As noted in the consultation document, there is a disproportionate level of claims activity in relation to conveyancing work. This was noted as far back as the Charles River Report in 2010. It was suggested in the report that the appropriate response was to undertake a review of the conveyancing process, to identify and examine the reason for this and consider changes to address this problem. There are a number of stakeholders who could be involved in this exercise with the SRA. We query why no action has been taken on this? Eight years have passed and nothing has been done.

Question 5: Do you think our proposed definition of conveyancing services is appropriate?

Y/N

If no, please explain what you think should be an alternative definition.

a) We are concerned that the definition of "conveyancing" is likely to lead to coverage disputes. The proposed definition is very broad and circumstances could arise where work undertaken in the context of a separate area of practice is classified as a "conveyancing service". For example, registering a notice to sever a joint tenancy would fall within the definition. This is often done in the context of family law work. It might be that the solicitor registers the notice without clear instructions. They could then face a claim from their client if the spouse dies with a will leaving their share of the property to a third party – as opposed to it passing to the client by way of survivorship. As a family law practice they might not have the cover extension. An alternative scenario might involve a solicitor involved in bringing bankruptcy proceedings, who registers a notice to protect the interest of their client who is a significant creditor. If the solicitor only registers the notice over one property and overlooks a second, which is sold in the interim and the proceeds dissipated, then there is a potential issue if they do not have conveyancing cover. These failures would seem to fall within the definition as currently drafted. We are concerned that there will be unintended consequences where the firm in question does not undertake "routine conveyancing", does not have the extension and does not appreciate the gap in cover.

b) If this proposal were to proceed, then in our view it would be important for the definition to be revisited to ensure that cover is preserved where the conveyancing service is ancillary to other work that is being undertaken.

Question 6: Do you think there are changes we should be making to our successor practice rules?

Y/N

If yes, please explain what these are and provide any evidence to support you view

a) We disagree with the assertion in the consultation document that the Successor Practice Rules are "not easy to understand and, depending on their application, can result in inconsistent outcomes". In our view, after 18 years, the existing rules are now well understood and there is considerable expertise within the legal, broking and insurance market regarding their operation.

b) The rules are detailed – but that is necessary to ensure that all potential scenarios are covered. Solicitors have the expertise to interpret and apply them and as noted above, there is a great deal of expertise in the market to assist with this if required.

c) The existing rules ensure that there is no gap in cover when a transition occurs, whether that is achieved as a result of the application of run off cover or a successor

taking responsibility for past liabilities. From the perspective of public protection, it is important that this scenario is maintained.

d) Occasionally disputes arise as to whether or not a firm is a successor. This is dealt with as a dispute between insurers. In our experience most insurers take a common sense approach to the resolution of those matters, with a referral to arbitration – sometimes simply on the papers. We challenge whether any change to the rules would prevent occasions when this happens. However, it is one area where the SRA could and should be more active in pressing any reluctant insurers to ensure that the successor practice position is established as quickly as possible.

e) We are also surprised at the suggestion in the consultation paper that some firms "structure themselves to avoid becoming a successor practice resulting in a gap in public protection". As noted above the rules are structured to avoid this. If there is no successor then there will be run off cover.

f) Situations can arise where there is more than one successor – but this is unusual. Where it does happen the rules are clear – all insurers involved are responsible for meeting the claims. In our experience insurers do co-operate to achieve that end.

Question 7: Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree
Somewhat agree
Neither disagree or agree
Somewhat disagree
Strongly disagree

Please explain your answer
Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

a) We agree that it is timely for a review of both the MTCs and PIA to determine if there are any useful changes that can be made. The difficulty is that while an amended copy of the MTCs has been provided, there is no corresponding amended copy of the PIA. It is important that this is made available before any decisions are taken on the updating of the MTCs to ensure that both documents are aligned.

b) We note that the consultation paper indicates that the SRA proposes to strengthen its response to firms that do not pay insurance premiums or are dishonest with their insurers. We consider that greater focus from the SRA in this regard is important.

c) Of the changes that are proposed to the MTCs, we note with some concern the deletion of clauses 1.4 to 1.7. It appears that this has been done in an effort to simplify the wording. We are concerned that there is an issue at 1.3 as the definition of "insured" needs to be broader to ensure that all relevant individuals in prior or successor practices are included.

d) At this point it is also appropriate to make some observations regarding the proposed change to enable defence costs to be subject to an excess and the subject of a limit:

(i) In our view the consultation is somewhat misguided in suggesting that the current arrangements in relation to defence costs result in claims being defended unnecessarily, increasing costs for insurers. That is certainly not our experience. In practice there is a very good level of co-operation between insurers and the profession with regard to the defence and settlement of claims. Where that does not happen, many insurers have a "control clause" in their policy that enables them to take over and settle a claim.

(ii) While the primary objective of the proposed changes is to lower the cost of insurance for law firms, this change has the potential to increase cost for them. There are many occasions where insurers successfully defend claims and no claim payment is made. Under the current rules where defence costs cannot be subject to an excess, the law firm makes no payment at all. If that were to change any potential premium saving could easily be negated, or exceeded.

(iii) We expect that insurers will have limited enthusiasm for the proposal that defence costs can be subject to a limit. If the claim is one that should be defended, then insurers would want the defence to continue despite the fact that it has reached the limit of its responsibility for defence costs. If the insured firm cannot afford to pay, then the insurer will have to. Discounting premium on one hand and still paying defence costs on the other, is unlikely to be an attractive proposition.

Question 8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree
Somewhat agree
Neither disagree or agree
Somewhat disagree
Strongly disagree

Please explain your answer

a) Reduction in limits:

(i) We question the impact that the reduction in the limit will have on premium. It was at the 2005/6 renewal that the limit doubled from £1m to £2m (or £3m for incorporated practices), however the total market premium as a percentage of gross fees dropped slightly in that year (refer Review of Client Financial Protection Arrangements by Charles River Associates, 2010, Figure 16). The reason for this is that insurers knew the increased limit would not significantly increase the claims they were required to meet – the converse is also true. At para 41 of the "Initial Impact Assessment" the SRA maintains that the premiums increased by 5% when the limit increased as at 2005/6. This is incorrect as confirmed above.

(ii) The SRA needs to engage in discussions with insurers on an individual basis to achieve a more reliable view as to whether the changes will reduce premiums. The suggestion in the consultation document (para 43, page 30) that premiums could reduce by 9% to 17% is unrealistic. The reference to one broker advertising a "10% reduction in premiums for £500k of cover" must be considered with the utmost caution. That was one voice amidst many who genuinely believe there will be no discernible change – and certainly not at a level that will enable savings to be passed on to consumers.

(iii) On the SRA's analysis 98% of claims would still be covered if the proposals were implemented. From an insurance perspective this means that broadly the same level of premium will be required to meet claims – there is limited (if any) margin for discount.

(iv) This change also has potential to increase the contributions that solicitors must make to the Compensation Fund, which will be called upon by claimants where there is insufficient cover and the firm cannot afford to pay.

b) Removal of conveyancing from compulsory cover:

(i) The consultation document suggests that making conveyancing cover the subject of a separate endorsement will reduce the premium for those firms that do not undertake conveyancing work. This indicates a

fundamental misunderstanding of the way that insurers price solicitors' PII. Rating models are heavily focused on areas of practice and this is the reason why every proposal form requires firms to break their work down by area of practice.

(ii) Insurers set their rates for the different areas of practice with reference to the claims experience they have and expect in that practice area. Conveyancing therefore carries a high rate, whereas criminal law work has a very low rate. There is nothing in the proposals that would justify a change to these models and accordingly it cannot be expected that any further discounting for firms that do not undertake conveyancing could realistically be achieved.

(iii) There is already a great deal of competition in the insurance market for those firms that do not have conveyancing exposure and practice in low risk areas. Properly broked, those firms achieve very competitive prices already and we do not consider that there is any significant margin for further reductions amongst this group – and certainly not at a level that could be passed onto consumers, thereby increasing access to justice.

(iv) This exclusion also has potential to increase the contributions that solicitors must make to the Compensation Fund, which will be called upon by claimants where there is no cover and the firm cannot afford to pay.

c) Exclusion for claims by financial institutions and large businesses:

(i) Firstly, this exclusion is not going to be appropriate or relevant to any firms that undertake conveyancing work and act for lenders (as is the current norm in any standard residential conveyancing transaction).

(ii) Likewise this exclusion is not going to have any impact on other low risk/domestic areas of practice which generally do not involve this client base.

(iii) In our view insurers will be cautious about permitting this exclusion given the high risk of firm failure (and 6 years of unpaid run-off cover) in the event that a firm were to subsequently receive a claim from a client fitting this criterion.

d) Allowing defence costs to be the subject of the excess and a limit:

(i) We comment on this issue in response to question 7 (paragraph d) above. We doubt that this will lower cost for the reasons noted there.

Question 9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree
Somewhat agree
Neither disagree or agree
Somewhat disagree
Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

a) The rationale for the change is to reduce the cost of run-off that is proving to be a barrier for some firms (particularly sole practitioners) wishing to close their practice. It is acknowledged in the consultation document (page 36) that the SRA does "not have robust data on the total settled claims for individual firms over the six-year run-off policies". It is accordingly something of a leap of faith to suggest that this change will bring about a reduction in premiums. In our experience it is unusual for a firm in run-off to have total claims activity within six years that exceeds £3m – or £1.5m for firms that do not undertake conveyancing services. If insurers are likely to be covering the same level of claims, it is unrealistic to expect that this change will result in run-off premiums being discounted to a level that would remove the barrier to closure.

b) The proposed changes to the MTCs suggest that cover for conveyancing services are excluded unless a firm has obtained an endorsement for cover. However when it comes to run-off, the proposed wording change to the MTCs provides that both the cover for conveyancing services and the £3m limit will be automatic if the firm has undertaken conveyancing work – whatever the terms of their last policy. So, a firm that has paid for cover based on £500,000 will automatically have £3m if they undertook conveyancing work historically. We believe insurers are unlikely to be very enthusiastic about reducing run-off premiums given this scenario.

c) We agree that run off is proving to be a barrier to closure for some practitioners wishing to retire. We believe there could be other solutions to this issue, including the possibility of a capped multiplier for the run off premium. We discuss this further below.

Question 10: To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree
Somewhat agree
Neither disagree or agree
Somewhat disagree
Strongly disagree

Please explain your answer

a) The answer to this is directly related to question 8 and the extent to which the proposals will reduce premiums. As we have explained, we do not agree that the changes will achieve significant savings, if any at all. In addition the changes will result in the potential for increased contributions to the Compensation Fund which will be an added burden for all firms.

b) New start-up firms are priced with reference to the areas of practice they intend to undertake and also achieve "prior acts" discounting to account for the fact that they have no prior exposure. There is a great deal of competition in the market for low risk start-ups where the solicitors involved can demonstrate appropriate levels of experience and competence. In our view it is unlikely that these premiums can or would reduce further.

Question 11: Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Y/N

If Yes, please explain what you think these impacts are.

(a) We have nothing new to add here beyond what has already been noted in response to the other questions.

Question 12: Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view.

(a) We note the concern with reference to run- off cover and agree that the cost of run-off is a barrier to closure in many cases. We believe that there needs to be more discussion between the SRA, insurers, brokers and the Law Society, to canvass options to address this issue.

(b) Part of the reason the run-off cover is so high is that insurers have to provide the cover even where the premium is not paid and accordingly they need to make provision to cover what can be quite high levels of bad debt. If there were an option whereby they only provided cover in cases where premium was paid, then that could

be an incentive for the market to agree a cap on the multiplier for run-off premiums. To ensure an element of public protection and limit the transfer of losses to the Compensation Fund, there could be an additional arrangement whereby the Compensation Fund had the option of paying the run-off premium where it would otherwise be required to meet the claim. While this is not a perfect solution, it would achieve some sharing of run-off losses and reduce premiums.

Question 13: To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it the in most?

Strongly agree
Somewhat agree
Neither disagree or agree
Somewhat disagree
Strongly disagree

Please explain your answer

a) We will make limited comments in relation to the issues relating to the Compensation Fund on the basis that we consider that this is largely an issue for the profession.

b) We agree that it is timely for the Compensation Fund to be reviewed and that this should be done alongside changes to PII.

c) We agree that there are some obvious changes that should be made to ensure that it is operating as a fund of last resort to address consumer loss that is clearly defined. However even with some or all of the changes proposed, to the extent that claims are excluded as a result of changes to PII arrangements, there will inevitably be increased recourse and pressure on the Compensation Fund

Question 14: Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?
Please explain why and provide any evidence that supports your

a) We have nothing further to add here.

Question 15: To what extent do you agree that we should exclude applications from people living in wealthy households?

Strongly agree
Somewhat agree
Neither disagree or agree
Somewhat disagree
Strongly disagree

Please explain your answer

a) There is no evidence to suggest what (if any) impact this change would have as we do not know the extent to which applications have been received from applicants in this wealth bracket historically. Does the SRA have this information? If a consumer has genuinely suffered loss, we also query why their ability to recover should be based on their own financial position.

b) The consultation document suggests there is a concern that the Fund could be impacted by claims for loss arising from failed investment schemes where solicitors were involved. Given that this seems to be the real concern, then the more transparent and clear approach would be to consider excluding or limiting claims arising from that activity, which could be clearly defined.

Question 16: Do you think our proposed measure of wealth and threshold for excluding these applications is appropriate?

Y/N

If no, do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

a) In our view there are difficulties with the proposed test to limit recourse to applicants with a net household financial wealth of less than £250,000 including the following:

(i) Inconsistencies and unfairness will inevitably arise at the definitional boundaries. Take for example the situation where an applicant is excluded from recovering up to £500,000 because their financial wealth exceeds the threshold by say £10,000 whereas an applicant £10,000 under the limit could recover £500,000.

(ii) Eligibility will also be impacted by the way an applicant arranges their affairs as opposed to a consideration of overall wealth. For example applicants who arrange their affairs to achieve financial wealth will be excluded where it exceeds £250k, whereas another applicant who has substantially more in terms of property and physical assets, but less in terms of financial wealth could make a claim.

b) As noted in our response above, it seems that the real concern here is the impact of losses arising from failed investment schemes and in our view that is the issue that should be addressed.

Question 17: Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Y/N

If yes, please set out your suggestions and reasons for the change

a) We have nothing to add to this issue and defer to the profession on this.

Question 18: Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Y/N

If no, please explain why.

Question 19: Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Y/N

If no, please explain your answer and any suggestions you have for alternative approaches.

a) We offer no view here as we consider this to be an issue for the profession.

Question 20: What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

a) To the extent that cover is dependent upon inquiry and investigation then cover becomes vague and uncertain and there is additional time and cost involved in making an assessment of what was done.

b) In our view it is preferable to have a more straight-forward approach, such as an exclusion or limit for certain activities.

Question 21: Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Y/N

Please explain your answer

a) Yes. Clear rules and guidance will always assist.

Question 22: Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Y/N

If Yes, please explain what you think these impacts are

Question 23: Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

a) First and foremost it is disappointing that the present consultation has not taken the opportunity to consider the appropriateness of compulsory cover for cybercrime. We make the following points:

(i) There has been much discussion in recent years that losses on the client account as a result of cybercrime should not fall to the PII policy. These losses should be covered by a cyber policy.

(ii) Solicitors hold considerable amount of personal data and GDPR highlights the importance of ensuring that data is kept safe. Cyber cover has now become as important as PII and as a regulator the SRA should be consulting on this, with a view to requiring firms to have an appropriate level of cover – which would include cover to respond to cyber attacks on the client account.

c) In terms of risk management we consider that the SRA, Law Society and insurers have done a great deal of work to inform and assist firms in relation to the issue of cybercrime. The issue will continue to evolve and it is important that guidance and risk alerts continue to be issued as the modus operandi of those involved in this activity changes.

d) Most of the cybercrime we have seen targets funds related to conveyancing transactions. This is yet another reason for the conveyancing process to be the subject of a complete review as we have noted earlier in this document.

Jenny Screech
Legal Professions Consultant
Howden (UK) Group Limited
14 June 2018

Protecting the users of legal services: balancing cost and access to legal

Response ID:75 Data

2. About you

1.
First name(s)

Ian

2.
Last name

Newbery

6.
I am responding..

on behalf of an organisation

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)

71887

9.
Please enter your organisation's name

Ian Newbery & Co

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: I strongly doubt that the reduction in level of cover will result in any or any meaningful reduction in the premiums charged. On the contrary, the basic cover will cost about the same. It reputedly embraces 98% of claims so why would the cost go down? Restoring ones cover to a higher level will then cost more.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: The brand of "solicitor" will be undermined if all clients can not expect the same level of protection.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

Just do not go there.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: If you start to "pick apart" insurance cover the cost will go up, and the risk of default increase.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

20. Please explain what these are and provide any evidence to support you view

Abolish the Successor Practice concept, and require the "target" firm to obtain run off cover.

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: You have failed to adequately explain your proposals

22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Insurers will expect to make the same income, no matter what the level of cover. Any additional cover will then be charged as an extra. The cost will go up.

23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: If it is costing £7million a year to meet the problem of firms closing improperly then it begs the question of whether that money could be better spent on enabling firms to close properly. Such a sum would fund hundreds if not thousands of run off policies. Firms could be given support, guidance, and a financial incentive to close down in an orderly way.

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: I doubt that the level of premiums will fall, but they will probably rise, so there is no reason to expect that this will encourage more new firms.

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: You will undermine the standing of solicitors if not all clients are treated equally

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

31. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

No. Do not go there

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

Reducing the level of compensation available is an arbitrary step which could severely disadvantage some indues

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Any individual should act with prudence. The greater the sum being committed the greater the level of investigation one should undertake, and a very high level of investigation is necessary when committing a substantial sum of money to any transaction.

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Clarity is always to be sought.

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

39. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

There are two different types of fraud to consider.

1) The "intercepted" email giving bogus bank details. This can only be tackled by stressing the correct procedures to follow so that the bank details are always properly verified.

2) the bogus firm/bogus seller fraud. Here the client will have a large part to play, having presumably met with the buyer/seller and satisfied themselves that they were genuine. Their solicitor is extremely unlikely to meet the other party. It should be permissible to have an exclusion clause/standard term to throw the onus onto the client to ensure that the other party was genuine.

Solicitors Regulation Authority consultation on protecting the users of legal services.

Institute of Legacy Management response

June 2018

Chris Millward, Chief Executive

Summary

The Institute of Legacy Management (ILM) is the professional body for legacy professionals – those responsible for the sensitive and successful administration of donors' final gifts to charitable organisations. Our members deal with others using legal services on a daily basis as well as accessing legal services themselves. We are uniquely positioned therefore to provide insight into the issues on which the Solicitors Regulation Authority is currently seeking input via your consultation on protecting the users of legal services: balancing cost and access to legal services.

We are concerned that charities do not fall within the terms of the proposed narrowed eligibility of "those…that need and deserve the most protection". Given that charities work with some of the most vulnerable in society, any lack of protection will, by default, fall on them. Additionally, given the large estates which many charities are fortunate enough to benefit from and which their work relies upon, the reduced cover of only £500,000 could impact them disproportionately.

Other issues

The desired reduction in solicitors' fees and therefore increased accessibility of legal services is reliant upon the solicitor / firms passing on the reduced overheads in their hourly rate. Without a requirement to do so, and with your own consultation stating that you do not expect solicitors to simply reduce their charges, these changes could simply endanger some regular legal service users without benefit to anyone else.

About the Institute of Legacy Management

The Institute of Legacy Management (ILM) www.legacymanagement.org.uk is the membership body for legacy professionals – those responsible for the successful and sensitive administration of donors' final gifts to charitable organisations.

The Institute was established in 1999 to provide individual legacy professionals with a network of support and dedicated training services. Today it represents and supports more than 600 individuals, working in over 350 charities, not-for-profit organisations and associated professions.

Across the sector, legacy professionals are responsible for over £2.8bn (1) of charitable income each year – income that many charitable organisations rely on for their survival. They are proud to do the work they do, they know they are representing a person's final wishes, and they conduct their work with great skill and compassion.

Ultimately ILM seeks to ensure that every donor's charitable legacy achieves its greatest potential. In working towards that goal, the Institute partners with a range of companies and professional bodies to ensure the legal environment supports and promotes charity legacy giving, and to offer members additional support, information and collaboration opportunities.

We are proud to:

- Act as a crucial network uniting legacy professionals across the UK
- Provide dedicated training services to maintain and improve practices across the profession
- Work with probate professionals and other service providers to improve and strengthen the legacy management process from start to finish
- Maintain and deliver information about the legacy management profession to the wider community
- Help define and share the highest professional standards for legacy management

Our vision

Ensuring every generous donors' final wishes achieve their greatest potential.

Our mission

- To support our members in the delivery of professional, proactive and sensitive legacy case management.
- To champion the interests of donors, members and charities to optimise the impact of legacy gifts.
- To drive professional standards and benchmark performance in legacy giving.

(1) Legacy Foresight – Legacy Giving 2017 report

A unique perspective

As the professional body for charity legacy professionals, ILM is uniquely placed to provide insight into the issues on which the SRA is currently seeking input.

Our members are and deal with others accessing legal services on a daily basis. As a body – given their professional knowledge and experience, and number of estates they are involved in the administration of – they are uniquely exposed to the issues arising.

In 2015, 6 in every 100 deaths (36,080 estates) resulted in a gift to charity. (2)
On average (mean), each ILM member has an ongoing workload of 187 cases (3)

How long have you worked in legacy administration?	**What is your organisation's annual legacy income?**
Less than 1 year = 7% 1-2 years = 7% 2-3 years = 12% 3-5 years = 20% 5-10 years = 23% 10+ years = 32%	Less than £20,000 = 1% £20,000 - £400.000 = 5% £400,000 - £1m = 12% £1m - £8m = 37% £8m - £20m = 12% Over £20m = 32%

What % of your time is spent on legacy administration?	**Do you hold a legal or other professional qualification?**
Less than 20% = 17% 20 - 50% = 14% 50 - 70% = 16% 70 – 90% = 18% 100% = 35%	Yes – 64% No – 36%

(Data from 2017-member engagement survey)

Mindful of the proposals contained in the SRA's consultation

- Reducing the claims limit
- Having a higher level for conveyancing
- Flexibility around who the cover should protect
- Make changes to run-off

ILM members are keen to help ensure that any changes continue to protect those accessing legal services and that the appropriate safeguards remain in place to ensure testators, and their often-generous final wishes, continue to achieve their greatest potential.

(2) Smee and Ford, 2015 market analysis
(3) ILM member survey 2017

Methodology

The ILM has encouraged member organisations to engage with the consultation, consider the implications of the proposals and to submit responses on behalf of their organisations.

We have also discussed this at an organisational level in the hope of best reflecting the views of our members, many of whom will not be able to respond to the consultation.

PII

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Whilst the proposals seem to benefit firms and cover 98% of claims, we are concerned that charities often benefit from very large estates where the potential for loss to the estate and therefore the beneficiaries, can far exceed £500,000. How would this additional loss be compensated?

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

We are very concerned with the proposal that minimum PII requirements do not need to include cover for other large business clients which may, by default, include charities. Whilst they may raise millions of pounds in donations or by other means, since charities exist for the public good and are non-profit making organisations, their funds are committed as soon as they are raised, and reserves are held in accordance with charity law. They are not businesses generating dividends for shareholders, but vital monies to fund often lifesaving work.

The proposal that this could be an election of the law firm depends upon both the business ethics and risk aversion of the firm in question and cannot guarantee security to the charity client in accessing legal services.

Question 3: Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

NO

As previously stated, whatever level of income is generated by a charity, this is directed towards its charitable objectives and not to shareholders. To exclude such non-profit organisations from protection unjustly exposes not only the charity itself, but its employees and volunteers and ultimately its service users or charitable objectives.

Compensation Fund

Question 13: To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

1. We are very concerned with the proposal to narrow eligibility for claims on the Compensation Fund. Whilst they may raise millions of pounds in donations or by other means, since charities exist for the public good and are non-profit making organisations, their funds are committed as soon as they are raised, and reserves are held in accordance with charity law. The removal of large charities from eligibility for the Compensation Fund misaligns them with commercial enterprises generating income for their shareholders, instead of non-profit making organisations whose income is immediately spent on furthering its charitable objectives, often helping those in hardship themselves.

   Notwithstanding the proposed ineligibility, a loss of significant income for a charity, which would also be very unlikely to engage in one of the "high return dubious schemes" mentioned in the consultation document and therefore likely only arise through negligence or other by the solicitor, would result in hardship not just for the charity as an organisation, but its employees and ultimately its service users or charitable objectives.

2. As noted above regarding PII, we are concerned that charities often benefit from very large estates where the potential for loss to the estate and therefore the beneficiaries, can far exceed £500,000. How would this additional loss be compensated?

Question 18: Do you think we have set out the right approach for assessing when a maximum payment has been reached?

NO

There appears to be a clear inequity of approach towards clients suffering the same loss, based on the number of retainers used as opposed to actual loss suffered.

This would clearly impact charities who might jointly instruct a solicitor to act on their behalf in an estate, or indeed lay executors within an estate which is defrauded. Either way, the donor's intentions to benefit others is thwarted by the actions of the solicitors and again by the Compensation Fund.

Dubious Investment Schemes

Question 20: What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Under the Trustee Act 2000, there is a statutory duty of care placed upon trustees, such that they must exercise skill and care as is reasonable given the circumstances and the knowledge and experience of the trustee. There is the additional duty to obtain and consider proper advice where necessary.

In the scenario of a charity (or charities) being a beneficiary under a reversionary trust, we would expect the trustee (normally the executor of the estate) to obtain professional advice as to how to invest the funds. In this instance, it is reasonable for the trustee to rely on the expertise of the solicitor / accountant who holds themselves out as an expert in this field, subject to a routine check of credentials. It should not be expected for a lay executor to undertake intensive research around products recommended to them by a professional unless the product is sufficiently new or risky to warrant additional checks.

Other Issues

With affordability recognised as a major barrier to accessing legal services, the desired outcome of lower solicitors' fees being levied due to reduced overheads relies upon the solicitor / firm passing on these savings to clients. Without any requirement to do so, and with many solicitors viewing conveyancing and will writing as loss-leaders, we are concerned that the desired benefits will not be realised.

Protecting the users of legal services: balancing cost and access to legal

Response ID:299 Data

2. About you

1.
First name(s)

Christopher

2.
Last name

Jones

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative industry group

8.
Please enter the name of the group

International Underwriting Association

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Somewhat agree
Please explain your answer
: Given that the cover provided via the solicitors MTC is as broad as the PII requirements of any of the other professional bodies, lowering the minimum level of cover requires careful consideration. In the current climate, some may view the proposed minimum cover allowing for £500,000 per claim to be too small and see £1m as more appropriate. If the threshold is set too low, there would be obvious concerns should insured firms need to make up a potential shortfall. However, we acknowledge that it is a minimum only and insurers will tailor their products to the requirements of specific firms, many of whom may wish to purchase more than the required minimum. This also applies to the provision of defence costs. Moreover, insurers strongly support the increased flexibility in the approach taken by the SRA and so, in principle, see value in reducing the minimum level of cover required.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree

Please explain your answer

: The minimum PI requirements are, principally and rightly, in place to protect the public. Broadly speaking, financial institutions and larger firms should be suitably capitalised and sophisticated to manage their own risks, without the need for compulsory requirements. Thus, we agree that the SRA's more targeted approach based on proportionality principles is suitable. In terms of the whether these rules should be adopted as a permitted exclusion, we have no fundamental concerns in this regard and the flexibility inherent in an elective approach is in keeping with the overall approach of the SRA in these proposals.

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree

Please explain your answer

: Comment to Q3 abovew: We note that there are established definitions in place at both the EU and FCA level and these would usually also include some element of employee head count and/or capital assets. The £2m threshold is one that, under these criteria, may be deemed a small or micro-business, rather than a large corporation. That said, as insurers, we are probably not best placed to comment on whether a turnover-only test, and with a trigger of £2m, is most suitable. We would also make a point on the drafting of the MTCs in that paragraph 6.3 refers to a 'client's turnover for its most recent financial year exceeds £2 million', which is likely different to the trigger outlined in the consultation paper, namely 'in the financial year at the time the act giving rise to the claim occurred'. Comment on Q4: This would allow insurers, whom do not wish to cover conveyancing exposure, to have certainty over this issue. It is also proportionate in application and approach. However, it is important for insurers that contractual remedies can be applied and enforced in respect of conveyancing exclusion clauses. So , for example, if an insured states in a proposal form that they do not provide conveyancing services but actually already do, or commences such services without notifying the insurer, or have historically provided such services (though no longer do) and do not disclose it, then the exclusion applies. Though we are on balance comfortable with making the conveyancing distinction, we recognise that it may be more complicated when considering that the MTCs provide cover not just for the firm but also its individual current and former employers and principals. The issue of insureds being a successor practice is also an important factor.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

15. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

16. Please explain what these are and provide any evidence to support you view

As a general point, we think successor practice rules should be reviewed and simplified. That said, legal practitioners are better positioned to answer this question in more detail.

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: We support the stated rationale towards updating the MTCs and the PIA.

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

: We agree with the general premise that there is a potential for lower insurance costs. However, these changes will only have an effect on a relatively small number of specialist firms and would be applied differently to those firms dependent upon their individual risk profile. More generally, we note that, as most claims are below £500,000 in value, the limitation in cover to this amount would have relatively little impact in reducing the financial exposure of the insurer. Moreover, insurers already have sophisticated processes in place to assess and price firm's potential exposures. Ultimately, there are many factors that are critical to the insurer pricing a risk, in much the same way as solicitor firms develop their own pricing model and, in this regard, we note that the SRA specifically highlights that there may be valid reasons why the (perceived) lower insurance costs may not be passed on to clients of the firm.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The lack of robust, detailed claims data in this area make it difficult to provide in-depth comments on 'adequate protection'. So, we have no substantive comments to make on the proposals, except to provide an overall view that the proposed caps will likely have relatively little impact on run-off premium levels. Insurers need to factor in those that have paid and those that have not paid the relevant premium.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat agree

Please explain your answer

: In our view, this would apply to specialist practice areas only.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

We have noted that the reductions in scope and increased flexibility of the proposals may attract new insurers to certain sectors of the solicitors market. With that in mind, we feel that consideration should be given to developing rating criteria for participating insurers. Such a regime is in place in other, comparable professions (such as contained in the RICS requirements) and would recognise the continuing concerns surrounding the use of unrated insurers and potential consequences where they go insolvent.

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

: The questions on the compensation fund are less applicable to ourselves as a trade assosiction and our member companies. As such, we have limited our answers to the questions on PII.

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

The questions on the compensation fund are less applicable to ourselves as a trade assosiction and our member companies. As such, we have limited our answers to the questions on PII.

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

: The questions on the compensation fund are less applicable to ourselves as a trade assosiction and our member companies. As such, we have limited our answers to the questions on PII.

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

27. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

The questions on the compensation fund are less applicable to ourselves as a trade assosiction and our member companies. As such, we have limited our answers to the questions on PII.

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

30. Please explain why.

The questions on the compensation fund are less applicable to ourselves as a trade assosiction and our member companies. As such, we have limited our answers to the questions on PII.

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

32. Please explain you answer and any suggestions you have for alternative approaches

The questions on the compensation fund are less applicable to ourselves as a trade assosiction and our member companies. As such, we have limited our answers to the questions on PII.

7. Questions continued

33. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

The questions on the compensation fund are less applicable to ourselves as a trade assosiction and our member companies. As such, we have limited our answers to the questions on PII.

34. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

: The questions on the compensation fund are less applicable to ourselves as a trade assosiction and our member companies. As such, we have limited our answers to the questions on PII.

35. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

36. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

The questions on the compensation fund are less applicable to ourselves as a trade assosiction and our member companies. As such, we have limited our answers to the questions on PII.

Protecting the users of legal services: balancing cost and access to legal

Response ID:213 Data

2. About you

1.
First name(s)

Mike

2.
Last name

Perry

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

PII broker

8.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

9.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The current PII arrangements have worked well. Most firms now experience a renewal that is a simple, straightforward process and are benefiting from a competitive marketplace. It is our considered opinion that the proposed changes to the PII Minimum Terms will not provide an appropriate level of cover for SRA regulated law firms. We consider that the proposed reduction in the minimum limit to £500,000 but £1,000,000 for conveyancing work presents additional risk to the users of legal services and may in fact increase the complexity of the renewal process and potentially increase the cost to the vast majority of law firms. We believe these proposed changes to be unnecessary at this time. 1.1 Validity of Data The LSB's decision to reject the SRA's 2014 consultation was largely premised on the SRA's lack of data to support such a change at that time. The SRA now state in Section 95 of the consultation document that they have a "comprehensive evidence base" to support their reforms. We question whether this evidence is comprehensive for the following reasons: • The data used to inform the consultation may not reflect the true position for the period 2004 to 2014 inclusive as it does not include data from insurers that have left the market. These insurers represented 26% market share over this period. Many collapsed under the weight of PII claims on their solicitors' book (the demographic of which would have included many firms that would have considered reducing their limit). There can be no certainty that had the data from these insurers been included that the outcome may not

have been different particularly as these insurers tended to write higher risk firms. • The data does not include many of the 'Friday Afternoon' fraud claims as the majority occurred after the end of this period and many of these were for sums significantly in excess of £500,000 and some exceeded £1,000,000. • The data only reflects paid claims and does not include reserves that can be considerable and may have reached a significant settlement outside the dates analysed. • Even if we accept that the data accurately demonstrates that 98% by number of claims fall within the proposed £500,000 limit the data is also clear in that by value only 53% of claims would have been met. • The SRA's own commissioned report from EPC (section 1.3. claims data) states that … "Overall, therefore it is important to recognise that the data represents only a portion of the true value of claims over the period." Furthermore it states "Non-responding insurers may have a different claims experience to those insurers that did respond to the survey. In particular, some insurers who did not respond were particularly focussed on small. Hence the overall data will therefore understate the proportion of claims that typically arise with small firms…" It is these small firms that are likely to reduce their cover should the changes be adopted. • The SRA's own presentation "Reflecting on Solicitors Professional Indemnity insurance (PII): market trends and analysis of historic claims data" by Crispin Passmore states on the slide headed "What data did we receive?" – " No one should rely on this analysis for any commercial, purchasing or other decision - it is only to aid discussion about role of PII in the legal services market" We do not feel that given the above weaknesses in the data analysed the data could under any circumstance be deemed to be "comprehensive". 1.2 Client Account considerations The amount held in client account has to be a serious consideration when deciding upon an appropriate indemnity limit. It is clear that those engaged in conveyancing regularly hold amounts well in excess of £1,000,000. Firms engaged in this area often hold substantial sums in client account for relatively long periods of time with the associated exposure to the risk of fraud on client account. The SRA in the consultation states 'We do not think it is appropriate at this point to exclude this risk from being covered by PII policies. These crimes, especially in relation to conveyancing transactions, can cause large sums of money to be lost. The risk to an individual or family of the loss of such money is particularly damaging……' Reducing the compulsory indemnity limit may be limiting cover for cyber claims which is counter to the SRA's stated objectives. 1.3 Code of Conduct Outcome 7.3 – Buying an appropriate level of cover Of course firms will still be required to purchase a limit of indemnity appropriate to their business (Outcome 7.13). From our data it is clear that the majority of firms will now have to buy top up cover to fill the gap established by the proposed reductions and exclusions in the current Minimum Terms. This will increase the complexity of the renewal process for most and may result in increased costs for the majority of purchasers. The Council for Licenced Conveyancers (CLC) has assessed that the appropriate minimum limit for firms which they regulate is £2 million each and every claim. The SRA states that they will take a robust stance on ensuring firms buy the correct cover. For example they will be able to monitor whether or not firms are purchasing conveyancing cover by comparing land registry returns with their records on which firms have bought conveyancing cover. 1.4 Aggregation There is a further risk that we do not believe has been identified in the report by EPC on the data collected by SRA as follows. It is the case that the MTCs currently contain an aggregation clause and we see no evidence that this will change. With the current levels of minimum limit the number of times that insurers have sought to apply this is very low. With the lower limits proposed the number of times when it will be to the benefit of insurers to apply this clause is likely to increase. This will be a risk to both the public and a risk to effective regulation as in these circumstances it is likely that a firm may be underinsured and forced into disorderly closure. This increased risk is likely to increase the number of occasions that the SRA are required to intervene thereby further increasing the cost of regulation.

10. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: The proposal to remove cover for Financial Institutions and other large business clients will have wide ranging consequences. Given that the majority of firms who conduct conveyancing work also act for Lenders then firms engaged in conveyancing would need to buy Financial Institutions and large business cover back. Equally any firm that historically did work for Financial Institutions is going to need to purchase their current level of cover in order to continue to protect the client as per their original engagement document. They would need to do this even though they may no longer conduct this work. It must then also be remembered that as the cover would not be prescribed by MTCs (above the £500,000 or £1,000,000 limit the extent of the cover could be reduced. For example the "top-up" required to get back to the original £2m or £3m cover could be restricted to negligence claims only and so breach of Trust claims might not be covered. As the policy is claims made it is possible that firms who conducted work for lenders in the knowledge that they had cover might find themselves uninsured. Whilst this would not impact directly on individual consumer claims it would probably lead to the failure of the firm increasing

regulatory risk and impacting on all of those consumers for whom the firm was working at the time. In respect of the exclusion of claims brought by businesses with a turnover of more than £2,000,000 similar considerations apply. Having spoken to a number of clients, the majority of firms would not be able to identify those clients for whom they have previously done work with a turnover of more than £2,000,000 at the time the work was done. Thus every firm that has ever done commercial work in the past where a claim would still be possible would need to purchase cover for Financial Institutions and large business clients. It is also doubtful that those firms who have not and will not work for these clients and so do not need the cover will benefit from a reduction in premium by the removal of such cover as this fact would already be taken into consideration when an insurer makes their decision on premium quoted. There is also a regulatory risk as some firms may not have purchased cover as they were unaware that they needed to. Any claim that subsequently arises would not be covered which may lead to the financial failure of the firm. It is very possible that if these changes are introduced then Lenders will simply not permit a significant number of firms to be on their panels. This is because the lender will have to satisfy themselves that 1) The firm has bought back cover for Financial Institution claims. 2) The extent of the cover is wide enough to satisfy their requirements. 3) There is some form of certainty that the firm will continue to be able to purchase the cover in the future as the policy is claims made. This will significantly reduce consumer choice for conveyancing services and may also lead to a significant drop in the number of firms overall. It is often the case that the conveyancing department acts to attract other types of work to firms. Without a conveyancing department some firms may just not be able to continue. The report by EPC raises this as a possibility, however, this concern seems to be omitted from the consultation document. Furthermore, it does not seem that the views of Lenders have been sought which leads to significant uncertainty about the likely outcomes.

11.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

12. Please provide an alternative way of drafting the exclusion definition.

Firstly the definition of what constitutes a Financial Institution is unclear.
The rationale for excluding claims brought by large corporations and businesses is that such organisations are large enough to have the resources and expertise to engage with their solicitor to ensure that they hold appropriate cover.
We believe that £2 million turnover is far too low as a determiner as to whether a business is large enough to be sophisticated. For example a small builder / developer could easily have a turnover of £2 million but as an organisation will be small and would not necessarily have the internal expertise to establish whether or not the solicitor that they deal with has the right cover and more importantly will continue to have the right cover in the future (remember this is a claims made policy).
If turnover is to be used then this should be a much higher level. It will still be important, however, for solicitors to buy back this cover to ensure they are not precluded from acting in conveyancing transactions for Lenders. As for conveyancing cover the information required to buy back this cover could take significant time to collate and present. It also presents a risk that a firm has not bought the cover that it should have to protect them and a claim arises from work done some years ago which is now no longer afforded the protection of the current MTC policy.

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: Conveyancing is clearly a major area of risk for law firms and as a consequence a serious concern for insurers. From the data used by the SRA and EPC conveyancing claims represent £0.77 billion or nearly 40% of the £1.96 billion of claims reported. Bear in mind the data only takes into account 74% of the market share and the real position is considerably worse. 3.1 Cover for conveyancing services When considering the reduction to only £1m for the minimum terms it is vital that the claims made nature of the policy is taken into consideration. By making this alteration it is the case that firms who no longer do conveyancing but have done so in the past may mistakenly opt not to have the cover and will therefore put at risk the protection of the public and their own firms. Insurers already consider if a firm has no exposure to conveyancing claims and calculate the premium accordingly, the protection however remains. Indeed it is the case that at least one insurer will only offer terms to firms that have never carried out conveyancing and their premiums reflect this. There is of course the risk for that insurer that this turns out not to be the case however that is their risk to bear, not that of the consumer. Taking this approach

also creates a significant regulatory risk. SRA state that they will be able to compare land registry returns with the returns made by firms to ensure those that are actively providing conveyancing services have purchased the appropriate cover. This will not work as such an approach will not identify which firms have historically carried out conveyancing but have ceased to do so. A firm that has carried out conveyancing will need to continue to purchase cover for at least 15 years after ceasing to offer conveyancing services if the firm and its clients are to be properly protected. Firms that do not have a claim met because of inadequate cover are likely to be forced into a disorderly closure.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

15. Please explain what you think should be an alternative definition.

If the MTC cover remains as it currently is any changes to this definition are irrelevant. However, if cover now has to be bought back from the base level of £500,000 up to a minimum of £1,000,000 underwriters are going to want to know what type of work is included in this new broader definition. As it currently stands nothing is excluded.
The proposal is to change the definition of conveyancing services to include;
"Dealing with transfers conveyances, leases, contracts, deeds, grants, mortgages, charges, licenses and other documents in connection with, and other services ancillary to, the disposition, acquisition or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in Land."
Should any firm decide they do not need conveyancing cover and a claim is deemed to come from one of the above areas then the claim would not be covered. This would expose a number of firms who are unable to identify all their past work under this new definition.
This requirement for additional information could also significantly increase the time required by practitioners to collate such information and meet insurer's requirements. This additional workload would be an unwelcome additional cost to smaller and larger firms alike.
3.3 Improvements in risk management
We thoroughly endorse the EPC report recommendations that "Addressing the underlying conveyancing problems rather than the insurance market would be a targeted approach (Principle 5) and is likely to have a more significant impact of cost of insurance than many other issues the SRA is considering. Conveyancing transactions are also linked to concerns about misrepresentation, dishonesty and cyber-crime hence action on conveyancing will also help reduce concerns about these aspects of PII".
If we are able to reduce the number of claims in this area this will have a dramatic effect on the premiums charged to vast numbers of the profession.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

No

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree
Please explain your answer
: During the last 18 years we have seen many MTC insurers come and go. Although some feel that PII premiums are high, the

reason so many insurers have left this market is the claims activity they experience far outstripped the premiums they received. Many of these insurers, including the unrated insurers that have come and gone were attractive to a number of firms because they were cheaper than some of the more established insurers. Where firms are able to reduce to the proposed new minimum of £500,000 it is our considered opinion that the premium reductions will be minimal and the SRA's estimates may not be realised. Low risk firms that may choose to reduce their cover already benefit from very low premium rates as insurers already recognise the fact that these firms are less likely to suffer from both frequency and severity of claims. The EPC report recognises that if 98% of the claims are within £500,000 (actually £580,000) then it follows that a similar percentage of the premium is there to cover the first £500,000 Outcome 7.13 requires firms to assess the limit of cover needed and to purchase cover at this level. Firms that need to continue to purchase higher limits will not see any premium saving. Indeed the costs of cover, for these firms, may in fact increase. Where primary insurers limit their exposure to the minimum required this will mean a lower attachment point for excess layer insurers. Even assuming that excess layer insurers are prepared to attach at this lower level premium rates will have to increase and the extent of cover may not be as broad. For example excess layer insurers may be reluctant to provide client account fraud cover at this lower level attachment point. Allowing firms not to purchase cover for conveyancing activities is unlikely to produce a premium saving as insurers are already aware of these firms and underwrite accordingly. Our data shows that smaller firms engaged in only criminal and immigration work already pay a rate on fees as low as 1% and in many cases lower. Excluding claims brought by Financial Institutions is unlikely to produce premium savings. These claims are almost entirely associated with conveyancing and so almost all firms engaged in conveyancing or who have historically carried out conveyancing will need to buy the cover back and so will not benefit from the premium savings. Insurers are already aware of those firms that do not carry out conveyancing and rate accordingly. Only those firms that are not or have not historically been involved in providing legal services to large corporations or businesses will be able to benefit from this exclusion. There is however unlikely to be any premium benefit for these firms as insurers will already be rating them appropriately. 5.1 Passing on the savings to clients SRA also assume that reductions in premiums will lead to lower costs of legal services making them more affordable for disadvantaged members of society. SRA state that the average rate on fees that firms pay for their PII is 5% thus if premiums are reduced by 10% then the saving is 50p in every £100 of fee income. Even if this is passed on in full to consumers it hardly make any difference to affordability of legal services. Is this insignificant reduction worth the additional risk to consumer protection? 5.2 Introducing an Excess applicable to costs Allowing more flexibility in the way that defence costs are covered for example by allowing the policy excess to apply to defence costs may have some minor cost benefit. However, we question whether or not this will be of much advantage to small firms. Furthermore as this merely transfers the risk from the insurer to the firm itself the firm will not be able to pass on any savings to the consumer as they will need to charge an element in their fees to cover the possibility of needing to meet an excess. The SRA's estimation is that if every firm was made to have a £5,000 each and every costs excess insurers would save over £80m. As a consequence they could then pass the saving on to solicitors by way of premium reductions. This change would increase the exposure each and every firm but more importantly could lead to firms not notifying circumstances to insurers in fear that they will incure a costs excess. Not notifying circumstance and claim could result in firms not defending claims in the best way which could lead to increases in claims when they are finalised. This could lead to increasing conflicts between insurer and law firm. The SRA's estimate of a 9 – 17% saving assumes that all firms take such an excess.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Placing an aggregate cap of £1,500,000 / £3,000,000 may well offer some scope for insurers to reduce the cost of run off cover. The data provided by SRA however does not give any comment as to how many claims and what value of claims would be affected and so it is impossible from the data to predict what kind of saving might be expected. Also if claims are not paid then it is the partners of a firm who will have to pay and they may not have the resources to do so. Of course firms could become limited companies prior to closure and purchase of run off cover however this will still not provide protection to the consumer. It might have some benefit for the principals of the firm however this is not guaranteed. SRA seems to think that restricting cover in this way might promote a market for open market run off cover. Our experience would indicate that run off cover is difficult to obtain for other professions and usually is impossible in harder market conditions. Given the level of claims that solicitors firms in run off suffer then it is likely to be much more difficult for solicitors to arrange additional run off cover than

for other professionals. The question is whether or not any premium saving that is achieved is worth the risk that claims will not be paid or the extreme financial hardship it could cause for retired solicitors.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Given our own data and working with new start up firms we do not believe that the cost of PII is a serious barrier to entry for new firms. Since January 2018, JLT Specialty has have provided terms to 38 proposed new start-up firms and the premiums have ranged from £2.500 to £22,000 with the mode being £3,000. If a saving of a few hundred pounds makes the difference between starting up and not then you have to question the long term viability of the business plan in the first place. On the other side of the coin we are concerned that the proposed changes will lead to a significant fall in the number of firms; exactly the opposite effect of the desired outcome.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

22. Please explain what you think these impacts are

The consultation document states that 60% of small firms generate no turnover from residential property rising to 65% commercial property work (there is no comment about other commercial work). It then goes on to say that the percentage for residential property work raises to 63% for BAME firms. It further states that BAME firms have a higher proportion of work in areas of law such as criminal litigation and immigration work.
The above being the case it is therefore likely that BAME firms are already paying a significantly lower percentage of fees for PII as insurers already charge a significantly lower rate for these work types. It is difficulty to envisage therefore that there will be a significant positive benefit although there is also unlikely to be a significant negative impact when compared to non BAME firms.
We do not believe that any modest positive benefit will be proportionate when viewed against the risk to consumers.

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The Legal Services Act sets out 8 regulatory objectives for SRA to work to and we look at how the proposed changes might impact on these.
RO1 - Protecting and promoting public interest
Although the revised minimum terms would still provide an element of consumer protection any reduction in scope and level of cover acts to increase risks to the public. In addition where consumers are not compensated this would have an impact on public confidence in the legal profession.
RO2 - Purporting the constitutional principal of the rule of law
No impact
RO3 - Improving access to justice
The proposed changes present a real risk of reducing access to justice and that these changes will in fact reduce the number of firms. This risk is largely due to the possibility that lenders will stop using small firms on to their conveyancing panels. This would have the effect of making the legal services market less competitive.
RO4 - Protecting and promoting the interests of consumers
Whilst the revised minimum terms will still provide consumer protection reducing cover means that inevitably some consumers will have claims that will not be met either because a firm fails to purchase the correct cover to meet current needs and or is unable to purchase cover that protects consumers in relation to work that a firm has already completed.

RO5 - Promoting competition in the provision of services
There is a significant risk to this principle and our comments in relation to RO3 apply.
In addition the changes as proposed significantly increase the complexity of the cover. We do not believe that most consumers will have the ability and knowledge to understand the differences in cover that might apply to different firms creating confusion and inequality in the market.
RO6 encouraging an independent, strong, diverse and effective legal profession.
There is a significant risk that the changes as proposed will mean that conveyancing work will only be conducted by a relatively small number of large organisations reducing independence and diversity. There is also the potential to drive increased cost to the consumer as a result of less competition.
RO7 - Increasing public understanding of the citizen's legal rights and duties
See response to RO5
RO8 - Promoting and maintaining adherence to the professional principals.
Despite outcome 7.13 the changes inevitably increases the risk that some firms will either deliberately or through misunderstanding underinsure and fail to arrange sufficient cover to meet their potential exposure

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

:

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

28. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

31. Please explain why.

32. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

33. Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer
:

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

The methods by which cybercrime attacks are perpetrated are continually evolving. It is unlikely that there is any one or even a number of things that can be done to completely eliminate them. All that can be done is to be aware of the key issues in order to mitigate against the possibility of an attack or series of attacks.
It is often the case that once a firm is victim to a cyberattack then this same style of attack is quickly perpetrated against many firms.
It is vital that information is shared amongst firms to limit the incidence of the attacks. Whilst SRA and the law Society do circulate information this is often generic and too late.
SRA should proactively collect information from firms on cyberattacks and quickly act to provide warnings to the rest of the profession.
It is very often the case that a cyberattack will involve a significant level of human error within a practice. There are already requirements for solicitors to reflect on their own training requirements but it could be beneficial for all solicitors to attend an SRA approved cyber and fraud risk awareness training session.

Protecting the users of legal services: balancing cost and access to legal

Response ID:238 Data

2. About you

1.
First name(s)

Joseph

2.
Last name

Egan

6.
I am responding..

on behalf of an organisation

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)

627521

9.
Please enter your organisation's name

Joe Egan Solicitors

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

:

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

:

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

:

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

No

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Our broker tells us that the only thing that has an effect on premiums is the value of claims paid out.The PI market currently works at about 10% profit. Unless claims go down there is no possibility of premiums reduction. 95% of claims settle for under £500,000. Cover for "catastrophy" claims up to £2/3M is provided by the market, effectively for free. If the minimum cover is reduced to £500K firms will have to buy this extra cover to be safe so that their premiums will be higher. Or they risk being wiped out by an unforeseen claim. Lots of firms will not take out this cover with the resultant reputational damage to our profession. The idea of separating out conveyancing will be catastrophic for the professsion. We will have to enquire of the firms we are dealing with whether and what insurance they have. Some firms will do the odd piece of conveyancing not

realising they are not covered. Currently, firms' premiums are based on the information provided on their proposal forms. If they do not do conveyancing their premiums will reflect that. Firms that do will end up paying more. Apart from their potential to cause mayhem in the profession these proposals will not reduce costs but will give away the "free" insurance mentioned above for absolutely no gain. Our broker tells us that they have responded to this consultation giving their views that the proposals are nonsensical and that is the view of the PI insurance profession in general. Please listen to the experts.

23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: The cost of insurance is not what is keeping firms out of the market. Lack of profitability is a greater cause.

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

No

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

:

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

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32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

35. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

36. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

37. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

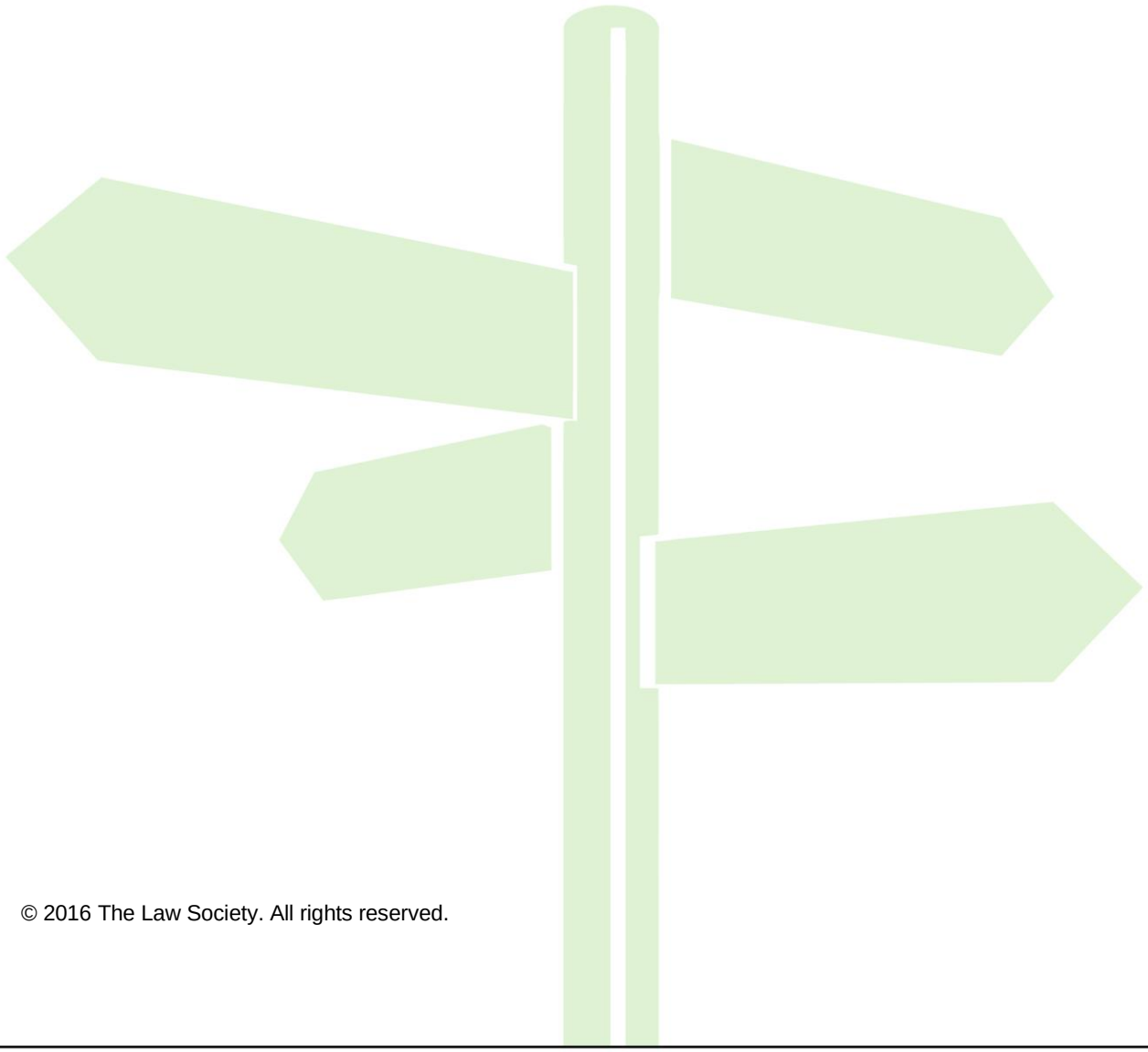
no

The Law Society

Protecting the users of legal services: Balancing cost and access to legal services

Junior Lawyers Division response to the SRA consultation

June 2018



The Junior Lawyers Division

Response to the SRA consultation
Protecting the users of legal services: Balancing cost and access to legal services

Introduction

This response has been prepared by Nick Gova, director of Garrick Law Limited and the Junior Lawyers Division (JLD) national committee representative of the Berks Bucks & Oxen JLD. Nick Gova attends quarterly national committee meetings held at The Law Society and therefore works with the JLD executive committee combating issues that affect junior lawyers throughout England and Wales.

Being a director of a law firm and a junior lawyer, the JLD felt that it was entirely appropriate, based on his wealth of experience, to seek the views of Nick Gova in response to this consultation.

The JLD is a division of the Law Society of England and Wales. The JLD is one of the largest communities within the Law Society with approximately 70,000 members. Membership of the JLD is free and automatic for those within its membership group including Legal Practice Course (LPC) students, LPC graduates, trainee solicitors and solicitors one to five years qualified.

Background

The current system was established as long ago as 2000 under the Minimum Terms and Conditions (MTCs) and the Compensation Fund. The consultation by the SRA seeks to determine whether or not the MTCs are proportionate. It is submitted that consumers generally have a low level of understanding of legal services regulation and assume that those within the legal profession maintain and carry the relevant protection from both a law firm and consumer protection perspective. It is submitted that there is also an expectation that as individuals within the legal field, the Regulator, in this case the SRA Would have set a high standard to ensure a consistent level of protection that all firms must meet.

Purpose of the Proposal

The current proposal by the SRA suggest that consumers should be tasked with investigating the level of their proposed solicitor's Professional Indemnity Insurance in order to make an informed decision as to whether or not they would instruct a particular solicitor. This is not only unrealistic but would be extremely burdensome for a consumer, especially one simply wishing for a resolution to their matter. This leads to the issue of whether or not such additional information would simply confuse a consumer, thereby affecting the overarching reason for this consultation.

Competition

It is not entirely excepted that competition is delivering good value in the insurance market. In its response to the consultation, the Law Society has produced its Annual PII survey which suggests that mean premiums fell by 7.7% between 2014 to 2015

and 2015 to 2016, and a further 1.3% between 2015 to 2016 and 2016 to 2017. The figure quoted is in respect of all Firms. However, when you look at the change in mean PII Premiums for sole practitioners between 2015 to 2016 and 2016 to 2017, this increased by 6.9%. Disappointingly in respect of firms with 2-4 partners , for the period 2015 to 2016 and 2016 to 2017, this increased by 11.8%. The current Code of Conduct permits solicitors with more than three years post qualification experience to establish their own law firms. Therefore, from a Junior Lawyers perspective, such an increase in premiums would adversely affect not only a Junior Lawyers' ability to set up and establish a law firm due to the cost but also reduce competition within the legal market as Junior Lawyers would be inhibited from starting their own practices. For completeness, the most significant reduction in PII premiums was referable to those firms with 11 to 25 partners. It is highly unlikely that a group of 11 to 25 Junior Lawyers would establish a practice and thereby benefit from any such reduction in costs.

The current MTCs ensure that insurers provide the same level of cover irrespective of the size of a firm. As outlined above, the proposal would adversely affect sole practitioners and smaller firms as they would be left in a highly precarious position in having to negotiate insurance terms on an individual basis rather than having a uniform base level of cover. In the event that this unnecessarily increases the costs of the running a firm, making it unsustainable, it is possible that a firm may no longer continue practising. This would affect all solicitors at those firms including those from the Junior end.

That said the market does already include the cost of risk in its existing premiums i.e. firms with low exposure to risk (those practising in family law, criminal law, immigration) pay lower premiums than those practising in high risk areas of Law (such as conveyancing).

Access to Justice

The Junior Lawyers Division has been a vocal champion for access to justice. In their consultation, the SRA suggest that part of their reasoning for these changes is to promote consumer choice and access to justice for people needing legal services. In short, the SRA proposes a claims limit. Currently, firms must have a minimum cover of £2 million, rising to £3 million for firms with certain structures. The SRA plans to reduce this to £500,000 for all firms apart from claims for conveyancing services. In respect of claims for conveyancing services, those carrying out conveyancing services would need a minimum of £1 million cover. The SRA states that this is because of the high risk of working in that area and making sure the public are protected where problems are most likely. The current proposal curtails the level of redress a consumer may have thereby reducing their ability to access justice. The cuts in Legal Aid have already affected a number of Junior Lawyers.

The SRA's position is one that by implementing their proposal, a law firm would make substantial savings which it would then pass on to its consumers. Therefore, those that could not, in the first instance afford to instruct a solicitor, would now be in a position to do so as a result of the savings to a firm's PII premium. This is, at best, far reaching and there is no guarantee whatsoever that such savings would be passed on to a consumer.

In its consultation, the SRA seeks to justify its proposal by suggesting that 4.8% of a client's bill may be determined by the cost of PII. Taking the SRA's estimated savings

of 9 to 17%, and assuming that firms decide to pass on to clients the savings in full, we might expect to see a reduction in fees of 0.4 to 0.8%.

On a review of the Legal Services Board research into the price of legal services for 2017, using their mean values of legal services in 2017 compared to the mean values of legal services expected post reform, such savings would be nominal.

Examples:

1) A sale of a freehold property, the mean price for legal services in 2017 was £650. When you consider the mean price of legal services, post reform, this equates to £644.70. This would provide a client with a projected saving of only *£5.30*.

2) An uncontested divorce, requiring a full legal service, the mean price of legal services in 2017 was £721. The mean price of legal services expected post reform is £715.12. This would provide the client with a projected saving of only *£5.88*.

3) Preparing an individual standard will, the mean price of legal services in 2017 was £195. In comparison, the mean price of legal services expected post reform is £193.41. This would provide a projected saving for a client of only *£1.59*.

It is the Junior Lawyers position that in choosing a legal provider, a client would tend to look at the appropriate expertise and qualifications of an individual when instructing them over and above the price that is been quoted for the services. That said, it is appreciated that price is a key factor when individuals are determining or differentiating between legal providers.

The Junior Lawyers Division concurs with the Law Society's review in that the level of cost savings for firms have been significantly overestimated. The information provided by the SRA suggest that a firm's overall compliance costs must be reduced in order for it to feel the effects of the savings. For the avoidance of doubt, the overall costs include any further top up cover, fees payable with respect to excesses, payments to the Compensation Fund not to mention the costs of implementing the proposed changes by the SRA. In its findings, the SRA states that more than one in 50 successful claims have settled for an amount in excess of £580,000. The level at which they have been settled is not provided. It would be helpful if this was forthcoming. Accordingly, the SRA's proposal that the claims limit be reduced to £500,000 would be detrimental to the profession as a whole. It is possible that most solicitors will choose to take on additional cover in the event that a claim is made against them. The cost of the top up could in essence outweigh any purported benefits highlighted in the SRAs consultation.

The Law Society rightly highlights the fact that that directors, partners, or other office holders may be required to obtain specific cover to protect against circumstances where staff have not obtained appropriate and adequate cover, which would prevent them from being sued in a personal capacity for breach of their duties by clients whose claims are not fully covered by the firms PII. The JLD is concerned that this may lead to junior lawyers being expected to obtain an insurance policy, out of their own pocket, due to the greater likelihood of employees being sued in a personal capacity when their firm's insurance proves inadequate. This is a concern to the JLD due to the

financial restraints already placed upon junior lawyers as a direct result of low income and debt associated with training. Also, the Law Society response highlights the possibility of the SRA's increased cost of enforcement that would stem from their efforts to ensure that all firms have obtained and maintain, a level of cover which is appropriate and adequate for the risk of their work. This simply cannot be a case where one cost reduction is replaced or substituted by a different cost.

In respect of the SRA's position that the current regulations surrounding PII are creating a barrier for firms wishing to enter the market, this is not accepted. No evidence has been provided by the SRA to demonstrate that the reforms proposed would alleviate such a barrier and allow for individuals to access the market. The Junior Lawyers Division echo the Law Society's comments in respect of this.

Accordingly, the conclusions reached by the SRA are fundamentally flawed. The evidence provided in support of their assertions is highly deficient as well as unclear.

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly Disagree

As outlined above, the Junior Lawyers Division strongly disagrees with the proposals to reduce the minimum level of cover from £2 million or £3 million, down to £500,000 or £1 million for conveyancing firms. In reality, if the majority of firms choose to provide the same level of cover as they currently have, the costs are likely to rise rather than fall as suggested by the SRA.

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly Disagree

The current proposals do not distinguish between those who are sophisticated purchasers of legal services (i.e. financial institutions and other large business clients) and those that are of lesser experience. The proposal makes an assumption of smaller businesses and suggests that they should be heavily regulated in comparison to financial institutions and other large business clients. Accordingly, the proposals indirectly seeks to criticise those from small businesses.

Question 3: Do you think our definition for excluding large financial institutional corporations and business client is appropriate?

No

Please see our response to question two above. If it is the SRA's proposal to include a definition of a "large business", then this needs to be sufficiently suitable to ensure it provides the necessary protection for these types of large businesses. Whilst the current definition proposed by the SRA is based on one of turnover, it would be appropriate to include factors such as the number of employees, potential liabilities and possibly even assets. The current £2 million turnover figure selected as a threshold

is far too low. In the circumstances, a small business with a turnover of £2 million would, on the SRA's definition, be classified as a (large) business client, subject to the proposed regulation. It is the Junior Lawyers Division's position that such clients would benefit from the added protection in such circumstances.

Question 4: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree.

Whilst we are able to appreciate the SRA's reasoning in wanting to include a separate component within their PII arrangements, this adds an extra layer of complexity into the system. We do not agree that cover of the £1 million is suitable, however it is possible that if the minimum level requirements were to be increased to say £3 million for a firm practising in conveyancing, (with all those firms that are not practicing in conveyancing to say £2 million), this may be more acceptable. With the increasing prices of property, with particular reference to London, it is doubtful that cover of £1 million is sufficient for the same.

Question 5: Do you think the proposed definition of conveyancing services is appropriate?

No.

We do not believe that the proposed definition of conveyancing services is appropriate. It is extremely broad and fails to consider the fact that the conveyancing has the ability to crossover into many areas of law including disputes, family, litigation and probate.

For example, on the breakdown of a marriage and financial resolution following a divorce, a Family Law solicitor may be instructed to deal with the simple task of having the transfer documentation signed by their client. According to the definition, this would fall within the meaning of conveyancing services and that solicitor would not be able to carry out this task. It would also mean that this Solicitor would need to instruct a specific conveyancing solicitor to carry out the same.

Also, with regard to Family Law, in instances where a Home Rights Notice is placed on a property belonging to one party but not the other, sufficient insurance would be required as this would fall within the definition of conveyancing services. The definition fails to take into consideration times when applications be required to the HM Land Registry on an ad hoc basis.

Where parties are attempting to enforce a court order requiring the transfer of a property, according to the definition, this would fall within the SRA's proposed definition of conveyancing services. Again, this is not something that the litigation solicitor would be able to do. And an insurer would be within their rights to exclude the claim.

Question 6: Do you think there are changes we should be making to our successor practice rules?

Yes

We would support any changes to successor practice rules to provide clarification for

clients where practices have been purchased by other firms. Also, it would assist law firms to understand in what circumstances PI liabilities have been inherited and by whom. It is possible that in the event a successor practice is involved, there will be a query as to whether or not that practice will have adequate cover to meet future claims from historic negligence by the firm.

Question 7: Do you agree with the approach we are taking to bring the MTCs and PIA up to date?

Somewhat disagree

The main change outlined in the SRA's proposal is for the curtailment of defence costs. A firm will need to create and maintain reserves to meet additional costs of potential claims. This will have an adverse effect on not only the confidence in the regulator but also law firms in general. As defence costs are not covered, it is likely that law firms will incur further expenses to avoid exposure to claims over and above the limit.

Question 8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

We have already explained why the flexible options offered by the SRA would not lower insurance costs. In fact, it is possible that with the SRA's proposal, a firm's cost may in fact increase due to top of cover and administrative costs rather than decrease which is the purpose of this consultation. This would mean that such costs would be passed onto client, hindering what the SRA is attempting to achieve with their proposal, competitiveness and reduced costs for firms and consumers.

Question 9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither agree or disagree.

The SRA offers no evidence as to their reasoning for the proposed level for the cap on cover in run-off. It is noted that there is currently a substantially high cost of run-off. It is understood that this tends to be three times the annual insurance premium, irrespective of the history and risk profile of a firm. The SRA is asked to produce evidence to confirm that it is able to reduce the cost of insurance in the run-off period.

Question 10: To what extent do you agree that the changes in PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services.

Strongly disagree.

The SRA has failed to provide any evidence to support it assertion that PII presents a barrier to entry. Further, it has failed to provide any evidence to support its view that these proposals would result in additional firms entering the market. We do not accept that the changes would reduce the overall cost of insurance thereby allowing a competitive market place and new entrants to the same.

Question 11: Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

It is the SRA's position that the proposed consultation with benefit small law firms. We do not believe that a proper impact assessment has been conducted in respect of the same. It is well known that small firms are more likely to have high number of black and minority ethnic (BAME) and or female solicitors, not to mention, Junior Lawyers. Accordingly, this could have a bearing on the diversity of the profession. When looking at the type of work commonly associated with small firms, this would encompass conveyancing. Accordingly, not only will small law firms be required to purchase the standard level of cover, on the SRA's proposal of £1 million, it is possible that they would also be required to obtain quotes for top-up cover. In general, the compliance costs for all firms will increase. This would adversely affect small firms who cannot readily afford the increased costs.

Question 12: Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further?

The issue of run-off has already been highlighted above and must be addressed in any future consultation or amended proposal.

Question 13: To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable.

Somewhat disagree

The Junior Lawyers Division supports the analysis completed by the Law Society namely the legal risks involved as well as policy consideration.

The primary purpose of the Compensation Fund, according to the SRA Handbook is "*to replace money which a defaulting practitioner or a defaulting practitioner's employee or manager has misappropriated or otherwise failed to account for*." It is our understanding that the Fund is available in cases where fraud and failures to account for money are not covered by a firm's mandatory PII policy i.e. any gap in protection. The SRA has failed to provide sufficient information with respect to the claims it receives, handles and closes in the course of the year. There is also no information on the distinction between claims for dishonesty.

The Compensation Fund must be sufficient to protect innocent clients (as well as third parties) against loss. In the event that they are not protected, this will harm the reputation of the profession and reduce public confidence in the profession.

Question 14: Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further? Please explain why and provide any evidence that supports your view.

Again, the Junior Lawyers Division supports the analysis completed by the Law Society namely the inclusion of a cumulative limit on claims from one investment scheme and the reduction of intervention costs.

Question 15: To what extent do you agree that we should exclude applications from people living in wealthy households.

Strongly disagree.

This proposal is discriminatory. This would not only be wholly unfair but undermine the public interest in proper standards. By way of example, individuals who are under the age of 30, living with parents, would be restricted if their parents hold assets over £250,000. Also, to place a bar on individuals on the fact that they live in a wealthy household would suggest that they have disposable sums to adequately be remunerated for the failings by legal professionals. It is possible that this would in turn result in a subpar service to those individuals, as legal professionals would be aware that the limit of claims against them is capped or that they cannot apply.

By removing them from the Compensation Fund, it removes consumer protection and will undermine the confidence that consumers can have when using a solicitor thereby impeding trust in the profession.

Question 16: Do you think our proposed measure of wealth and threshold for excluding these applications in appropriate?

No

If no, do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set.

Please see our response to Question 15. The Junior Lawyers Division does not support the exclusion of wealthy households as a category of claimant.

Question 17: Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

If yes, please set out your suggestions and reasons for the change.

Again, the Junior Lawyers Division supports the position by the Law Society. The SRA should consider the way that the risk of large investment schemes could be managed. There is further data and clarification required from the SRA namely: -

1) The nature and extent of claims that are paid where firms carry no insurance for negligence, together with a differential on the types of firms / number of partners.

2) In circumstances where a firm hold the basis £500,000 limit as proposed by the SRA, and that firm carries out conveyancing services (for which the proposed minimum limit is £1 million), what is the position and penalty in respect of the same. Would the Compensation Fund on the SRA's proposal cover any deficient or these claims? If it did not, this would penalise an innocent client.

3) An analysis of the impact on Fraud or Dishonest claims on the insurance of a firm. In circumstances where there has been no fraud or claims of dishonesty, how would this impact or assist firms?

4) With regard to top-up insurance, the potential costs of the same, what levels could be purchased and details of insurers spoken to in respect of this point. An overall costs analysis of the total costs of the insurance (inclusive of the top up insurance to the current level) versus the current level.

5) The cost of insurance for start-up firms is disproportionately high. How would the new proposal address this and ensure that there is a fairness. The SRA offers no comparator of the costs of insurance for start-up firms now to how these would differ with the SRA's current proposal.

Question 18: Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

Further information and clarification is required i.e. details of historical claims as well as details of projections about scale and nature of risks.

Question 19: Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

If no, please explain your answer and any suggestions you have for alternative approaches.

The current fails to take into consideration the potential increase in claims for firms which have inadequate insurance or no insurance at all. Further, there has been a significant increase in cyber crime and money laundering, where individuals are specifically targeting law firms. Therefore, further consideration may need to be provided on whether these should fall within the remit of the fund.

Question 20: What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

There is general Government guidance on issues such as financial investments. Ultimately, the onus is on the individual unless a legal professional has been instructed to advise on the merits of a specific scheme or transaction. It is also important for the legal profession to recognise that if there are any irregularities that these be reported using the proper channels. In circumstances where consumers go against this advice and are simply reckless in what they are doing, as a direct consequence of a failing on their part, it would be unjust to place such blame on a solicitor.

Question 21: Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors.

Yes

The Junior Lawyers Division is a strong advocate in ensuring that clear guidance is available. Such information should be simple to understand and digest by consumers, clients and those in the profession.

Question 22: Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

If yes, please explain what you think these impacts are.

We have dealt with EDI in detail above however we are unable to provide a substantive comment without detailed quantification of impacts, taking into consideration age, practice type, number of directors, size of a firm. No information appears to have been canvassed from EDI (Legal) Groups such as Society of Asian Lawyers, Black Solicitors Network etc.

Question 23: Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

The SRA's guidance in respect of a Law Firms requirements surrounding cyber-crime is, at best, ambiguous. The SRA could provide a checklist of some sort / bulleted details of minimum compliance requirements by a legal profession, which would address this issue. This will provide some reassurance to legal professions that they are meeting the minimum standard as set by a regulator. In circumstances which are outside of a law firm or Solicitor's control which respect to cyber-crime, the SRA should provide a voice to those law firms and or solicitors to ensure this is made known so that there is no adverse impact to their reputation or loss of confidence in them.

Nick Gova, director of Garrick Law Limited on behalf of the Junior Lawyers Division
June 2018

The Law Society

Response to the SRA consultation on *Protecting the users of legal services: balancing cost and access to legal services*

06 June 2018

The Law Society's response to the SRA consultation on *Protecting the users of legal services: balancing cost and access to legal services*

Introduction

1. The Law Society has evaluated the SRA's proposals against the regulatory objectives and continues to hold the view that the final proposals will undermine the objectives and damage the public interest in proper regulatory protection.

2. The proposals in the SRA's consultation paper risk opening up new areas of considerable consumer harm. In return they offer aspirational benefits that are unlikely to be delivered.

3. Professional Indemnity Insurance (PII) is a significant expense for solicitors. Therefore, if there were ways to reduce that cost, in ways that enhanced, rather than undermined, the regulatory objectives, we would be supportive. Where possible, we have flagged areas where changes could be made without disproportionate damage to the regulatory objectives. These include the rules around run-off cover and certain proposals regarding the Compensation Fund.

4. However, taken as a whole, it is highly unlikely that most of these proposed changes will enhance the regulatory objectives. In particular, we do not accept that these changes are likely to boost competition or improve access to justice. The principles of the public interest and rule of law demand professional standards and trust in the profession of solicitors. These in turn demand that protections should be in place to guard against negligent failures by regulated persons. Having clear and uniform protections provides people with reassurance.

5. Fundamentally, insurance protection is an important part of regulation as it is a post-purchase safeguard rather than pre-purchase, providing indemnity that clients can rely on when other regulatory safeguards have failed. Insurance should not be used, therefore, as a mechanism to promote any market or inhibit any aspect of practice.

6. Our analysis is that these proposals are likely to undermine the following regulatory objectives:

    - protecting and promoting the public interest;
    - protecting and promoting the interests of consumers; and
    - promoting and maintaining adherence to the professional principles.

7. We particularly wish to highlight concerns about the quality of the data and analysis that underpins the SRA's conclusions. We believe the evidence is unclear, insufficient, and incomplete.

Benefits of the current system

8. The current system of redress works well for the profession and the public. The existing level of protection took considerable time and negotiation to achieve. If dismantled it would be virtually impossible to reinstate it.

Clear and strong levels of protection

9. The current financial protection arrangements under the Minimum Terms and Conditions (MTCs) and the Compensation Fund provide substantial protection for the consumer. The current arrangements have proved robust and flexible enough to accommodate developments in markets and the law. It is widely understood and accepted by the courts that no one will be left destitute or without some level of redress if a solicitor is negligent or dishonest. This is currently a significant selling point to consumers of the solicitors' profession.[1] The effect of these proposals is that this (perhaps taken for granted) situation would be threatened.

10. As a direct result of these proposed changes, some consumers would be left unprotected. The SRA estimates that 442 claims that were dealt with between 2004 and 2014 would have been at risk if their reformed MTCs had been in place during that period.[2] It would be reasonable then to infer that, if the SRA's proposed reforms were implemented, then every year we could expect to see an average of at least 40 additional claims in excess of £500,000 at risk.[3] Without more data and analysis it is only possible to speculate as to who may be the victims of this change and the impact it would have.

11. Quite aside from the potentially devastating effects that these could have on individuals, there is – at a wider level – the additional danger of the impact of such events on the reputation of the profession. Public errors by one or two members of a profession which go uncompensated can have a powerful effect on public perception and trust.[4] This in turn could lead to a reduced number of consumers seeking legal advice.

Ease of doing business

12. The MTCs were established in 2000 when the profession went to the open market. They largely replicated the PII cover that was earlier available under the Solicitors Indemnity Fund (SIF). In broad terms, the cover indemnifies solicitors against civil liability incurred in private practice. The benefits of the MTCs and Compensation Fund are clarity and certainty. They do not differentiate between client or type of work and were designed to avoid coverage disputes. Coverage disputes are unsatisfactory not only in terms of cost but also the delay in delivering redress for claimants.

[1] https://www.legalfutures.co.uk/latest-news/law-society-advertising-campaign-highlights-regulated-insured-professionals

[2] https://www.sra.org.uk/documents/SRA/consultations/protecting-users-legal-services-consultation.pdf

[3] This is without taking into account other factors, such as house price inflation, which would mean the number is likely to be substantially higher.

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/214405/WP108.pdf

13. This leads to a simple assumption that, for most transactions, all participating firms will have adequate insurance. A move to more differentiated cover would increase burdens for clients in terms of identifying a firm with appropriate protection. In addition, firms will have to be reassured that solicitors representing *other* clients will also be adequately covered. All of the above automatically builds in new and unnecessary layers of complexity, with the added (uncosted) burden falling on consumers and firms.

14. The value of the current system has become more apparent in light of the recent decision in *Dreamvar*,[5] which has significant implications for solicitors dealing with property transactions, and any matters in which funds are held on client account in relation to another transaction. The Court of Appeal's ruling in this case has effectively made solicitors guarantors of the genuineness of such transactions. If the PII regime does not maintain high and consistent levels of cover, then it will increase the cost of conveyancing transactions, as it will become necessary to ask the other side for evidence of PII cover. This would be unfortunate, at a time when the government is seeking to make conveyancing cheaper and faster.

Proportionality

15. The consultation rightly asks the question as to whether the current MTCs are proportionate. The Law Society believes that the current MTCs are proportionate. Given that consumers currently have a low level of understanding of legal services regulation,[6] it is appropriate and proportionate for the regulator to set a high and consistent level of protection that all firms must meet.

16. The SRA's proposals would place a disproportionate burden and risk on consumers to investigate the level of their solicitor's PII protection in order to make informed choices. This would not be a realistic or proportionate approach. At one blow it would undermine confidence in the market for regulated legal services and destabilise the supplier base. The SRA's aim to increase innovation and disruption in legal practice should not be conflated or confused with the statutory requirements for it to assure professional standards and consumer protections.

Competition is delivering good value in the insurance market

17. While a high cost for firms, evidence suggests that the current system of insurance does represent good value for money. Extrapolating from the available data, it would not appear that insurers are making excessive profits. Or to put it another way, the premiums are not disproportionate to the cost of claims.

18. In recent years the insurance market has been soft, which means that conditions have characteristically favoured the purchaser. This has led to price competition between insurance providers, which has actually brought down the average cost of insurance.

19. This reduction in costs is illustrated by the Law Society's annual PII survey, which suggests that mean premiums fell by 7.7 per cent between 2014-15 and 2015-16, and a further 1.3 per cent between 2015-16 and 2016-17.[7]

[5] https://www.todaysconveyancer.co.uk/wp-content/uploads/2018/05/Dreamvar-Judgement2.pdf
[6] The 2016 CMA market study, and the Law Society's 2017 consumer research, both support this conclusion.
[7] http://www.lawsociety.org.uk/Support-services/Research-trends/docs/PII-survey-2016-17-response/

Table 1. Percentage change in mean PII premium

From 2015-16 to 2016-17	Mean premium 2015-16 (£)	Mean premium 2016-17 (£)	Percentage change (%)
All firms	*27,209*	*26,853*	*-1.3*
Sole practitioners	8,773	9,379	6.9
2-4 partners	29,049	32,470	11.8
5-10 partners	71,448	66,724	-6.6
11-25 partners	154,356	127,965	-17.1
From 2014-15 to 2015-16	**Mean premium 2014-15 (£)**	**Mean premium 2015-16 (£)**	**Percentage change (%)**
All firms	*29,478*	*27,209*	*-7.7*
Sole practitioners	9,448	8,773	-7.1
2-4 partners	29,848	29,049	-2.7
5-10 partners	85,095	71,448	-16.0
11-25 partners	161,070	154,356	-4.2

20. This reduction in costs is compelling, because it shows that cost savings of a similar order to those anticipated by the SRA can be achieved without fundamentally undermining vital consumer protections. It also seems to underline that the market is working.[8]

21. The market already includes the cost of risk in its existing premiums, i.e. firms with low exposure to risk pay lower premiums. Legal firms also tend to offer a mix of services, some of which carry greater risk than others and we believe the MTCs reflect this well.

Addresses inequality of bargaining power

22. The current MTCs ensure that insurers must cover certain eventualities and offer the same cover irrespective of size, meaning that firms, and more importantly clients, do not suffer harm. The proposed change is likely to disadvantage sole practitioners and small firms who will be left in a weak position when negotiating insurance terms on individual basis rather than having a uniform base level of cover.

Summary

23. Considering the risks of this radical change we believe the burden is on the SRA to clearly show that the changes will result in:

    - substantial savings to premiums;
    - that those savings to premiums will be passed on to consumers; and
    - that any benefits will be clearly weighed against the corresponding loss of consumer protection and trust in the profession.

[8] It should be noted, however, that cost savings were not distributed evenly across firms of different sizes. So, while all other firms saw a reduction in the price of their premiums between 2014-15 and 2016-17, 2-4 partner firms actually experienced an increase of 8.8 per cent.

24. We do not believe the SRA's data, analysis or assumptions support its conclusions. Our view is further explained in the remainder of the document, and in the summary of the legal advice we have received (see annex A).

Problems with the proposed reforms

25. As the consultation document and the Law Society's annual PII survey makes clear, PII premiums are a substantial cost for any firm regulated by the SRA. For this reason, we appreciate why the SRA is exploring ways to try and make savings to the premiums. However, while the promise of a 9-17 per cent reduction to premiums might be attractive to some, we do not believe that the planned reforms have any realistic prospect of delivering that level of savings.

Unlikely to have a positive impact on access to justice

26. One of the main arguments the SRA has advanced for making these changes is that it expects them to increase 'consumer choice and access to justice for people needing legal services'.[9]

27. Promoting and protecting access to justice is a constant theme for the Law Society, and a core value uniting our diverse membership. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers to account. Access to justice is the foundation of a fair and democratic society.

28. Professor Richard Moorhead, Chair of Law and Professional Ethics at UCL makes the case for an expansive understanding of 'access to justice', saying that it means being:[10]

> 'treated fairly according to the law and if you are not treated fairly being able to get appropriate redress. That doesn't just mean access to lawyers and courts. It means access to ombudsmen, advice agencies and the police law. It means public authorities behaving properly. It means everyone having some basic understanding of their rights. It means making law less complex and more intelligible.'

29. Access to justice includes the availability of consumer protections, of which PII and the Compensation Fund are two important examples. Therefore, reducing these protections has a presumptively negative impact on people's ability to get redress, and their ability to access justice. This is a point that the SRA needs to bear in mind more generally, because the danger of stripping away back-end protections (such as PII), at the same time as they are removing traditional front-end guarantees of quality (such as the qualified to supervise rule or the firm authorisation for sole practitioners), is that consumers are left dangerously exposed.

30. The difficulties faced by many people in accessing legal services has become a prominent issue in recent years, especially following the global financial crisis, after which the government implemented what the civil and human rights campaigning organisation Liberty described as 'brutal cuts to our legal aid system and further misconceived proposals [that] are jeopardising our proud legacy as a nation which

[9] https://www.sra.org.uk/documents/SRA/consultations/protecting-users-legal-services-consultation.pdf
[10] https://www.theguardian.com/law/2011/oct/06/access-to-justice-legal-aid-cuts

believes in justice for all'. It sketched out the problems in three main areas – judicial review, criminal legal aid, and most crucially to this current matter, civil legal aid:[11]

> 'Cuts have already put publicly-funded advice and representation beyond the reach of vast swathes of the British population. Funding has been scrapped for entire areas, with the majority of family, immigration, employment, debt, welfare benefits and education cases now falling outside the system's scope. Inevitably, society's most vulnerable are hardest hit[.]'

31. The Law Society continues to resist legal aid cuts and to enthusiastically support attempts to remove barriers that prevent individuals, in particular those who have low or modest incomes, or who are vulnerable or marginalised, from seeking legal remedies. However, we do not believe that the PII changes proposed by the SRA have a realistic prospect of improving access to justice.

32. By the SRA's own argument, for the reforms to increase access to justice there would need to be:

    - substantial savings to a firm's overall PII premiums, which are then
    - passed on to consumers, with the result that
    - consumers who could not afford to access legal advice at the previous price choose to do so at the new price.

33. In the section below, we explain why this will not be the outcome of the proposed reforms.

The cost-savings for firms are significantly over-estimated

34. The consultation gives the following rationale for the proposed reforms:[12]

> 'These changes should help to lower some firms' insurance costs. We expect this to encourage competition and ultimately lead to lower prices for some users of legal services, assuming the market is working well and firms pass these savings on to their customers.'

35. This quote highlights, correctly, that it is a firm's overall compliance costs which must reduce in order for these benefits to be delivered. It is not enough simply for the cost of MTC cover to decrease. The overall costs include the cost of top-up cover, the cost of additional excesses, any costs that are passed on to the Compensation Fund and any administrative or compliance costs that result from the changes.[13] There may also be the creation of a new liability, which will require firms to purchase Directors and Officers insurance, in order to protect staff responsible for determining an appropriate and adequate level of PII cover against being sued in a personal capacity for breach of fiduciary duty by clients whose claims are not fully covered by the firm's PII. The SRA has also omitted any forecast of the increased costs of enforcement that would stem from their efforts to ensure that all firms have obtained, and maintain, a level of cover which is appropriate and adequate for the risk of their work. These are significant omissions from the 9-17 per cent savings estimate.

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[11] https://www.libertyhumanrights.org.uk/campaigning/other-campaigns/access-justice

[12] https://www.sra.org.uk/documents/SRA/consultations/protecting-users-legal-services-consultation.pdf

[13] No firm can forecast what claims will be made in any year from business completed in previous years. The necessary layer of top-up insurance may cost more than any saving in the primary layer cover and it may not be offered or be available on similar terms as the MTC.

36. The importance of considering all relevant costs was made by the Legal Services Board (LSB) in a warning notice issued to the SRA in 2014, which said, in reference to previous proposals to reduce PII cover:[14]

> 'The consultation and the application both present potential cost savings as a key driver for the change but there is only limited evidence that this will be achieved. In particular, the impact on the price of top-up cover does not seem to have been explored in any detail and the time that may be required for the market to adjust to the new regulatory requirements (in a way which may result in these potential cost savings) has also not been explored sufficiently.'

37. In this consultation the SRA briefly touches on the issue of top-up cover, but the cost that many firms will incur in purchasing top-up cover has not been factored into the 9-17 per cent savings estimate. The increased cost of top-up cover was a significant theme in the discussion at a recent roundtable that the Law Society hosted for insurance brokers and underwriters.

38. Table 2 shows the mean costs of basic MTC insurance and top-up cover since the 2014-15 PII renewal period, it is based on findings from the Law Society's annual PII survey.[15] The table reiterates the declining costs of premiums since 2014 (previously addressed in table 1) but these are to be contrasted with the rising mean cost of top-up cover over the same period.

Table 2. Costs of basic MTC insurance and top-up cover since 2014

Year	Mean cost of premiums (£)	Mean cost of top-up cover (£)	Percentage change in cost of premiums (%)	Percentage change in cost of top-up cover (%)
2016-17	26,853	7,750	-1.3	+2.3
2015-16	27,209	7,575	-7.7	+9.9
2014-15	29,478	6,895		

39. While the cost of premiums fell 7.7 per cent from 2014-15 to 2015-16, the cost of top-up cover over the same period increased 9.9 per cent. Similarly, although there was a 1.3 per cent fall in the cost of mean premiums from 2015-16 to 2016-17, the price of top-up cover went up by 2.3 per cent.

40. There are too few data points available to make any reliable predictions, but accepting that caution, the almost inversely proportional relationship that seems to exist between basic MTC premiums and top-up cover is striking; it looks as if when the price of premiums goes down, the price of top-up cover increases by just slightly more. If this really were a pattern, then we might expect that a 17 per cent reduction in the cost of premiums would result in an increase in the cost of top-up cover of more than 20 per cent.

41. These findings should at least give pause to anyone who believes that transferring more of the insurance burden from the MTCs to top-up could result in a lower over-all cost for solicitors' insurance. It certainly demands more research.

[14] http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2014/20140819_Paul_Philip_SRA_Warning_Notice_CK.PDF

[15] http://www.lawsociety.org.uk/support-services/risk-compliance/pii/surveys/

42. At present, only 22 per cent of firms purchase top-up cover.[16] But, top-up cover will assume a new significance if the reforms go ahead, as the SRA is proposing sizeable cuts to solicitors' indemnity limits, from the current levels of £2 million or £3 million, to £1 million for solicitors that offer conveyancing services, and just £500,000 for everyone else.

43. There is a risk that, in fragmenting and diluting the single primary layer, the stability of the market will be disrupted. The SRA has not produced a report from an insurance expert on this matter. Nor is there analysis by an insurance expert of possible impacts where the primary layer is reduced, and the profession's reliance on top-up cover is therefore increased.

44. We have already highlighted the very real dangers such reductions in cover could pose to solicitors:[17]

> 'The [SRA's] data pack shows that if the minimum level of protection was reduced to £580,000, 98 per cent of claims would be met. However, the effect on a solicitors' firm and its partners in the remaining 2 per cent of cases where the claim was not fully met by insurance, could be catastrophic. A claim of £2m, in the absence of top-up insurance, could lead to a shortfall of almost £1.5m. In some situations, high value uninsured risks could easily lead to firm insolvency and a reduction in competition and choice.'

45. The disorderly closure of a firm forced into bankruptcy by uninsured claims has implications well beyond the stresses inflicted on the firm's principals and employees. The knock-on effects for clients whose house purchases fall through, or businesses whose transactions are affected could be traumatic at a personal level, and could prove disruptive in the broader economy.

46. When the SRA's own findings suggest that more than one in fifty successful claims is settled for an amount in excess of £580,000, many prudent solicitors will choose to take on additional cover. Attendees at our PII roundtable agreed that most of the high value claims are genuine one-offs, which even exceptionally well-managed firms would not see coming. It is also easy to imagine that – given the 'claims made' basis of solicitors' PII – clients who had work carried out under the existing arrangements may well insist that the current levels of cover are maintained. Such circumstances may compel solicitors to purchase top-up cover that would bring them up to the current level of cover, but at a higher price than under the existing MTCs.

47. With more firms needing to purchase additional insurance, there will be additional compliance costs as a result of these changes. Every year, firms will need to spend time working out which risks are not covered by the revised MTCs, either as a result of the lower indemnity limits, or as a result of the other newly proposed exclusions (for example, for clients with turnover more than £2 million). Firms could do this in-house or seek specialist support to help them assess their insurance needs, but either way, the compliance cost is likely to increase. This is another significant gap in the analysis, and another reason why 9-17 per cent savings is an over-estimate.

48. Even if a firm doesn't consider buying top-up cover, the 9-17 per cent figures seem ambitious. If the reforms are calibrated to exclude only a little more than two per cent of claims, it is difficult to see how any appreciable savings are to be made. Simon Lovat, director of the insurance broker Inperio, said that the idea that the reforms

[16] http://www.lawsociety.org.uk/Support-services/Research-trends/docs/PII-survey-2016-17-response/
[17] https://www.lawsociety.org.uk/policy-campaigns/documents/pii-market-trends-response/

would result in lower premiums was 'whimsical' and 'nonsensical'.[18] This is an opinion that has been echoed in our discussions with insurance brokers and underwriters. John Wooldridge, from Howden, presented the industry's consensus view that premiums will change little, if at all:[19]

> 'Any actuary looking at the claims statistics will come back and say, "all your losses are going to be in the first £500,000". When you allocate the premiums involved, it is all going to sit down the bottom.'

49. In the consultation document the SRA states:[20]

> 'We also observed when we had previously increased the level of cover from £1m to £2m/£3m that premiums increased by percent' [sic].

50. We are sceptical about this assertion, which contradicts conversations we have had with PII industry figures who were participating in the market in 2005. We would, therefore, be interested to know the actual percentage by which the SRA believes premiums increased (which is absent from the consultation document), and how it arrived at that number.

51. In a submission to the LSB, dated 24 July 2014, Jenny Screech from Zurich Professional and Financial Lines' London Underwriting Centre took issue with the similar reforms that the SRA was proposing at that time. She wrote:[21]

> 'It is entirely unrealistic to expect there to be any significant premium reduction if a firm were to lower its limit of indemnity. By way of example, when the compulsory limit of cover doubled from £1M to £2M (and £1.5M to £3M for incorporated practices) on 1 October 2005, total market premium for the 2005-2006 indemnity year increased by just 0.45%.'[22]

52. If the SRA is relying on an increase on anything as slight as this to bolster the case for reform, it would be very disappointing. In her letter Jenny Screech paints it as a distraction because in the context of the total market 0.45 per cent is highly minimal.

53. It is understandable that there is some confusion surrounding the actual level of total premiums collected from year-to-year. Under the Assigned Risk Pool (ARP), there were always two returns for each year (and sometimes interim amendments when insurers recalculated), so that is why the figures will sometimes differ depending upon the version that was recorded historically. But, having had the opportunity to reconsider her earlier submission to the LSB, and with the benefit of having seen the final figures for each year 2000-01 to 2012-13 (provided by Capita which manages the ARP), Jenny Screech – now a Legal Professions Executive at Howden Group – has been able to offer this further clarification:

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[18] https://www.insurancetimes.co.uk/broker-backlash-at-fundamentally-flawed-solicitors-pi-reform-proposals/1426756.article

[19] https://www.lawgazette.co.uk/roundtables/roundtable-breaking-cover/5066171.article

[20] https://www.sra.org.uk/documents/SRA/consultations/protecting-users-legal-services-consultation.pdf

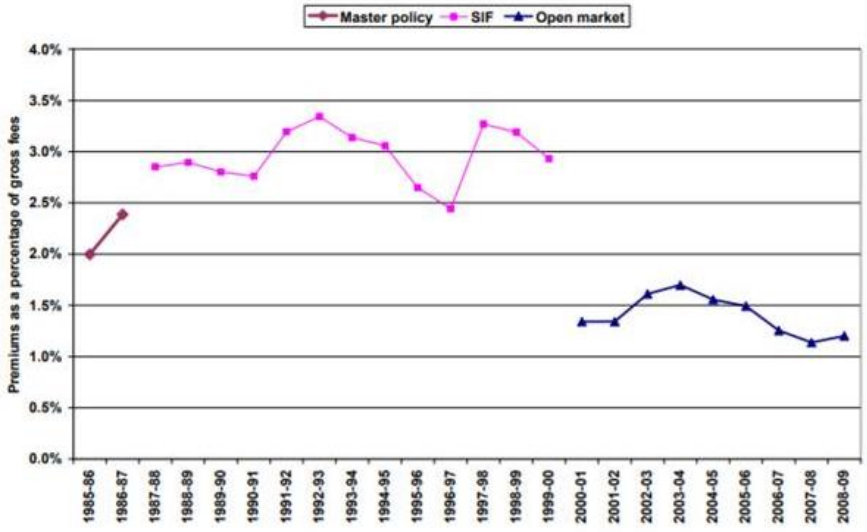
[21] http://www.legalservicesboard.org.uk/projects/statutory_decision_making/pdf/2014/20140715_SRA/Zurich.pdf

[22] It should be noted that a slight increase in total market premium would not necessarily entail increases in the costs of premiums for firms, it might imply that more firms entered the market, or that firms have increased turnover (so they are paying less proportionally).

> ‘The 5 per cent increase in premiums following the raising of the minimum indemnity limit from £1 million to £2 or £3 million, referred to in Appendix 2 of the SRA’s Consultation Document is incorrect. On the final figures it is 0.87 per cent – *de minimis*. However, the more compelling point is that the Charles River report confirms that based on a percentage of gross fees, premiums went down in the 2005/6 year.’

54. This is correct; the idea that a momentary uptick in premiums around 2005-06 should be attributed any lasting significance is undermined by the SRA’s own published research. Figure 1 – a graph taken directly from the report it commissioned from Charles River Associates in 2010 – reveals (a) that the SRA did not collect data on the cost of premiums in the relevant period, and (b) linear interpolation suggests that prices actually fell:[23]

Figure 1. Premiums as a percentage of gross fees for SIF and open market



Source: CRA analysis based on data from the SRA and SIF Annual reports from various years. Note that the SRA did not collect information on the total gross fees for the indemnity years 2003/04-2007/08 hence these have been estimated through linear interpolation.[50]

55. To conclude, the available evidence suggests that any significant decrease in premiums is highly unlikely, even for firms who reduce their cover to the new minimum levels. For firms who choose to maintain existing levels of cover, costs are likely to increase. It is disappointing that, as part of its research, the SRA has not approached brokers seeking sample quotes for hypothetical, representative firms, to test its assumptions.

The savings for consumers will be negligible

56. The section above outlines why the 9-17 per cent figures are likely to be overstated, and because of the additional requirements to purchase top-up, firms may actually end up paying more for their insurance.

57. Despite this, the following section examines a hypothetical scenario where the SRA’s predicted 9-17 per cent savings do materialise, and considers the impact on

[23] https://www.sra.org.uk/documents/SRA/cra-report-on-sra-financial-protection-arrangements.pdf

consumers. These savings would translate to less than a 1 per cent reduction in the overall operating costs of a typical firm (see infobox 1).

Infobox 1. Savings for consumers

In the absence of any solid calculations from the SRA, we have constructed a simple skeleton logic chain to arrive at an estimate of the extent of savings that could eventuate if its hopes are realised:

1) We know from the Law Society's Annual PII Survey that solicitors spend a mean average of 4.8 per cent of turnover on their PII.[24]

2) Solicitors fees are generally determined by a competitive hourly rate or fixed fees, rather than a strict calculation of outgoings or turnover, but in the absence of any detailed impact assessment from the SRA, suppose that 4.8 per cent of a client's bill might be determined by the cost of PII.

3) Taking the SRA's estimated savings of 9 to 17 per cent, and assuming that firms decide to pass on to clients these savings in full, we might expect to see reductions in fees of 0.4 to 0.8 per cent.

58. There is a significant group of people who cannot access legal services due to price, but the idea that cost-savings at that level would result in an increased number of people being able to access legal services is fanciful.

59. The Law Society and Legal Service Board's *Legal Needs Survey*[25] showed that, of those who did not seek professional legal advice to help them resolve their problem, only 18 per cent failed to do so due to cost. More commonly stated reasons included not knowing professional legal advisers could help (23 per cent), the problem not being sufficiently important (20 per cent), and not needing help (20 per cent).

60. For those prospective clients for whom cost is a barrier to accessing legal services, how many of them will be able to afford a solicitor if the bill reduces by 0.8 per cent? Of all the people who felt unable to purchase a will for £195, how many will feel empowered to do so if the price falls to £193.41? Almost none, because very few will be so price-sensitive.

61. Based upon the Legal Services Board's research into the price of legal services,[26] and the reasoning explained in infobox 1, table 3 sets out the meagre reductions in costs that might accrue to consumers if the SRA's aspirational 17 per cent reduction in PII costs were to be realised:

Table 3. Estimated client savings if reforms are implemented successfully

	Mean price of legal services in 2017 (£)	Mean price of legal services expected post-reform (£)	Projected savings for clients (£)
Conveyancing			
A sale of a freehold property	650.00	644.70	5.30
A sale of a leasehold property	738.00	731.98	6.02
A purchase of a freehold property	705.00	699.25	5.75
A purchase of a leasehold property	803.00	796.45	6.55

[24] http://www.lawsociety.org.uk/Support-services/Research-trends/docs/PII-survey-2016-17-response/
[25] http://www.lawsociety.org.uk/news/press-releases/largest-ever-legal-needs-survey-in-england-and-wales/
[26] https://research.legalservicesboard.org.uk/news/latest-research-17/

A sale and purchase of freehold properties	1,278.00	1,267.57	10.43
Family			
An uncontested divorce requiring a full legal service	721.00	715.12	5.88
An uncontested divorce – responding to a petition for divorce	459.00	455.25	3.75
An uncontested divorce requiring arrangements for dependent children	1,045.00	1,036.47	8.53
A more complex divorce requiring mediation and advisory services	1,803.00	1,788.29	14.71
A more complex divorce involving disagreement over assets	2,911.00	2,887.25	23.75
Wills, trusts and probate			
An individual standard will	195.00	193.41	1.59
A complex will	237.00	235.07	1.93
A lasting power of attorney	363.00	360.04	2.96
Assistance for obtaining grant of probate	891.00	883.73	7.27
Estate administration	2,028.00	2,011.45	16.55

62. Table 3 reveals the inadequacy of amending PII requirements if the objective is lowering the price of legal services. Although PII is a substantial cost to solicitors, it is not large enough to have a meaningful influence on consumer pricing, especially if the savings to solicitors are uncertain, and there is no effective mechanism to ensure that (if they do eventuate) they will be passed on to clients.

63. The SRA's own *Research on Consumers' Attitudes towards the Purchase of Legal Services* revealed that:[27]

> 'When choosing a provider of legal services, consumers are generally making an assumption that the provider will have appropriate expertise and qualifications, ensuring that they are able to offer a professional service. Whilst protection is not actively considered, basic consumer protection appears to be assumed at some level. Price appears to be less important for many, but clearly does play a key role for some.'

64. It would be fair to imagine that the minority for whom price is a key determinant are more likely to include people facing multiple social and economic disadvantages. If this is the case, our behavioural research only serves to reinforce the need for high and consistent levels of consumer protection, because these are also the people who are least likely to consider PII before accessing legal services:[28]

> 'Less than one fifth (17%) of participants in the behavioural forums had previously considered the issue of legal service providers having sufficient insurance to compensate customers if something goes wrong. While there was not a major difference between those with more complex personal issues and those with simpler experience, there was a notable difference across social grades. More than a quarter of people in the higher social grades A and B had considered PII before, compared to only one in ten respondents from social grades C, D and E.'

[27] https://www.sra.org.uk/documents/consumer-reports/consumer-research-2010-purchase-attitudes-final.pdf

[28] http://www.lawsociety.org.uk/policy-campaigns/consultation-responses/documents/consumer-behaviour-research/

65. In any case, such clients would be among the least capable of assessing a firm's insurance provisions; a point acknowledged by the SRA in its consultation on *Better Information, More Choice*, which noted that: [29]

> 'The most vulnerable consumers are […] unlikely to have the capacity to engage with more information and ways to choose a legal services provider.'

66. Removing the basic protections that most consumers assume to be in place, but do not actively consider, is no way to address concerns about access to justice.

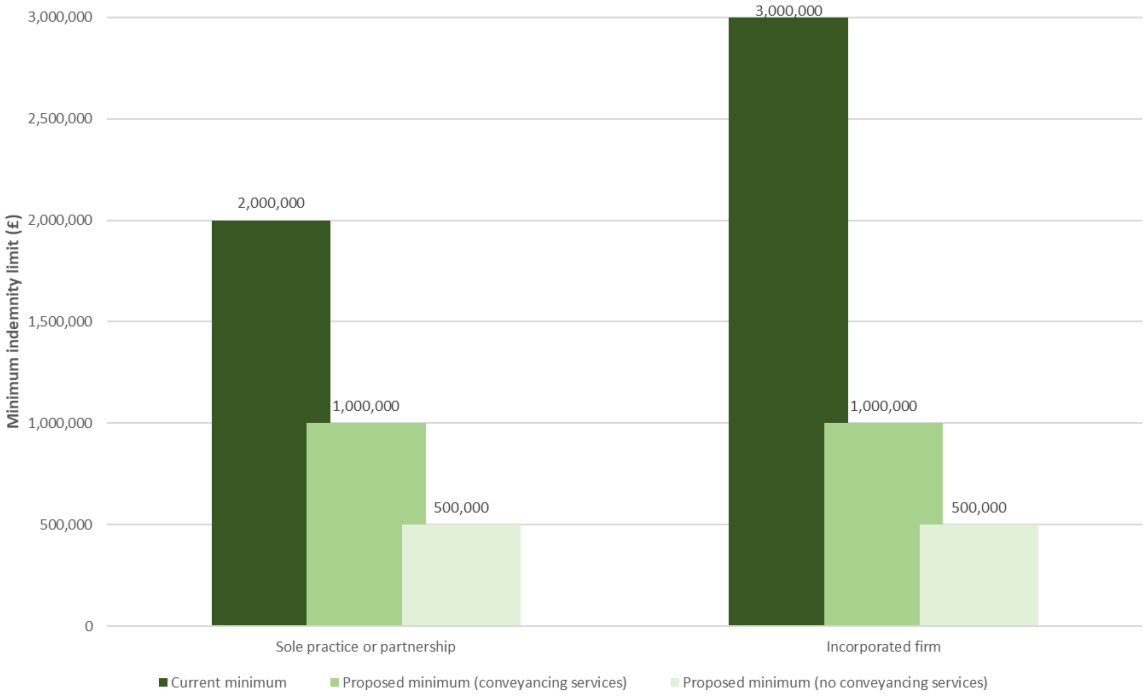
Loss of consumer protections

67. These proposed reforms must be viewed as part of the SRA's wider deregulatory programme, as explained in the consultation document:[30]

> 'We are currently reviewing and modernising our whole regulatory approach to make it simpler and to target what matters. We are making certain there is a sharp focus on high standards, while getting rid of unnecessary bureaucracy that does not protect the public but pushes up costs or restricts access to solicitors. In keeping with this reform, we think it is the right time to review our approach to financial redress to make sure it offers appropriate protection.'

68. The Law Society would contest the notion that the current MTCs represent 'unnecessary bureaucracy that does not protect the public'. To the contrary, we would insist that they are an essential protection for solicitors and clients and a guarantee of professional quality.

Figure 2. Reductions in minimum indemnity limit by type of firm and type of work



[29] https://www.sra.org.uk/sra/consultations/lttf-better-information-consultation

[30] https://www.sra.org.uk/documents/SRA/consultations/protecting-users-legal-services-consultation.pdf

69. Figure 2 illustrates the scale of the reductions in consumer protections that would result if the SRA's proposed changes are implemented. The dark green bars represent the current level of protection within each type of firm, and the lighter green bars represent the proposed new minimums, depending on whether or not the firm in question offers conveyancing.

70. The graph shows the scale of the cuts, with the least dramatic being a halving of cover for traditional firms that offer conveyancing services, and the most dramatic being an 83 per cent reduction in the protections for incorporated firms that do not offer conveyancing.

71. The graph does not capture the full extent of reductions in consumer protection. The proposals to remove from the scope of cover all manner of people and organisations that benefit from the comprehensive protection of the current MTCs (such as businesses with turnovers in excess of £2 million), mean that the true reductions are even more substantial.

72. This creates a scenario in which solicitors' clients will face significant exposure, unless the relevant solicitors purchase not only the new MTC cover, but also some form of top-up cover.

73. The SRA's dataset suggests that 98 per cent of successful claims are settled for less than £580,000. The proposed single claim limit of £500,000 still leaves an £80,000 gap.

74. Clients, as a whole, do not currently have – and should not be expected to have – a sophisticated understanding of solicitors' regulation. Therefore – in the absence of a large-scale, and probably lengthy, public education campaign – it is not reasonable or proportionate for the SRA to reduce the consistent levels of protection from which consumers currently benefit.

75. Examples of the sorts of unfortunate circumstances that might come about as a consequence of reducing indemnity limits are set out in infobox 2. These cases show that the risks to clients from these proposals are real, not theoretical.

Infobox 2. Clients who would fall outside of cover under the new MTCs

In order to gauge the potential impact of proposed reforms to compulsory limits of indemnity, members of the Law Society's PII Committee asked colleagues to provide details of recent or ongoing cases where – had the recommendations been implemented – consumer claimants could have suffered (or might stand to suffer) significant losses.

The universal response was that detailed research would demonstrate a succession of similar examples throughout the period during which the current indemnity limit has been in place. It was also noted that, notwithstanding relatively low inflation over the last decade, the real value of the limit of indemnity must have declined by over 30 per cent during the period of its existence.

Many of the cases involve issues of confidentiality and therefore can only be provided on an anonymised basis. In many of these cases there could be no reasonable expectation that the relevant solicitors could make good the shortfall from their own assets.

Case 1: *Various Claimants v Giambrone*. [2018] BNLR 2. The Court of Appeal judgment upheld liability on the part of the solicitors. Issues of aggregation remain outstanding. There are 185 individual claimants who provided deposits between £30,000 and £105,000 to purchase properties in Italy. If their claims were to average £50,000, the total loss would exceed £9 million. Under the present rules, claimants might expect to recover 33 per cent of their losses, following the proposed revisions that recovery would amount to

approximately 11 per cent. This consideration applies to many aggregation cases. The AIG decision in the Supreme Court, in which the SRA intervened, is another clear example of cases in which consumer claimants would be significantly prejudiced by the proposals.

Case 2: Conveyancing negligence. Settled at £1.5 million. The claimant would be deprived of £500,000 under the proposals.

Case 3: Negligent failure to obtain a valid guarantee settled at £650,000. The claimant would be deprived of £150,000 under the proposals.

Case 4: Negligent failure concerning personal investment settled at £750,000. The claimant would be deprived of £250,000 under the proposals.

Case 5: Personal injury under-settlement claim over £1 million. The claimant would be deprived of upwards of £500,000 under the proposals. Case continues.

Case 6: Dishonest conveyancing claim of £1.2 million as well as interest. The claimant would be deprived of upwards of £200,000 under the proposals. Case continues.

Case 7: Negligent conveyancing claim of £2.5 million. The claimant would be deprived of £1.5 million under the proposals. Case continues.

Case 8: Personal injury under-settlement settled for £2.4 million. £1.1 million recovered from under-insured counsel by solicitor's insurers. The claimant would have been deprived of £800,000 under the proposals. Case continues. Under settlement of personal injury claims appears to be a growing area, not least in respect of high value claims where even the present limit of indemnity can be inadequate.

Case 9: Probate fraud. Numerous relatively low value consumer claims potentially totalling at least £10 million. Insurers have reinstated client account to the extent of the limit of indemnity. The solicitor is also the subject of a Proceeds of Crime Act confiscation order of £2.5 million. The claimants are at risk of a shortfall of in excess of 50 per cent of their claims. They may have claims against the Compensation Fund. Under the proposals the recovery shortfall would exceed 66 per cent.

Case 10: A road traffic accident claim was settled for £70,000. It subsequently transpired that the claimant's head injuries were far more serious than headaches limited to stress as the solicitor first thought and he faced a claim for in excess of £3 million. The claimant could be deprived of upwards of £2,500,000 under the proposals.

Case 11: A solicitor represented a financial adviser in a fraud matter. The financial adviser was convicted and lost his business and his authorisation from the then-FSA. On appeal, the Court of Appeal said that his case had been badly prepared, including lacking forensic expert evidence. His claim was settled for in excess of £3 million. The claimant could be deprived of upwards of £2,500,000 under the proposals.

Case 12: A solicitor settled a personal injury claim after taking advice from counsel. Counsel's cover was limited to £500,000 and the claims for care and other heads of losses that had been admitted ran into an excess of £2 million. The claimant could be deprived of upwards of £1,500,000 under the proposals.

It should be noted that in the cases concerning multiple claimants with aggregating relatively small claims, insurers will remain exposed to defence costs, which can exceed the claims, regardless of the reduction in the limit of indemnity. This exposure will continue to demand a significant element of premium income.

The risk of creating market instability

76. The proposed changes would affect what is at present a single market for the primary layer which costs a premium of around £230-250 million each year. This attracts a small number of specialist insurers who write the bulk of the business in any year.

77. Opening up a new market with a lower limit might attract new insurers without sufficient expertise to meet the needs of the profession, which brings a risk of volatility and poor servicing of claims. This could result in market instability that would be detrimental to the profession and consumers alike.

Competition impacts

78. One of the stated objectives of these reforms is to help remove barriers for firms who wish to enter the market. However, no evidence has been presented to demonstrate that PII does currently represent a barrier to entry, nor has evidence been presented to show that these proposals would result in additional firms entering the market.

79. The Competition and Markets Authority (CMA)'s final report on legal services tends to contradict the SRA's assumption the requirements for PII are discouraging new entrants to the market:[31]

> 'While PII costs may be an issue for some firms (especially for some sole practitioners and smaller firms), it seems unlikely that these requirements represent significant barriers to entry[.]'

80. The CMA's view is confirmed by our discussions with figures from the insurance industry. For instance, one insurance broker told us that they have written around 60 new start-ups, at an average premium of around £3,000 per annum. Our PII survey suggests that sole practitioners have an annual turnover in excess of £150,000, so this would equate to a premium of 2 per cent, which does not seem to us to create a serious impediment. In any event, we are sceptical that these changes would reduce the overall costs of insurance.

81. Nevertheless, it is entirely possible that the reforms could lead to unintended reductions in competition between legal service providers, because firms will increasingly be forced to specialise, or to go out of business entirely.

82. Another way in which the proposals could threaten informed consumer choice is by levelling-down the market for legal services. More unregulated providers are entering the market, and this is generally welcomed by the Government on the grounds that it increases choice to consumers. But by reducing PII cover, the SRA could reduce consumer choice, because such a move could deprive clients of the full spectrum of legal service providers, from the reassurance of highly-regulated, well-insured solicitors at one end to the uncertain reliability and questionable protections of the unregulated sector at the other.

83. By reducing PII cover, the SRA would be reducing the scope of the available market; bringing solicitors closer to the unregulated and so reducing the width and scope of

[31] https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf

choice of consumers for a highly regulated format. (We note that solicitors can choose to be insured to a higher level, but that is a different matter from being obliged to).

84. The Law Society believes that competition should not be at the cost of quality, and has consistently argued that other providers of legal services should operate to the same high standards as solicitors. However, if the SRA's concern here is 'promoting competition in the provision of legal services', then they cannot overlook the possibility that informed consumers may want to choose between legal service providers that compete not just on price, but on a range of factors, including their level of regulation. Although under the proposed new system solicitors will have the choice of carrying a higher level of insurance cover, this is different from being formally obliged to do so. The SRA is removing the option for consumers who would like to access a wide range of legal services that are also well-regulated and highly-insured.

The international context

85. There is a recognised trend internationally to ensure that the lawyers have more and better PII.

86. The current scheme of solicitors' PII in England and Wales has an enviable reputation internationally; it is even held up as an aspirational model, (although it is not the only one – for instance, many bars prefer the system of having a single insurance scheme for the whole profession, as we used to have).

87. For those (regrettably many) jurisdictions without mandatory cover, there is a tendency towards making it mandatory if possible. And for those with low or sporadic cover, there is also a tendency towards making it stronger. As far as we are aware there is no country where there is a tendency in the other direction.

88. It will give a very bad signal to the world and undermine trust in the profession here if we are the only jurisdiction going in the opposite direction and reducing cover.

Evidence base has limitations

89. The evidence and data published by the SRA does not support the proposed reforms. In addition, there are limitations to the data which we will set out here.

90. When the SRA attempted to put through similar reforms in 2014, the LSB cast doubt on the quality of its underlying research, saying:[32]

> 'Whilst we note that the data is the best available, without a specific survey and/or modelling exercise, it may not be sufficiently recent to be a reliable basis for the development of forward looking policy.'

91. An *Initial Impact Assessment* (annex 2, of the SRA's consultation document) appears to set out the extent of the SRA's research into the likely effects of lowering indemnity limits. The relevant section is brief enough to be replicated here in full:[33]

[32] http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2014/20140819_Paul_Philip_SRA_Warning_Notice_CK.PDF

[33] https://www.sra.org.uk/documents/SRA/consultations/pii-annex-2.pdf

> ‘Lower indemnity limits
> *‘41*. We can expect this to result in a discount in premiums. This is because insurers providing only this level of cover would have reduced costs to pay or reinsure against the risk of unlikely, but particularly high, value claims. This includes a reduction in their risk for claims that could be treated as arising from ‘similar acts or omissions in a series of related matter or transactions’ – the so-called aggregation clause in current PII policies. This includes risks of claims from incidents that are not associated with a single area of work, for example exposure to internal and external fraud risks, that may result in loss of money from a firms’ client account.
> ‘There are a range of views on what the size of any discount might be. When we previously proposed reducing the limit to £500,000 we presented evidence that the impact on premiums might be in the range five percent to 15 percent. This was based on a range of evidence from stakeholder feedback during the earlier consultation on PII reforms in 2014. This included external advice on the discounts that were being offered to some firms at that time. We also observed when we had previously increased the level of cover from £1m to £2m /£3m that premiums increased by five percent.
> ‘Some insurers think the impact could be more modest than this saying they already factor into premiums the likelihood that a firm will face a very high claim and they already receive lower premiums. We agree that most of the cost of cover is allocated to the first £500,000. However, our view remains that there is a premium value for coverage above this level and therefore this proposal would reduce underwriting risk for the compulsory layer of insurance. the insurance industry does not take on additional risk at no cost, or to put it another way, does not offer free insurance.
> *‘42*. Reflecting caution from insurers and that we are now proposing a higher limit for conveyancing cover we estimate the impact of our proposed lower limit would be in the range of 5 to 10 percent reduction in premiums.’

92. It is notable that the current consultation document and accompanying annexes include neither a specific survey nor a modelling exercise, and the SRA is re-using the figures from their previous consultation in 2014, despite the LSB questioning whether the SRA’s data was sufficiently recent to provide ‘a reliable basis for the development of forward looking policy’ at that time.

93. The current proposal does include some analysis, but the Law Society has previously challenged its reliability.[34] The dataset on which the research is based, is four years old (covering the decade 2004-2014), and only encompasses around three-quarters of the market. Crucially, it does not include data from any of the insurance providers that collapsed during that period. Frank Maher, a partner at Legal Risk LLP who specialises in PII, has observed that:[35]

> ‘By definition, many of these insurers had left the market or become insolvent in no small measure because of their adverse claims experience insuring solicitors – the very insurers which might be expected to have the largest claims. Those which became insolvent were Quinn (2,911 firms insured), Lemma (590), Balva (1,500), ERIC (number unknown) and Enterprise (43), so the numbers are not insubstantial.’

94. These omissions call into question many of the assumptions from which the current proposals apparently stem. However, insurance industry figures inform us that, with

[34] https://www.lawsociety.org.uk/policy-campaigns/documents/pii-market-trends-response/
[35] https://www.legalrisk.co.uk/wp-content/uploads/2018/04/risk_focus_frank_maher_v2.pdf

the exception of one or two insurers who are no longer in this class, the SRA could still get much of the data. It would be labour-intensive, most likely involving copying numbers from scanned documents, but it would be possible. And if the SRA were to do that work, it would greatly improve the reliability of its evidence base.

95. The SRA should obtain and publish all relevant data before it can expect solicitors to be equipped to make accurate assessments of risk. Every year insurers gather claims data from firms. Before the SRA proposes a radical restructuring of the PII system, it ought to obtain access to the information held by participating insurers, which would enable it to better supervise risk and gradually reduce the number of firms with poor claims histories, through individually targeted or collectively applied improvements.

96. The SRA data does not mention the number or value of outstanding notifications and claims currently open. The claims – when settled – could affect the accuracy of the data for the years prior to 2014 given the long time it takes to settle claims.[36]

97. The fact that the dataset is four years old is relevant too, as it cannot reflect important changes that have taken place in the intervening years. For instance, the average house price in England increased by 28.7 per cent between January 2014 and January 2018, from £188,000 to £242,000.[37]

98. This also represents a period in which so-called 'Friday afternoon fraud' has become a major problem,[38] and cyber insurance in general has taken on much greater significance. All of which are factors that should militate against the lowering of indemnity limits.

99. The SRA's own research illustrates the difficulty of gathering relevant data in such a fast-changing environment, but also the importance of doing so. Its 2014 report *Spiders in the web: The risks of online crime to legal business* does not even mention conveyancing,[39] while the headline finding from its follow-up report in 2016, was that:[40]

> 'Three-quarters of cybercrimes reported to the SRA in the 12 months are some form of "Friday afternoon" fraud.'

[36] It is assumed that the data for claims settled is given net of recovery from subrogated claims. The exposure of solicitors' firms pending final settlement would be for higher amounts than suggested by the data offered by SRA.

[37] https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/housepriceindex/january2018

[38] https://www.ft.com/content/2c5340fe-f0fa-11e5-9f20-c3a047354386

[39] https://www.sra.org.uk/documents/solicitors/freedom-in-practice/cybercrime.pdf

[40] https://www.sra.org.uk/sra/news/press/cybercrime-risk-december-2016.page

Questions

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

- **Strongly agree**
- **Somewhat agree**
- **Neither disagree or agree**
- **Somewhat disagree**
- ✔ **Strongly disagree**

Please explain your answer

The Law Society strongly disagrees with the proposals to reduce the minimum level of cover from £2 million or £3 million, down to £500,000, or £1 million for conveyancing firms. The reasoning for our opposition has been explained in the sections above, so we reiterate our view that this change will have multiple negative impacts for firms, consumers and the broader public, and will undermine key regulatory objectives, such as protecting and promoting the public interest; protecting and promoting the interests of consumers; and promoting and maintaining adherence to the professional principles.

However, there are some further points, not captured in our introductory sections, which we will add here.

- *Incorporated practices' higher indemnity limits:* In relation to the distinction between firms needing to have £2 million or £3 million of cover the SRA proposes that it would be appropriate to do away with the higher indemnity limit for those firms. However, we have not seen any data which would support the SRA's proposals. In 2005, when the higher indemnity limit of £3 million was set, the underlying reasoning was that the partners in a traditional firm can be pursued for their personal liability in way that those working within limited liability structures cannot. Given that limitation, it is reasonable that claimants who may be more exposed through having lesser remedies should have greater insurance protection.

- *Aggregation:* A significant reason for the increase in the minimum limit in 2005 which was the direct outcome of the case of *Lloyds TSB General Insurance Holdings and others v. Lloyds Bank Group Insurance Company Limited* [2003] UKHL 48 on appeal from: [2001] EWCA Civ 1643. This concerned the construction of wording of the aggregation clauses in the MTC. In order to accommodate the risk to the insured party of the aggregation of similar mistaken acts as one, the headroom was raised to twice its previous level. For the most part this meant that the position regarding aggregation of claims has been balanced between claimants and insurers. Reversing the position as proposed will create risk that claims will go uncovered where insurers are able to make a case for aggregation. This is a risk for clients, as well as for firms and their employees. The case of *Willmett* (2009) – and litigation still continuing – shows the impact on clients and on the Compensation Fund where aggregation of claims means that primary layer cover is exhausted. The recent cases heard in the Court of Appeal of *P&P* and *Dreamvar* ([2018] EWCA Civ 1082) show how fraudsters can impose a total loss and it is not hard to imagine a situation where multiple frauds might be aggregated.

- *Threat to ease of business:* The reduction would be severely disruptive to aspects of the legal services market including conveyancing where solicitors interact and need to place reliance upon other solicitors. Under the current arrangements, where a firm is a counterparty in a transaction there is the assurance provided by knowing that a high minimum level of cover is universally maintained. In future, every transaction

would have to be assessed (in case of financial failure) and even then, there would be less certainty than there is at present.

- *Top-up cover:* Virtually all existing firms will be unable to safely reduce their existing cover. The overwhelming majority will need to maintain cover at the same level as at present. This will be necessary to counteract the heightened risk of aggregation of claims and to take account of claims arising from historic cases. It would be unsafe for firms to reduce cover without extremely strong reason to believe they would not experience high level claims. In some cases, agreements with retired partners or closed firms (where old claims are insured by a successor practice) will mean that a reduction of cover is not available. Most existing firms will therefore need to purchase top-up cover, not just for the difference between the new minimum cover and current minimum, but also their other needs such as defence costs. As we have explained in the introductory section, buyers of top-up will be in a weaker position when negotiating for individual needs and cover may not be offered on the MTC terms.

The bottom line is that for the majority of firms who choose to buy the same level of cover as they currently have, the costs are likely to rise, and not fall as suggested.

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

- **Strongly agree**
- **Somewhat agree**
- **Neither disagree or agree**
- **Somewhat disagree**
- ✔ **Strongly disagree**

Please explain your answer
Please provide any additional comments on the alternative option that this could be at the election of the law firm

We understand the rationale for this proposal to be that financial institutions and large business clients will be more sophisticated purchasers of legal services. Therefore, the case for regulatory protections should be less than it is for individual consumers and small businesses. However, we believe the theory wrongly assumes that those above the chosen threshold are able to discern the relevant risk to which they may be exposed. There is no easy distinction to be made between sophisticated buyers of legal services and those who are less experienced, and the SRA's proposed definition of small businesses would have a harmful effect on clients and the legal services market.

There would be a number of negative consequences if this proposal were to be implemented. Firstly, solicitors who act for these newly excluded classes of clients would be required to take out additional insurance (top-up cover) to cover their risk. This top-up cover would be in addition to the premium that the solicitors' firm is paying for an MTC policy for the minimum layer of cover. Therefore, this is an additional cost which many firms would face as a result of these changes.

Secondly, the top-up cover is unlikely to be as comprehensive in its coverage as the current MTCs. Insurance industry figures inform us that the solicitors' profession is the most capital intensive to insure. Therefore, if the compulsory minimum indemnity limit is reduced, it is unlikely that any top-up cover would be offered on MTC terms. This could leave clients and solicitors' firms (including managers and employees past and present) exposed to additional risk.

Thirdly, it introduces complexity and bureaucracy into the PII system. An advantage of the current MTCs is that they are simple and comprehensive. If these proposals were implemented clients would be confused, and the reality is that many businesses with turnover of more than £2 million are not sophisticated buyers of legal services. We can imagine that as public awareness of the proposed reforms slowly begins to spread, such clients will seek to minimise their risks by avoiding instructing smaller firms that they may have used in the past, for fear that they might not have appropriate cover. On the other side of the coin, such firms, finding the market skewing against them, would face the additional complication of determining what top-up cover to purchase. If additional cover was not taken out those firms would, over time, be excluded from the market and market choice would be reduced. Likewise, mortgage lender panels and similar institutions are likely to demand that firms take on top-up cover (that would at least maintain the status quo), and this is likely to further disadvantage smaller practices.

This proposal introduces complexity and bureaucracy with many traps for both insured and claimants, and it complicates, rather than simplifies, solicitor regulation. For smaller firms who wish to compete to keep their clients there is a significant prospect that they will feel compelled to buy additional cover they do not need – just to retain confidence – and this will be at additional cost.

Question 3: Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

~~Y~~/N

If no, please provide an alternative way of drafting the exclusion definition

See our response to question 2 (above). We do not agree that the proposed exemption should be implemented. However, if it is, then we believe that definition of a 'large business' has been set at far too low a level, and will inadvertently exclude many businesses that need protection.

The definition of 'large business clients' adopted in the consultation assumes that turnover is a suitable way to distinguish business clients who would regularly use legal services and therefore would be sophisticated purchasers. This approach is too simplistic, and disregards other relevant factors such as assets, number of employees or loans. For example, a fulfilment house could employ 60 people working for a single client, from a single site, with millions of pounds in sales, and seldom require the services of a law firm. It would not be a sophisticated client.

In any event, the £2 million figure selected as the threshold is far too low. This would capture some otherwise self-evidently small businesses, which would have need for robust regulatory protections. For instance, a self-employed property developer who sells just three £700,000 houses over a 12-month period would be considered a large business client.

Furthermore, using a turnover figure to set the threshold will create uncertainty for firms trying to determine whether or not a client is a large business, as they would not necessarily have access to a clients' annual accounts, and reliable information about the turnover of a business during the time in which it received legal services. Indeed, this may not become available until months after the services have been rendered.

This suggests the SRA's proposed measure would constitute a serious restriction on the market for legal services, creating a new barrier for firms that freely participate under the current arrangements but might struggle to pay for top-up cover if commercial clients were excluded from the MTCs. The impact would be to unnecessarily restrict choice of providers, reduce competition, and thereby reduce access to justice.

Question 4: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

- **Strongly agree**
- **Somewhat agree**
- **Neither disagree or agree**
- **Somewhat disagree**
- ✔ **Strongly disagree**

Please explain your answer

We strongly disagree with this proposal. Once again, it adds an additional layer of complexity into the PII system. Differentiated levels of cover for conveyancing firms would not be required if the current minimum requirements of £2 million and £3 million were to be retained, which we believe would be a more proportionate approach.

Considering the rising level of property prices, particularly in London, there has to be a question about whether £1 million of cover a sufficient minimum is. Also, in the interests of regulatory stability, and because of the claims made nature of PII, these limits need to be future-proofed. Property prices are likely to continue to rise in the long term, which supports the retention of a higher minimum level of cover than £1m. The data used to justify these proposals only goes up to 2014, and doesn't take into account the increases in property prices since then. For instance, between January 2014 and January 2018 average house prices in London rose 36.5 per cent, from £356,000 to £486,000.

The contrast is even more stark if the change in average London house prices between 2004 (when the SRA dataset begins) and 2018 is considered. Over that period the average property increased in value by 121.9 per cent, from £219,000 to £486,000. The scale of this change – with property prices more than doubling – means that any analysis of conveyancing solicitors' PII requirements that does not account for inflation is fundamentally inadequate.

Also, the impact on client protections is unclear. If the SRA fails to ensure that all firms carrying out conveyancing work purchase the higher £1 million limit of cover, then there are further risks to consumers, particularly if they are unable to fall back on the Compensation Fund. Under the current arrangements clients of uninsured firms can claim against the Fund. The SRA's apparent reticence to maintain either current levels of insurance cover or access to the Compensation Fund is another example of overzealous deregulation. Two layers of client protection could be removed at a stroke: the requirement for high and consistent levels of indemnity cover, and access to the Compensation Fund.

We would also reiterate our concerns about the increased work that would be involved in firms reassuring themselves that the other party has appropriate and adequate insurance in place, as discussed above in relation to *Dreamvar*.

Question 5: Do you think our proposed definition of conveyancing services is appropriate?

~~Y~~/N

If no, please explain what you think should be an alternative definition

Conveyancing is an integral part of many legal cases – for example disputes, litigation, probate – and it cannot be easily separated from the rest of a solicitor's work.

We are strictly opposed to a bifurcation of the MTCs. Particularly as the practice areas that a firm is involved in are already factored into the process for calculating premiums.

However, if a differentiated level of cover were to be pursued for conveyancing, then we agree that the definition of conveyancing activities should be broader than the definition which is used for the purpose of the reserved activity. As the consultation document notes, the definition of the reserved activity would be too narrow to cover all relevant claims. But, as we will go on to explain, there is considerable difficulty in defining conveyancing services in such a way that does not inadvertently capture other legal services. This is another argument against having separate limits for conveyancing firms.

Draft rule 2.2 puts considerable weight on the words 'conveyancing services' to identify whether the special endorsement of extension for such services is required. The definition in the glossary notes:

> 'conveyancing services means dealing with transfers, conveyances, leases, contracts, deeds, grants, mortgages, charges, licences and other documents in connection with, and other services ancillary to, the disposition, acquisition or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in land.'

There are a number of problems with this approach, most notably because of the breadth of this definition. For example, 'dealing with' may be considered to include advice as well as transactional work, and 'licences' to enter or remain on land may feature in a very wide range of indirect commercial transactions. On the basis of this definition it is difficult to envisage many legal practices which would not at some point stray into 'conveyancing services', e.g. it could cover an immigration practice that provided advice on the implications of a house purchase, or a criminal law firm acting in opposition to confiscation proceedings.

The definition of conveyancing activities is very broad, and potentially extends into areas of law that might at first glance have little connection to core conveyancing activities. Separating it as a category of legal work that must be insured separately creates considerable dangers for any solicitors who are operating on the basic £500,000, non-conveyancing MTC cover, because the definition of conveyancing activities is effectively a wide-ranging and poorly delineated exclusion clause. For anyone on the basic MTCs, if an insurer can link a claim to work that might by some logic fit within the definition of 'conveyancing services', they will be within their rights to exclude the claim. Faced with such uncertainty, most prudent solicitors would feel compelled to purchase conveyancing cover, regardless of their previous work or areas of practice. Indeed, if the changes were to go ahead in their current form, the Law Society would have to seriously consider recommending that all firms take out conveyancing cover, to avoid this risk.

The definition of conveyancing services adopted by the SRA also includes a wider range of activities than are currently contemplated by insurers when they are determining a firm's conveyancing risk. The outcome of this could be that firms which under the existing system are charged little for their premiums, on the basis that they engage in only relatively low risk activities (such as landlord-tenant work), will be compelled to pay higher premiums because

the SRA's new definition of conveyancing services groups them in with firms carrying out much riskier work.

While it is perhaps overly expansive, there is still the possibility that the definition does not include some important functions that might otherwise be recognised as conveyancing services. For example, it is unclear whether the definition as currently formulated would cover pursuing or objecting to applications for adverse possession, and more generally, whether it would encompass those circumstances that involve the making of (or objecting to) applications to HM Land Registry.

The system of conveyancing depends upon undertakings and in a chain of transactions there will be a number of these from a variety of firms. The increased possibility that insurance may not be available to meet any default by a party is a risk for consumers and threatens to make the system unworkable. The possibility that no cover or inadequate cover is held by a participant firm is a risk that no lender can countenance. The lenders will set minimum requirements for their panel managers who will be directed to create smaller panels. This will divide the market, reduce competition and reduce the open access to legal services that consumers currently enjoy.

The current system of relatively open access depends upon confidence in the level of PII set by the SRA. Over time with inflation of property prices (which vary according to region) the lenders may well be inclined to impose new cover requirements, higher than the current minimum. It should also be noted that the Council for Licensed Conveyancers (CLC) – which is a growing but competing regulator of conveyancing and probate services – maintains a minimum cover requirement of £2 million. Such a disparity in minimum indemnity levels could also place SRA-regulated practices at a competitive disadvantage if licensed conveyancers decided to market their services on the basis that they carried twice the mandatory insurance of solicitors.

Criticism of the standards of conveyancing have been made, and some of these are long-standing. The regulator has failed to address these issues, despite a number of thematic reviews of conveyancing and most – if not all – could be addressed by regulatory action. The SRA promises that it can enforce the new artificial market it intends to create for conveyancing so as to avoid problems and claims on the Compensation Fund. However, there is no analysis offered of the steps it has taken to effectively enforce any known issues, let alone the steps it intends to rely upon to address the new set of issues that these proposals may create.

Question 6: Do you think there are changes we should be making to our successor practice rules?

Y/~~N~~

If yes, please explain what these are and provide any evidence to support you view

The successor practice rules enable a firm to provide succession and continuity for clients while avoiding the costs associated with the purchase of run-off cover. In principle, we are supportive of the rules.

In considering the successor practice rules, it is of paramount importance that there are no inadvertent gaps in protection for clients or practitioners. As a point of principle, if a firm has not gone into run-off, then former clients of that firm should be quickly able to identify which firm is the successor practice in order to pursue a claim.

Although we do not have a proposal for a specific clarification, we would be supportive of clarifications to the successor practice rules which would make it easier for clients and firms to understand in what circumstances PII liabilities have been inherited, and by whom.

Generally, we would point out that the proposed reduction in minimum cover, and increased aggregation risks, may mean that a retiring firm's managers and their employees will no longer have confidence that the successor practice will have adequate cover to meet future claims from historic negligence. The risk to clients of each firm (impacting smaller firms in particular) is increased unless the retiring managers take out their own insurance cover, which many would feel compelled to do.

Question 7: Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

- **Strongly agree**
- **Somewhat agree**
- **Neither disagree or agree**
- **Somewhat disagree**
- ✔ **Strongly disagree**

Please explain your answer
Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

We note that the curtailment of defence costs is likely to increase the cost to firms of meeting claims and may affect the funding of claims within the excess layer. The impact is that firms will need to create and maintain reserves to meet these additional costs.

We consider that that the changes overall will reduce confidence in the regulator and in firms. The funding of most firms relies upon bank finance as well as partner capital, and the increased risk upon each firm could adversely affect the terms on which finance is offered.

It should be borne in mind that claims are notified and made for sums that far exceed the amount at which they are ultimately settled.[41] Neither firms nor their bankers will be content to carry claims in excess of their cover for the time it takes to settle, even where that is achieved within a lower limit. As the SRA suggests that defence costs would not be covered for claims exceeding the minimum cover, firms will incur further expense to avoid this exposure.

One unintended consequence of the changes is that it makes it harder for firms to close down. At present, solicitors wishing to close their practice may go into run-off, or they might merge with or sell their firm to a successor practice. Under the new requirements, solicitors would be restricted to selling their firms to those with the same level of cover. If a successor practice fails to maintain the same level of cover into the future, then – given the claims made basis of PII – former clients may pursue the retired solicitor for any shortfall.

[41] There is little data or analysis available of the claims made as contrasted with claims settled, but it would be reckless to propose any downward revision of indemnity limits before this issue is properly investigated and understood.

Question 8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

- **Strongly agree**
- **Somewhat agree**
- **Neither disagree or agree**
- **Somewhat disagree**
- ✔ **Strongly disagree**

Please explain your answer

In our general comments to this consultation response we have extensively explained why we do not believe that these proposals will save firms money overall. We will not reiterate the points in full here.

The Society fundamentally disagrees with the proposed changes which will increase complexity, reduce protections for the public, and could increase costs for firms due to the need for various types of top-up cover and administrative costs.

Question 9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

- **Strongly agree**
- **Somewhat agree**
- ✔ **Neither disagree or agree**
- **Somewhat disagree**
- **Strongly disagree**

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap

The high cost of run-off is an issue of serious concern for the profession. Some solicitors are deterred from retiring as a result of the high cost of run-off, which tends to be around three times the annual insurance premium, irrespective of the history and risk profile of the firm.

A high proportion of firms go into run-off without paying their premiums. This cost is picked up by other firms of solicitors that do pay their insurance premiums, which has the negative impact of distorting the market. The SRA has been aware of this regulatory failure for many years, and it was highlighted in the Charles River report, which reviewed the SRA's client financial protection arrangements in 2010.[42] The SRA should consider how the cross-subsidy for defaulters can be removed from the cost of run-off, without exposing clients to disproportionate risk.

We are pleased to see that the SRA has chosen to retain a mandatory run-off period of 6 years. However, given that the SRA has been aware of the problem for many years now, we are surprised that this consultation does not include any substantive research into the proportions of firms closing without purchasing run-off cover, their profile, and their reasons for doing so. Taking the time to carry out such research would enable the SRA to target its approach much more effectively.

The proposal that the SRA has put forward, for insurance cover to be capped in the run-off period, is one that we would not be able to support without seeing further analysis. If the SRA can estimate both the likely savings to premiums on the one hand, and the nature and number of claims that would go unpaid as a result of the change on the other, then a comparison could be made of costs and benefits. This data is a pre-requisite to being able to determine whether this change would enhance or undermine the regulatory objectives.

We are therefore not completely opposed to this change, but until the SRA produces evidence, we cannot support it either, notwithstanding that it could reduce the cost of insurance in the run-off period. Again, the impact of the proposed changes, if made, is that prudent firms may well see the need to retain the higher level of protection under the current MTC, which is likely to cost more. This will add another complexity for retiring solicitors, who will need to consider purchasing top-up cover for their run-off period in order to cover former clients who expected to be covered by the existing MTCs.

[42] https://www.sra.org.uk/documents/SRA/cra-report-on-sra-financial-protection-arrangements.pdf

Question 10: To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree
Somewhat agree
Neither disagree or agree
Somewhat disagree
✔ **Strongly disagree**

Please explain your answer

No evidence has been presented to demonstrate that PII does currently represent a barrier to entry, nor has evidence been presented to show that these proposals would result in additional firms entering the market. Therefore, we disagree with the assertion that these changes will encourage new firms to enter the market.

Our discussions with the insurance industry suggest that insurance does not currently represent a significant barrier to entry for new firms. One insurance broker reports having written around 60 new start-ups, at an average premium of around £3,000 per annum, which hardly seems prohibitive.[43]

In any event, we are sceptical that these changes would reduce the overall costs of insurance. Indeed, we believe there is a substantial risk that, rather than increasing choice, these proposals will decrease it. These changes create a series of carve-outs from the MTCs which are likely to encourage firms to specialise further in order to avoid the need to purchase various types of additional cover. For example, firms are expected to buy additional cover if their work involves conveyancing, or if they offer services to clients with a turnover in excess of £2 million. Firms may also need to buy extra cover to protect them and their former clients against historic claims.

If firms decide to hive off lower risk activity for the benefits they think that might bring they will need to incur new regulatory costs. So, it is entirely possible that the reforms could lead to unintended reductions in competition between legal service providers, because firms will be forced to specialise in terms of the areas in which they practice, refuse to work for whole classes of prospective clients, or be forced out of business entirely.

If the SRA genuinely believes that charities, law clinics or start-ups in “legal deserts” would benefit from a relaxation of particular requirements in regard to their PII arrangements, then we would much rather that it uses its already existing waiver powers than undermine the integrity of the entire PII system. This would allow the SRA to impose individually targeted limits on only those practices that would truly stand to satisfy a community’s unmet legal needs. While the Society would caution against the widespread use of waivers, such an approach would be a more proportionate way to achieve the SRA’s aims than dismantling the MTCs.

[43] It is also worth considering that for a sole practitioner with a workload of 100 cases a year and fees of £125,000, a premium reduction from 7 percent of turnover to 5 per cent would yield a saving of £2,500, which is just £25 spread equally across each case (although this does not take into account insurance premium tax or VAT on the fees reduction. It also assumes no additional top-up or other protection measures are needed to safeguard from other changes to the MTC).

Question 11: Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Y/~~N~~

If yes, please explain what you think these impacts are

The SRA's impact assessment is based on the assumption that small firms are likely to benefit from these proposed changes. We do not agree with that assumption, and therefore we challenge the underlying basis for the impact assessment. Small firms are more likely to have higher numbers of black and minority ethnic (BAME) and/or female solicitors, so this could have a bearing on the diversity of the profession.[44]

In paragraph 50 of the impact assessment accompanying the consultation, it is noted that 'small firms find it more difficult to get competitive quotes for cover'.[45] Yet under the proposed changes, small firms will be required to not only purchase MTC cover, but they will increasingly need to get quotes for top-up cover, which is likely to be on less favourable terms than the MTCs currently provide.

There is an inequality of bargaining power between a small firm of solicitors and an insurer. One of the benefits of the current MTCs is that it addresses this inequality and ensures that certain key terms cannot be excluded. If these proposals go ahead, a greater proportion of a firm's cover is likely to be top-up cover, which sits outside the protection of the MTCs, and is therefore subject to an unbalanced negotiation.

Also, compliance costs will go up for all firms as a result of these changes. Any increase in compliance costs is likely to be more keenly felt in smaller firms. The proposed changes create a series of carve-outs from the MTCs which may encourage firms to specialise further in order to avoid the need to purchase various types of additional cover. For example, firms will have to consider buying additional cover if their work gives rise to risks over £500,000, if they offer conveyancing services, or if they service clients with a turnover of more than £2 million.

People who are already socially and economically disadvantaged are likely to be further disadvantaged by the SRA's proposed reforms. If, for instance, the increased cost of securing PII cover for conveyancing services forces some smaller firms to farm out some pieces of work (requiring clients to move around), or forces them out the market entirely, then this is likely to have a disproportionate effect on BAME-owned practices, (which are overrepresented in this segment). This could have knock-on effects for BAME prospective clients, whose reticence to use a small firm run by members of their own community may be intensified by the prospect of using a larger, non-BAME practice.

We believe that negative diversity implications have been not fully understood or overlooked.

[44] http://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2015/

[45] https://www.sra.org.uk/documents/SRA/consultations/pii-annex-2.pdf

Question 12: Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

As noted in our response to question 10, run-off is an area that urgently requires further consideration. A high proportion of run-off premiums go unpaid, with the result that the costs will inevitably be borne by the rest of the profession. This is an area where no data has been produced to analyse the circumstances in which default occurs. We suggest more should be done to explore ways of avoiding this mischief.

The SRA's regulatory response should take into account whether it is dealing with those who *can't pay* for their run-off cover or those who simply *won't pay*. It is not known in how many cases practitioners suddenly and unexpectedly find themselves in a situation where they cannot afford to pay for their run-off cover; but in most instances it ought to be possible to manage such issues through regulatory actions.

If a firm has gone into run-off without premiums being paid, then it should not be possible for the principals of that firm to set up in another SRA-regulated firm. We suggest this is an area that the SRA investigates further to make non-payment of run-off cover a truly exceptional circumstance, reserved only for those who absolutely cannot afford to pay.

Question 13: To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

- **Strongly agree**
- **Somewhat agree**
- **Neither disagree or agree**
- ✔ **Somewhat disagree**
- **Strongly disagree**

Please explain your answer

Introduction

The Compensation Fund is a discretionary fund. Its primary purpose is 'to replace money which a defaulting practitioner or a defaulting practitioner's employee or manager has misappropriated or otherwise failed to account for'.[46]

The Compensation Fund relates mostly to cases where fraud and failures to account for money are not covered by the mandatory PII policy. The Fund covers what would otherwise be a gap in client protection, for example for sole practitioners where the MTC insurance will not extend to cover the fraud of the insured party. It therefore serves a vital role to protect clients and the reputation of the profession. The Fund also bears the costs of SRA interventions. At times, the Fund can recover its cost from solicitors or insurers.

The Compensation Fund forms an important part of the overall protection for the public in cases where a solicitor has failed to obtain the requisite insurance or has otherwise behaved in a way that results in them forfeiting their insurance. As a consequence of this additional layer of assurance, the public can place their trust in solicitors, knowing that if something were to go wrong they should be protected.

We appreciate the need to keep the cost of the Fund sustainable. However, there is currently insufficient data analysis for us to support the proposals. The SRA does not provide comprehensive data on the make-up of the claims that it receives, handles, and closes in the course of a year, nor the proportion of claims that arise just from dishonesty. We accept that these numbers vary across the economic cycle, so it is challenging to draw conclusions. But without robust data underlying the proposals for the Compensation Fund, it is not possible to comment on each individual proposal. We would request that the SRA publish for each proposal, how many claimants would be adversely affected and what costs and savings would result to the Fund as a result of any change.

Legal risks

The Law Society commissioned independent legal advice on the SRA's proposed reforms. The opinion has informed our response – although we would not necessarily endorse or accept all of the views contained therein – and we have included a digest version of it (annex A), which should be read alongside our submission.

It is not, in our view, within the power of the SRA to change the fundamental basis on which the Fund works. There is doubt as to whether the underlying rule-making power permits the SRA to impose eligibility requirements based on the identity or attributes of the applicant.

This is particularly the case in relation to the asset test for individuals. Section 36 of the Solicitors Act 1974 refers to rules which prescribe the circumstances in which grants may be

[46] https://www.sra.org.uk/solicitors/handbook/compfund/part3/content.page

made and particularises the nature of the loss and the nature of the act or omission. It does not, however, particularise the attributes of the applicant.

In draft rule 2.3, the applicant-based approach is made explicit by empowering the SRA not to pay a grant in particular circumstances, or in relation to particular types of application, applicant, or loss. This power appears to be uncertain. The decision relates to a particular application which would involve the exercise of discretion. Draft rule 2.3, however, appears to go further and permits the SRA to decide (without amending rules) that types of application, applicant or loss will not be paid or will be limited. This suggests that a further series of gateways may be applied. Given the absence of any express underpinning statutory provision in Section 36(5) this may be ultra vires.

There is also potential that the financial limits set are too arbitrary. For example, the proxy definition for hardship (household assets of less than £250,000) may be irrational. According to the consultation document, an individual limit of £250,000 would only exclude 5 per cent of households.

However, if 95 per cent of households would be eligible and there is no consideration of specific circumstances, it seems difficult to suggest that grants of sums up to £500,000 to 95 per cent of the population represent any meaningful focus on the relief of hardship (which is stated to be the main purpose of the Fund).

Policy considerations

Regardless of the legal arguments, in policy terms it would be wrong for the SRA to change the basis on which the fund has operated into a hardship fund for selective categories of claimant. The idea of barring claimants whose household assets exceed £250,000 could have perverse consequences. For instance, a £2,000 claim from a person with household assets of £240,000 would be allowed, while a £500,000 claim from a person with household assets of £260,000 would be ruled out, despite the fact that their material circumstances are largely indistinguishable and the latter's loss is unquestionably greater.

Further mischief might arise out of the definition of 'household'. One can imagine, for instance, a would-be first-time buyer, on a relatively low income, who has been defrauded by her solicitor. Her claim might be rejected on the grounds that she was living with her parents while she saved for a deposit, and their household assets are more than £250,000. Regulation should be inclusive and not means-tested so as to discriminate between different types of claimant.

The SRA has made a number of proposals to restrict the availability of the Compensation Fund in order to ensure its financial sustainability.[47] The significant risk that these proposals are intended to address is the risk of fraudulent investment schemes, which the SRA suggests, notwithstanding its discretion and the limits on claims, have the potential to make the fund financially unsustainable. So far as the Law Society is aware only a very small number of solicitors are involved in allegedly fraudulent investment schemes, and this is a tiny fraction of the profession. However, it is right that the SRA is considering how to manage this risk in order to ensure the fund remains viable. In our answer to question 14, we have suggested some ways that this risk could be managed in a more targeted fashion, without excluding clients who have not chosen to engage in high-risk investment schemes.

[47] The SRA can, of course, raise money at any time by imposing a levy on the profession. It can also invest reserves (which if does), it can borrow, and it can insure against claims – none of which appear to have been examined as options in the scope of the consultation document.

Our initial impression is that fundamental changes to the Compensation Fund are not necessary in order to manage the risk associated with large investment schemes, so we would not support a number of the proposed changes. It may also be the case that lowering the indemnity limits for PII lead to more claims against the Fund, as more clients seek to mitigate loses for which their solicitors are inadequately insured. On this basis, attempting to put through reforms to the Compensation Fund at the same time as a major overhaul of PII seems especially likely to harm consumers and public trust in the profession.

For example, it has been proposed that the maximum payment from the fund should be lowered from the £2 million limit, at which it currently sits, to just £500,000. We oppose this change on the same grounds that we oppose the lowering of the minimum level of cover for PII. In addition, if this change is being brought in to ensure consistency with the PII proposals and the Compensation Fund, then the maximum pay-out for claims relating to conveyancing services should logically be £1 million, not £500,000. In any case, we have not seen any evidence of a detailed impact assessment looking into the likely consequences of such a reform.

For some of the other proposed limitations on the Compensation Fund, we are more supportive. For example, it has been proposed that applicants to the Compensation Fund should be required to have a duty of full and frank disclosure. We would support this, provided that the rules of the Compensation Fund are communicated to applicants in a manner that can be easily understood.

We fully and consistently support the view that the solicitors' profession is one in which the public must be able to place absolute trust.[48] The Law Society believes it is important that the Compensation Fund remains sufficient to protect innocent clients (and third parties) against losses. Doing so will also protect the reputation of the profession, and ensure that trust in the profession remains high, which should mean that when they need it most, the public can be confident in seeking legal support from a solicitor.

[48] That belief in the existing client financial protections was re-iterated by a recent case (*Wolstenholmes*) where the sentencing judge's statement referred to the profession as: *'A business in which members of the public are entitled to place absolute trust'*. Case No.2MA3006 10 June 2014.

Question 14: Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further? Please explain why and provide any evidence that supports your view

A cumulative limit on claims from one investment scheme

If the primary risk that the SRA is concerned about is large claims on the Compensation Fund as a result of investment schemes, then we would suggest the SRA explores more targeted ways to manage that risk.

To begin with, the SRA does not explain the circumstances in which an investment scheme could wipe out a large proportion of the fund. Is it a function of the number of investors? Is it the minimum investment amount? Before a solution is sought, the problem must be precisely defined and articulated. Otherwise the risk is that the solutions proposed are disproportionate to the problem.

A better way to manage the risk of investment schemes might be to limit the total amount that could be claimed from the Compensation Fund in respect of any specific scheme. If a single investment scheme can give rise to multiple claims then limiting each scheme to a maximum compensation pot of £2 million might be a feasible, and defensible, solution, guarding against the risk of a flood of claims wiping out the Fund entirely.

Such a 'per-scheme' limit could apply as an aggregate, or be limited to say £50,000 for any claimant, and be given as a warning to all clients who claim in respect of that investment scheme. This approach could avoid excluding large numbers of claimant consumers who are not involved in investment schemes, whilst managing the risk on the Fund in a more targeted manner.

Seeking to reduce intervention costs

The SRA has the power to intervene in firms. This power is set out in Schedule 1 to the Solicitors Act 1974. The power is to take control of the practice bank accounts (office and client account) and take possession of the client files. The SRA usually appoints a firm of solicitors as the 'intervention agent' to implement their decision to intervene. In most instances, the SRA effects a 'full intervention', which in practical terms means the firm will close. This incurs agency costs that are charged to the Compensation Fund.

Intervention costs represent one of the most significant drains on the resources of the Fund, and yet they are unaddressed by the SRA's proposed reforms. While steps ought to be taken to reduce the burden that fraud and dishonesty place on the Fund – and we would welcome the opportunity to work with the SRA to achieve this outcome – the SRA can exert more direct control over its expenditure on interventions.

The SRA holds a great deal of information that may assist in finding improvements to the intervention process, but any methodology for calculating the charge of its costs to the Fund has not been set out publicly, and appears to have varied over the last ten years. A clear statement of what the methodology was, and is, with an accompanying statement of the amounts claimed, would be a welcome step towards transparency.

We have looked back over the last 5 years of the Compensation Fund's available financial statements and extracted the relevant data about interventions and other legal costs, as well as the amounts paid out in grants of compensation, and set these out in table 4.

In 2012 the SRA was not routinely paying for interventions out of the Fund, but since 2013 it has done so, and the proportion of the Fund's outgoings spent on interventions has grown

dramatically in the years since. Indeed, from 2012 to 2016 the proportion of the Compensation Fund's outgoings spent on interventions rose from 2.2 to 27.7 per cent, a more than ten-fold increase. While in the same period the proportion of the Fund's outgoings spent on grants of compensation fell by almost a third, suggesting that this is actually a declining cost for the Fund, and runaway intervention costs pose the more immediate threat.

Table 4. Compensation Fund expenditure, 2012-2016

Year	Total expenditure (million £)	Expenditure on grants (million £)	Expenditure on interventions and other legal costs (million £)	Grants as a percentage of total expenditure (%)	Interventions and other legal costs as a percentage of total expenditure (%)
2016	18.8	10.3	5.2	54.8	27.7
2015	28.4	17.9	6.6	63.0	23.2
2014	34.4	23.8	6.4	69.2	18.6
2013	20.0	13.8	3.0	69.0	15.0
2012	23.1	18.6	0.5	80.5	2.2

Even if the cost of interventions were reined in, it is arguably inappropriate for the SRA to be paying for them out of the Compensation Fund. Solicitors are levied to fund compensation, and the money raised for the Fund should be reserved for that purpose. Interventions should be regarded as part of the ordinary business of the regulator and paid for out of the SRA's general funds, where they would also be open to a greater level of scrutiny.

If the SRA were more diligent in monitoring the activities of its regulated entities, then less money would be spent on interventions, and if the cost of interventions were removed from the Compensation Fund, that would remove the fastest growing drain on its resources.

Question 15: To what extent do you agree that we should we exclude applications from people living in wealthy households?

- **Strongly agree**
- **Somewhat agree**
- **Neither disagree or agree**
- **Somewhat disagree**
- ✔ **Strongly disagree**

Please explain your answer

We strongly oppose the idea that regulatory protections should discriminate based on characteristics of claimants. It could be perceived as unfair and undermine the public interest in proper standards.

We see significant risks with the proposal that individuals from households with assets over £250,000 should not be able to claim. These individuals may not be sophisticated consumers, and they aren't necessarily consciously taking risky investment decisions. But by removing them from the scope of the Compensation Fund, it removes consumer protection and will undermine the confidence that consumers can have when using a solicitor. It therefore could have wider ramifications in terms of trust in the profession.

In our response to question 13, we explained why in legal terms the £250,000 household wealth restriction may be irrational, and in policy terms why it would lead to significant unfairness.

Question 16: Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

~~Y~~/N

If no, do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

As stated above, we do not support the exclusion of wealthy households as a category of claimant.

Question 17: Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Y/~~N~~

If yes, please set out your suggestions and reasons for the change

Please refer to our answer to question 14, which proposes an alternative way that the risk of large investment schemes could be managed, without infringing client protections, or impacting as much on public trust in the profession, as would the current proposals.

Other than that, we do have certain requests of the SRA for additional data or clarification:

- We would request data on the nature and extent of claims that are paid where firms carry no insurance for negligence. We would expect this category of claims to grow in future if the SRA make the changes they are proposing. The information regarding claims in the last 5 years in this category may be indicative of weaknesses in the regulatory system.

- We seek clarification on the situation where a claimant has a claim against a firm in respect of conveyancing services, but the firm holds no cover for conveyancing on a policy for £1 million. If it holds a policy under the basic MTCs for £500,000 cover, what is the position? Does the Compensation Fund cover such claims? Arguably the Fund should, as the alternative would be to redistribute the risk – and potentially the cost – of that error from the Compensation Fund on to an innocent client. This would harm public trust in the profession.

- We would also encourage the SRA to analyse its data and publish findings about the impact of fraud claims on PII and the Compensation Fund, including details about the relative size of claims, and the effects of aggregation.

Question 18: Do you think we have set out the right approach for assessing when a maximum payment has been reached?

~~**Y/N**~~

If no, please explain why

A clear set of criteria by which claims will be assessed would aid transparency and could be helpful. However, without the SRA providing more detailed information about historical claims – and well-founded projections about scale and nature of future risks – we cannot make an informed assessment of the adequacy and appropriateness of the measures being proposed.

Question 19: Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

~~Y~~/N

If no, please explain you answer and any suggestions you have for alternative approaches

The method is out of date, as it leaves out firms that do not hold client money when the Fund is making payments for other categories of claim. In the future, it may have to bear an increasing number of claims for firms which have inadequate insurance, or no insurance at all.

It should be a simple matter for the SRA to ensure that all solicitors whose clients could potentially claim from the Fund, are required to contribute to its upkeep.

Cyber-crime is a growing feature of claims and this is a risk that also should be shared across the whole profession, so there should perhaps be some consideration given to whether specific kinds of cyber-crime should also fall within the Fund's ambit.

Question 20: What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

The government set up the Money Advice Service, and funded it with a levy on financial services, to offer the public 'fast, free, independent help' on a wide variety of issues including investment.[49] While it urges caution in relation to high-risk investments, it does not tell people to avoid them entirely, instead – in a section of its website entitled 'How to protect yourself' – it suggests the following:[50]

- 'Make sure you understand what you're signing up to – especially the risks and charges. If it sounds too good to be true, it probably is.
- 'Don't take the first product you see or one where a company contacts you unexpectedly. Always compare products to make sure you're getting the right one.
- 'Read the paperwork you get and make sure you understand it – don't hesitate to ask questions if anything isn't clear.
- 'Some investment products are provided by companies that are not regulated by the Financial Conduct Authority (FCA). If the company is not regulated then you will not be covered by the Financial Ombudsman Service or the Financial Services Compensation Scheme.'

This government mandated advisory services does not tell people not to put their money in what it terms 'toxic' investment products. Rather provides a webpage which – while couched in warnings – still states that '[t]here's no reason not to invest in high-risk products'.[51] This is indicative of an official acceptance that people will make high-risk investments.

But the foolhardiness, or even recklessness, of clients is not relevant here: their claim against the Compensation Fund is not as a direct consequence of any failing on their part, but a failing of their solicitor.

The SRA is committed to the regulatory objective of 'promoting and maintaining adherence to the professional principles'. If professional principles include maintaining ethical standards, individual and collective responsibility, acknowledging mistakes or shortcomings and working to correct problems to the best of a professional's abilities, then this is relevant. A responsible professional does not seek to deflect blame onto others or avoid responsibilities.

If the direct reason for a claimant's loss is the failing of a solicitor, then the Compensation Fund should compensate them, subject to potential limits that we explored in the answer to question 14.

[49] https://www.moneyadviceservice.org.uk/en/corporate/about-us
[50] https://www.moneyadviceservice.org.uk/en/articles/high-risk-investment-products
[51] https://www.moneyadviceservice.org.uk/en/articles/beware-toxic-saving-and-investment-products

Question 21: Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Y/~~N~~

Please explain your answer

We support the development of clear principles. Whatever decisions the SRA takes about the eligibility for claiming against the Fund, it is critical that these can be communicated in a simple way for consumers and clients. If the SRA website could present these rules in a way that is easy for clients to digest, it would be beneficial.

Question 22: Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

If yes, please explain what you think these impacts are

Without a more detailed quantification of impacts, it is unclear.

Question 23: Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

The SRA could provide greater reassurance to help firms to understand the standard that they need to reach in order to be reasonably confident of avoiding these risks and preventing breaches of client security.

Many attacks emanate from weaknesses in the security maintained by clients. In such cases the solicitor will not be liable to restore losses and insurance claims will be rejected. However, these cases can still damage the reputation of the profession. So more could be done by SRA to alert the public to risks that are outside the control of solicitors, which consumers themselves have a responsibility to recognise and manage.

Developing a sector-wide approach (with the SRA and the Law Society working with the government, the National Cyber Security Centre, the Bar Standards Board, the CLC, CILEX Regulation, ICAEW, the Land Registry and others) may be a useful approach to combat these vulnerabilities through signposting or partnering with specialist organisations, who have the necessary expertise.

The current Cyber Essentials could be a starting point as providing that base-level protection was its intended purpose.[52] This will be an ongoing and constantly evolving process.

[52] https://www.cyberessentials.ncsc.gov.uk/

Annex A

NOTE IN RELATION TO LEGAL ISSUES WHICH MAY ARISE FROM THE IMPLEMENTATION OF THE DRAFT SRA COMPENSATION FUND RULES AND DRAFT SRA INDEMNITY INSURANCE RULES

Introduction

1. This note draws attention to potential legal issues arising from documents at Annex 3 of the SRA's Consultation. They are:

   (1) SRA Compensation Fund Rules

   (2) SRA Indemnity Insurance Rules

   (3) Glossary for draft SRA Indemnity Insurance Rules and draft SRA Compensation Fund Rules

2. There is a general concern that important points of detail may have been inadvertently omitted from the existing rules and that changes of choice of language may undermine, for no sufficient reason, the reliability of previous case law.

3. A significant legal issue arises from the proposed re-orientation of the fund to become a "hardship" fund. There must be a concern that the underlying rule-making power does not permit rules which base eligibility on the identity or attributes of the applicant. This is particularly the case in relation to the asset qualification for individuals.

4. Section 36 of the Solicitors Act 1974 refers to rules which prescribe the circumstances in which grants may be made and particularise the nature of the loss and the nature of the act or omission. It does not refer to rules which particularise the attributes of the applicant. For large commercial or charitable organisations it might be said that the nature of the organisation could be a relevant factor in considering the nature of the loss but this seems even more difficult for individuals. In any event the draft rules are not expressed in that way. If this issue is a problem in relation to organisations, it is one which already exists from previous amendments to the existing rules.

5. A further issue arising from the proposed re-orientation is the interpretation of the statutory purpose of the Fund. The concept of hardship is not derived from the

statute. It has been used in the Rules for many years in an attempt to restrict the circumstances in which grants may be made for failure to account. It has never applied to dishonesty based applications. Hardship can be related reasonably well to the nature of the loss – the individual loss must be one which on its facts has caused hardship. The blanket use of eligibility does not involve the consideration of the nature of the particular loss at all. The present proposal appears to attempt a fundamental change of the statutory purpose of the Fund through delegated rule changes.

6. An important aspect of regulation is the maintenance of public trust and confidence in solicitors (this term is used as a short-hand for regulated persons and entities). Public confidence in solicitors is necessary for the legal system to operate effectively and thereby goes to the heart of the public interest. This is often referred to in the context of the disciplinary regime and it is something of a legal cliché that solicitors must be trusted to the ends of the earth. It is no coincidence that the responsibility for the Compensation Fund is placed with the regulator. The Fund is not a charity with the objective of relieving the hardship of those who have suffered at the hands of solicitors. The Fund has limited resources and these must be applied to best effect taking into account the objective of supporting public confidence in solicitors. The Fund is discretionary and of the last resort. The SRA is able to make rules which transparently restrict the circumstances in which grants may be made. Transparency is important because public confidence is best preserved if users of legal services know in advance when they cannot expect to receive a grant in relation to the services they purchase.

7. Section 36(5) of the Solicitors Act 1974 expressly permits the publication of guidance as to the application of criteria to be applied in deciding whether or not to make a grant. Whilst, accordingly, it is permissible to publish guidance and policies (as long as they don't fetter discretion), they are not a substitute for the formality and transparency of rules. It is important that whether issues should be covered in rules or in guidance/policies is carefully considered so that the level at which various factors should come into play is properly reasoned and justified. Should it be prescribed by rule taking it out of the hands of the individual decision maker, should it be incorporated in policy or guidance which means that the decision maker may exceptionally decide otherwise or should it be left within the open discretion of the decision maker subject to the usual grounds of public law challenge? Policies may allow for rapid relatively informal change to respond to particular situations but they

may result in less transparency and accountability. It is not clear from the proposal that these issues have been adequately considered.

8. Rules and policies/guidance are susceptible to judicial review on conventional grounds. Rationality based on the evidence, the existence of an appropriate power and its use to pursue a permitted objective are all important factors. It is important when considering amendments that these matters are considered.

The draft Compensation Fund Rules

9. The existing Rules are the SRA Compensation Fund Rules 2011 which were made under sections 36, 36A, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, sections 21(2) and 83(5)(e) of, and paragraph 19 of Schedule 11 to, the Legal Services Act 2007.

10. A discretionary fund underwritten by the profession has been in existence since the Solicitors Act 1941. The underpinning of the Compensation Fund in primary legislation for solicitors is now contained in sections 36 and 36A of the Solicitors Act 1974 ("the SA 1974"). Other regulated legal service providers have similar statutory provisions.

11. Sections 79 and 80 of the SA 1974 deal essentially with powers to delegate. Section 9 of the Administration of Justice Act 1985 deals with the recognition of legal services bodies and sole solicitor practices. Paragraph 6 of Schedule 2 of that Act applies sections 36 and 36A(2) and (3) of the SA 1974 to recognised bodies in the same way as they apply to solicitors.

12. Section 83 of the Legal Services Act 2007 deals with the licensing rules for alternative business structures. Paragraph 19 of Schedule 11 of that Act permits licensing rules to authorise or require a licensing authority to establish and maintain a fund or funds, or require licensed bodies to maintain indemnification and compensation arrangements.

Interpretation

13. Unlike the Compensation Fund Rules 2011, the draft Compensation Fund Rules do not deal within themselves with interpretation. The 2011 Rules referred expressly to the SRA Handbook Glossary 2012 but the draft Compensation Fund Rules do not do so. It appears to be intended that the Glossary will continue to apply by implication but express incorporation is preferable. Insofar as it is intended that definitions be

identified by links from the electronic version of the draft Rules, this does not give sufficient certainty.

14. The draft Compensation Fund Rules also open with an "Introduction". The Introduction precedes Part 1 but comes after the heading "SRA Compensation Fund Rules". Whether the Introduction is intended to be part of the Rules preceding Rule 1 is unclear. The traditional approach reflected in the Compensation Fund Rules 2011 is to confine the preliminary to the powers under which the relevant rules are made. In the draft Compensation Fund Rules, the powers are added at the end as "Supplemental Notes".

15. The Introduction is to some extent problematic from the point of view of fetter. By attempting to provide a gloss, it suggests an application of discretion which is narrower than, or at least different from, that set out more precisely in the clearly identified substantive Rules. For example, it may be that a financial loss may be suffered which directly results from the dishonesty of a defaulting practitioner without any money actually being stolen. Fraud, for example, may involve a loss directly resulting from dishonesty for the purpose of draft Rule 5 but may not involve theft because the victim has willingly parted with their property.

16. The Introduction also introduces a more pervasive problem relating to hardship. The Introduction states that the purpose of the Fund is to relieve hardship provided that arises from loss suffered as a result of the acts or omissions of those regulated by the SRA. This does not mention dishonesty or a failure to account and elevates hardship to a core purpose. In order to explore the fundamental issue of purpose, it is necessary to follow the legal structure from its primary legislation. For present purposes this is best done in relation to the SA1974.

17. Section 36 allows the making of rules concerning the grant of compensation in respect of a loss that a person has suffered or is likely to suffer as a result of an act or omission of a solicitor, former solicitor, employee or former employee of a solicitor (or former solicitor) or the exercise of intervention powers. So the rules may not go beyond persons or bodies causing loss who are specified in primary legislation and the loss in question must result from essentially that person's act or omission. Section 36(2) then goes on to list the provisions that the rules may contain. Section 36(2)(a), which allows the rules to provide as to the circumstances in which such grants may and may not be made, is further particularised in s.36(3). This refers to the nature of the loss or the nature of the act or omission. It does not refer to the

attributes of the applicant. Accordingly, three questions arise in relation to the provisions in draft Rule 3 “Eligibility for a grant”:

(1) Whether the words “(among other things)” in s.36(2) extends the rule making power generally;

(2) Whether the words “as to the circumstances in which such grants may and may not be made” could include the attributes of the claimant notwithstanding the words of s.36(3) which refer to the nature of the loss and the nature of the act or omission;

(3) Whether the particularisation in s.36(3) is by way of limitation or by way of example.

18. The Rules are of course subsidiary to the primary legislation. Rules under statutory power amount to delegated legislation and have the effect of law. Discretion, policies and guidance also operate within a public law framework and where requirements sit is of considerable significance. Generally it is impermissible to use a statutory power given for one purpose for another purpose.

The decision making framework

19. The relevant primary legislation sets the perimeter within which the power to make rules may be exercised. Rules which stray outside of that perimeter are ultra vires and may be quashed. As was identified long ago[1] the grant-making process has two fundamental stages. First, the Fund must establish whether in accordance with primary legislation and its Rules there is a power to make a grant. Second, if there is such a power, it must then exercise discretion in deciding whether or not to make that grant. The exercise of that discretion may be guided by policies, but policies must always admit the possibility of an exception if they are to avoid amounting to an unlawful fetter. Decisions exercising discretion must be made lawfully which means essentially following a fair process taking into account all and only relevant matters and reaching a decision which a rational decision maker might have reached. Guidance may refer to information relevant to both decision makers and claimants. Some guidance may amount to statements of policy; other elements of guidance may be procedural information. The guidance empowered by s.36(5) of the SA 1974 is as to the criteria the SRA will apply in deciding whether or not to make a grant.

[1] R v Law Society ex p Mortgage Express [1997] 2 All ER 348

20. It is important that documents are written with a clear understanding of their place within the legal structure.

21. Draft Rule 3 (Eligibility for a grant) is a conceptually new approach not reflected in the 2011 Rules. The existing approach in the Rules sets as a primary object of the Fund the making of grants in respect of compensation claims. Rule 3.4 of the 2011 Compensation Fund Rules then permissibly narrows this and requires the loss either to arise in consequence of the dishonesty of the practitioner or that the loss by reason of a failure to account for money causes hardship. Although a slight stretch, it is probably correct that where hardship results from a loss that might fairly be described as the nature of the loss for the purpose of s36(3). Dishonesty seems fairly plainly the nature of the act or omission for the purposes of that section.

22. Clearly there are some parallels with the Financial Services Compensation Scheme made by rule under the Financial Services and Markets Act 2000, s.213. However, there is no asset based eligibility criteria for individuals in that Scheme and the regulator's power to make rules under s.213 is very broad, requiring the regulator simply by rule to establish a scheme to compensate persons where relevant liabilities are unsatisfied.

23. If the eligibility criteria are inserted as a proxy for hardship, there may be issues with the evidence and rationality of such an approach. Eligibility based on household wealth excludes a consideration of the relevance of the size of the loss. A person with wealth of £260,000 who loses through the dishonesty of a solicitor £500,000, might be said to be more deserving than a person with £240,000 who loses £2,000. If it is proposed that "household" includes all family members, presumably it would follow that a first time purchaser who loses their deposit saved from low earnings, would be disqualified because they happened to be still living with their wealthy parents.

24. In terms of the exercise of discretion, it has been accepted by the courts that the resources of the Fund are not unlimited and that the discretion must necessarily be exercised to apply those limited resources to the best effect. If at present a discretionary refusal of a grant were based simply on the financial assets of family members, that might be thought to strain the bounds of rationality.

25. As an aside, it is not yet clear whether any consideration has been given to the possible disproportionate impact of such a rule on the basis of age. The relevance of

the chosen eligibility criteria to the purpose of maintaining confidence and trust in solicitors is also not clear from the way that the draft rules are formulated.

Rules, policies and discretion

26. The question of whether a grant may be made falls to be determined in accordance with legislation and rules. If a grant may be made, the second question is a matter of discretion as to whether it should made. Assuming that a rule is lawfully made, the question of whether a grant can be made is a question of law. This means that in the event of a dispute, a court must interpret the rules and apply them to the facts. If a grant may be made and discretion is exercised to refuse it, the role of the court is to consider whether the exercise of the discretion was lawful on a conventional public law basis. In those circumstances it is not for the court to substitute its own discretion for that of the decision maker. Accordingly, the movement of objectives from the realm of policy and discretion into rules changes the potential nature and extent of legal challenges. If a grant is refused based on an interpretation of the rules which a court subsequently finds to be incorrect, a challenge would succeed. Additionally if a grant is made on the basis of an incorrect interpretation of the rules, that grant may be ultra vires and unlawful. It is important to remember that the Compensation Fund is a trust fund and that the trustee may be accountable for the loss of trust assets through ultra vires payments.

27. One purpose of a policy is to promote consistency in decision making whilst admitting the possibility of an exception. Rules have both the advantage and disadvantage of including or excluding an application for the purpose of the exercise of discretion. Rules are an advantage because they do not usually require the consideration of exceptions but may be a disadvantage because they preclude exceptions even in the most deserving cases. Rules which properly exclude classes of application may also save the administrative cost of reaching the point of the exercise of discretion.

Draft SRA Compensation Fund Rules

1 Rule 1: Maintenance of and contributions to the Fund

1.1 Rule 1.1 does not seem to be a satisfactory statement of the underlying purpose of the Fund. Logically the rules are the mechanism by which the purpose of the Fund is achieved but 1.1 suggests that the rules are the purpose of the Fund.

2 Rule 2: The object of the Fund

2.1 Rule 2.1 changes the core purpose of the Fund and narrows it to the alleviation of hardship. As explained previously, section 36 does not limit the statutory purpose in this way. Arguably for this rule to be permissible, it must be characterised as one relating to either the nature of the loss or the nature of the act or omission. Hardship has been relevant in previous rules as a requirement under rule 3.4 (2011 Rules) where an application was based on a failure to account for money. It was not, however, a required element in relation to a loss suffered in consequence of dishonesty. This means that whether the loss arises from a failure to account or dishonesty, and even where a person is eligible for a grant under draft rule 3, draft rule 2 suggests that hardship would still need to be demonstrated in order to tie the making of a particular grant to the new stated purpose of the Fund. This requirement, however, is not made explicit in draft rule 5 which now has no specific requirement to demonstrate hardship for either dishonesty or failure to account.

In draft rule 2.3, the applicant based approach is made explicit by empowering the SRA not to pay a grant in particular circumstances or in relation to particular types of application, **applicant** or loss. This power seems to be of rather uncertain effect. The decision referred to relates to a particular application and, as we know, such decisions involve the exercise of discretion. Draft rule 2.3, however, appears to go further and permit the SRA to decide (without amending rules) that types of application, applicant or loss will not be paid or will be limited. This suggests that a further series of gateways may be envisaged based on types of application, applicant or loss. The categorisation of excluded applicants, given the absence of any express underpinning statutory provision, seems problematic. A provision which in principle permits what might be very significant informal amendment of the criteria in the rules without any of the requirements of consultation applying to rules is striking particularly where the power is so broadly expressed. As a general principle, statutes and delegated legislation (as are the rules) should not empower their own amendment in provisions at a lower level. In the statutory context these are colloquially referred to as “Henry VIII” clauses.

The present formulation of draft rule 5 does not require the decision maker to consider “hardship”. It is fair to say that hardship is a vague and variable concept requiring a high degree of subjective assessment. If, however, alleviation of hardship is the permissible new core purpose of the Fund, then the use of eligibility as a proxy seems problematic.

3 Rule 3: Eligibility

3.1 "Household" may well be a useful concept for social policy analysis but is a blunt tool in assessing the funds available to a relevant applicant to meet a loss arising from the use of legal services in particular circumstances.

3.2 Although the term is used in the existing rules at 3.11, in draft rule 3.2 the concept of "a broad estimate" does not make clear what is intended. The financial limits are precisely stated as a matter of rule. What may be meant is that the SRA is not required to establish eligibility with certainty or precision. Alternatively it may be intended to mean that the SRA's assessment of the correct figure is binding. The determining nature of eligibility under the rule is not, on the face of it, a matter of discretion – it is a matter of fact and law. The SRA may have a duty of care to assess eligibility non-negligently. It is hard to see why the SRA's broad estimate should withstand a challenge showing it to be wrong based on hard evidence.

The proposed definition of "net household financial assets" is not explicitly stated although the consultation refers to the usage of the ONS. A clear and rational definition with a justification would seem to be required. The purpose is not for broad assessments of social policy but presumably to determine hardship in specific cases.

It is also worth observing that, according to the consultation document, an individual limit of £250,000 would only exclude 5% of households. If 95% of households would be eligible and there is no consideration of specific circumstances, it seems difficult to suggest that grants of sums up to £500,000 to 95% of the population represent any meaningful focus on hardship which is proposed to be the main purpose of the Fund.

A further point is whether there is a rational basis for the distinction for the respective selection of assets for individuals, turnover for businesses, annual income for charities and asset value for trusts. Why assets for one and income for another?

At page 62 of the Consultation document it is stated that the Fund retains its discretion to deal with applications from large charities (with assets or income above £2million) where it can be demonstrated that individual beneficiaries would suffer hardship. It is not clear how this is carried through in the draft Rules. Rule 3 which prescribes eligibility for a grant does not refer to exceptions based on hardship in individual cases. It may be that what is intended is that individual beneficiaries are anticipated to have household financial assets of less than £250,000. However, this

is not entirely satisfactory because that would require an application from those individuals and a grant to them. Where, for example, a non-eligible charity is unable to continue work supporting homeless people, severe hardship may be caused to beneficiaries but no obvious route to a grant may be available. This illustrates a difficulty in moving away from an assessment of particular circumstances to an eligibility approach which may in practice have little relationship to actual hardship in the circumstances.

At page 63, the Consultation document notes a proposal to exclude claims from barristers and experts. This does not seem to appear in the Rules. Presumably the status of a person as a barrister or an expert would not be intended to generally preclude them from eligibility to make an application to the Fund because, for example, their personal solicitor defaulted. The exclusion might therefore be expected to be covered in draft rule 11 (Losses outside the remit of the Fund) but does not appear to be so. This may refer back to rule 2.3 which gives the SRA an apparently unlimited power to designate types of application, applicant or loss that the Fund will not pay, or only pay in part.

As already discussed, the use of the characteristics of individual applicants to define eligibility in the Rules is new. This focus on the applicant appears again in rule 10.1(a). This provides that a grant may be refused or reduced to take account of, inter alia, the character of the applicant. It is doubtful whether the question of whether an applicant was a good or bad character is really what is intended by this provision. It may be assumed that what is intended to come into account in the exercise of discretion is the nature of the applicant, or perhaps their characteristics. As the heading of rule 10 is "Conduct of the applicant and contribution to loss", presumably what is envisaged is a consideration of the sophistication of the applicant.

4 Rule 4: Defaulting practitioners

Draft rule 4.2(a)(iii) includes within the definition of "defaulting practitioner" a solicitor or REL "*in accordance with [regulation X of the SRA Authorisation of Individuals Regulations]*". If this refers to the proposal for solicitors to be able to practise in firms not authorised by a regulator under the Legal Services Act, then it would appear to be at odds with paragraph 114 of the Consultation which suggests that such solicitors would be excluded from both contributions and their clients should be excluded from the Fund.

5 Rule 5: Grants which may be made from the Fund

5.1 Draft rule 5.1 establishes the basic authority to make a grant. The pre-condition set by the rule is not hardship but financial loss. The relevant loss must be a direct result of dishonesty or a failure to account. A failure to account may, as now, include a failure to complete work for which the defaulting practitioner was paid. The provision in relation to failure to account actually widens its application by removing the requirement for hardship which currently exists.

5.2 The restriction of grants to the "usual business" reflects the existing rules. It is understandable that no attempt has been made to clarify "usual business" beyond previous commentary by the courts. Rules are not, however, the end of the story. One rationale for the exclusion of unusual activities by solicitors is that the resources of the Fund are limited and should be focused on those activities which ordinary members of the public would regard as routine and regular and thereby to be expected to be protected. The binary choice of usual or unusual is not actually necessary for this purpose. For example, it may be justifiable to implement a policy (admitting exceptions) that, for the Fund's purposes, activities and losses which related to the offering of unregulated investments by unauthorised persons to multiple individual investors would generally not be considered as sufficiently within the usual practice of solicitors to merit a grant. Such a policy might be justified on the basis that public confidence is best preserved by focusing the Fund's limited resources on the kind of activities that the public would expect solicitors to undertake routinely. It would be likely to be permissible to illustrate the policy by the publication of anonymised previous decisions.

5.2(a) - The new rules omit the methodology at 5.3 of the existing rules.

5.3 In draft rule 5.3 the words "has been disclaimed or otherwise ceases" do not appear to be apposite. The insolvency of an insurer may well not result in either the policy being disclaimed or otherwise ceasing. It is more likely that the insolvent insurer simply will not pay. A liquidator may disclaim ongoing liability under the policy but would be likely to invite an insured who had already notified a claim to prove in the liquidation.

6 Rule 6: Grants to defaulting practitioners

6.1 A point for further consideration which arises here, as it does more significantly in rule 5.1, is whether there is any distinction between the "usual business of a solicitor"

on the one hand, and "the performance of a regulated activity by a defaulting licensed body" on the other. In any event, the required division within an ABS of different sorts of activity may in practice be very difficult. There may be existing experience of this.

6.2 The existing rule 6.2 appears to have been dropped which limits the circumstances in which a grant may made to a defaulting practitioner. There is also a subtle change of drafting to weaken the assumption that grants will be by way of loan.

7 Rule 7: Grants in respect of statutory trusts

7.1 Strictly, a statutory trust should never be in deficiency. The trust is over funds taken on intervention to be applied in accordance with the SRA Intervention Powers (Statutory Trust) Rules 2011. The deficiency which arises is in the trust of an intervened solicitor over client account. This means that the funds in the statutory trust are insufficient to meet entitlements to the client account trust in full and the question of funds from the Compensation Fund arises. It may well be efficient, and in the public interest, for the client account deficiency to be made good by the topping up of funds within the statutory trust. The nature of such payments does, however, need consideration. In particular, if grants are not made to individuals with claims against a solicitor's client account, the exercise of the right of subrogation against the defaulting practitioner may be problematic.

7.2 In draft rule 7.2, it is assumed that the reference to the "SRA Statutory Trust Rules" is a reference to the SRA Intervention Powers (Statutory Trust) Rules 2011. This may be clarified elsewhere. The reference to a provision extinguishing a claim in rule 8.2 of the SRA Statutory Trust Rules may be an error. There is a reference to claims being extinguished in rule 9.2 of those rules. What may be intended is that if statutory funds are paid into the Compensation Fund because they cannot be distributed, so that if a client beneficiary's claim to the statutory trust is extinguished, the Compensation Fund may nevertheless subsequently make a grant to relieve their loss.

Draft rule 7.2 seems to proceed on the basis that the client needs a claim to the statutory trust in order to apply for a grant from the Compensation Fund. The claim which is extinguished under 9.2 of the Statutory Trust Rules is the claim to the statutory trust, not the claim to the client account.

8 Rule 8: Interest

8.1 It is not clear that the rate of interest used by the Fund needs to be prescribed by rule. It might be more flexible to allow this to be varied more readily.

9 Rule 9: Maximum grant

9.1 Linguistically it is doubtful that exceptional circumstances can be either in the public interest or not in the public interest. It is not clear what extra consideration the addition of the words "in the public interest" requires. All decisions should be in the public interest in the broadest sense. The usual point about exceptionality is that what makes an exception is not easy to define in advance. It may be assumed that examples of exceptional situations might be given in policies/guidance. Previously it may have been expected that these would focus on exceptional hardship but the difference between hardship and exceptional hardship may be elusive.

The new rules also envisage a different conceptual approach to exceptions to the limit. The existing approach is by waiver under existing rule 24. Rule 24 has now been dropped. It is not clear why it is thought that a power to waive rules may be unnecessary or covered in some other way.

10 Rule 10: Conduct of the applicant and contribution to loss

10.1 Comment has already been made in relation to the word "character" in relation to the applicant. At page 64 of the Consultation document, an intention is expressed to set out explicitly **in rules** the circumstances when the conduct of the applicant may warrant a refusal or reduction. It is not clear how this has been done. The Consultation document also mentions at page 65 "directive investigatory powers". It is not clear that there are any additional powers.

In draft rule 10.1(b) the conduct of the applicant appears to be confined to "dishonest, improper or unreasonable conduct". Propriety may be a difficult concept in relation to an applicant. Unreasonableness tends to suggest that the assessment of reasonableness should be subjective – was this particular applicant acting in a way which was unreasonable for them. This may be problematic for certain sorts of applicant. What seems to be missing is any reference to the care taken by the applicant in protecting their own position. The current provision at rule 19 (Reduction of grants) is probably a clearer and more effective provision than the proposed new one.

10.2 Draft rule 10.2 refers to an act or omission which has contributed to or failed to mitigate the loss. Draft rule 10.1 appears to relate to the characteristics of the applicant or any criticisms of the applicant's conduct "in the circumstances that gave rise to the application". It is not clear whether these circumstances would include the circumstances leading to the loss or only more proximately that resulted in the application.

The existing provision in rule 10.2 regulates the position where an individual and the entity in which they work are differently regulated. It is not clear why this has been dropped.

11 Rule 11: Losses outside the remit of the Fund

11.1 The effect of draft rule 11 is to forbid grants in respect of certain types of losses. This means that its provisions have to be approached with care as particular hard cases may not be remedied by the exercise of exceptional discretion. It is also possible that defaulting practitioners may have an interest in objecting to the making of grants on the basis of an arguable case of exclusion.

Rule 11.1(a) & (b) - It might be suggested that a duty to account derives from a solicitor's retainer, and that therefore a failure arose solely by reason of the breach of it.

Rule 11.1(b) - The removal of legal or other professional costs in making the application and incurred by the applicant in actual or potential proceedings to recover the loss represents a significant change. In many cases it may be that a client does not require assistance in making an application but in other cases they will and will now have to fund it from any grant. In many applications an important consideration is whether an applicant could, by proceedings, recover the loss elsewhere, for example from insurers. Insurers often take an attritional approach to such claims and applicants are often reluctant to expose themselves to the risks involved. It may be harder to require applicants to take proceedings if, upon them being unsuccessful, the loss in having done so cannot be made good in any circumstances. This may affect the sustainability of decisions.

Rule 11.1(g) – It is assumed that this refers to a failure by practitioners to account to the Legal Aid Agency for interim payments. It does not appear that loss would result from the making of regular payments, nor does it seem that the nature of the

payments as regular is significant. It may be preferable simply to refer to interim payments or payments on account made by the Legal Aid Agency.

Rule 11.1(h) – It is understandable why it would not seem desirable to pay funds into an insolvency for the benefit of creditors. There may, however, be circumstances in which an applicant has been made bankrupt as a result of the loss which would otherwise be relievable, or has entered a voluntary arrangement with creditors in the interim, on the basis that the loss will in due course be made good. It may be the view that in such circumstances the interests of the applicant in obtaining discharge from bankruptcy is not a sufficient interest to justify a grant, but bankruptcy in such circumstances might be considered a paradigm for hardship.

The drafting of 11.1(h) seems to be wrongly attached to the word "that" at the beginning of 11.1.

12 Rule 12: Foreign lawyers

13 Rule 13: Fund of last resort

There are no particular observations on draft rule 12 and draft rule 13. The provision of existing rule 13 allowing the applicant to be required to take steps to exhaust other remedies has been dropped. The position of RELs and others may need to be considered in the context of possible post-Brexit arrangements.

14 Rule 14: Deduction from grants

14.1 The drafting of this may need some attention. Clearly an applicant will be in a better position by reason of a grant than if a grant had not been made. What may be intended is that the applicant should not be in a better position than if no loss had been sustained.

15 Rule 15: Apportionment and multi-party issues

15.1 Draft rule 15.1 provides much less assistance than the existing rule 10. There are significant issues in the rationality of any approach to apportioning losses using discretion. On a point of detail, the word "consider" in 15.1 is probably not the right word to express the idea that the SRA may take these matters into account. Usually the ability to consider things goes without saying.

15.2 The word “will” would be more appropriate in rule 15.2 than the proposed “may” as in existing rule 10.4.

16 Rule 16: Application and time limit

In relation to draft rule 16.2 the previous point about the public interest and extensions in particular circumstances can be re-made.

17 Rule 17: Notice to defaulting practitioner

No comment.

18 Rule 18: Recovery and subrogation

18.1 Section 36(2)(h) of the Solicitors Act 1974 permits the making of rules for the SRA to be subrogated, to such an extent as may be prescribed, to any rights and remedies of a person to whom a grant is made in relation to the loss in respect of which the grant is made. The new rule widens subrogation to grants by way of loan. It also drops the requirement for an indemnity to the recipient of the grant against costs relating to the subrogated proceedings. The explicit reference to subrogation including proof in insolvency and any action being in the name of the recipient has also been dropped. It is not clear why it would be considered appropriate to drop the indemnity which is an important safeguard for the recipients of grants and would tend to promote cooperation from recipients.

19 Rule 19: Refusal of an application

19.1 This repeats the requirement to give reasons in s.36(6) and repeats the existing rule 21.

Other Matters

The existing rule 22 giving a right of appeal to an applicant against refusal of an application appears to have been removed.

The powers set out in rule 2 of the existing rules seem to have been heavily abbreviated. It is not clear what consideration has been given for the necessity of these powers by rule or whether there is no intention to exercise them in the future. The powers include:

(a) A power to invest;

(b) A power to insure;

(c) A power to borrow and mortgage investments;

(d) The power to pay costs of administering the Fund;

(e) The payment of costs involved in the exercise of intervention powers; and

(f) The payment of costs or damages the SRA or its employees or agents may incur as a result of good faith acts or omissions in the exercise or purported exercise of the powers.

Some powers may arise by necessary implication but it is good practice to make them express where any doubt could arise. It may be that some power elsewhere is in some way relied upon.

It is not clear what consideration there has been of cross-border issues in relation to the Fund. Solicitors commonly deal with transactions with an international element. RFLs and RELs practice within the UK and may also deal with transactions with an international element. There is no nationality or residence requirement for applicants. Arrangements which apply to RELs may be presently in a state of flux as the arrangements post-Brexit become clearer.

Although the Consultation expresses a concern in relation to solicitor involvement in the facilitation of doubtful investment offerings, the rules do not take the opportunity of addressing this squarely. There are potential difficulties with the concept “usual” and a more targeted consideration of the relationship between the circumstances of loss and the need to apply resources to focus on public confidence in regular and routine transactions may be more robust. Previously discretion has been used to deny or reduce grants to clients who have been insufficiently prudent. It is not clear if consideration has been given to the definition of investment activity where particular risks lie. Other approaches might include an approach to aggregation comparable to that in professional indemnity insurance. The use of “usual” by way of rule would involve a potential decision by a court as to whether a particular activity was or was not “usual”, a discretionary decision as to whether a particular activity was sufficiently usual to merit the application of the funds limited resources would be subject to the different considerations of judicial review.

At present existing rule 9 deals at some length with undertakings. Those provisions appear to have been dropped.

The existing rule 24 permitting waivers of rules (other than 14, 21 and 25 of the existing rules) appears to have been dropped.

Draft SRA Indemnity Insurance Rules

The Introduction prior to Part 1 indicates that the rules do not apply to solicitors, RELs and RFLs that practice outside SRA authorised firms. The rules do not appear to expressly deal with questions of citation, definitions or interpretation.

1 Draft Rule 1: Application

1.1 This states that the rules apply to authorised bodies and their principals. Rule 1 of the SRA Indemnity Rules 2013 ("the 2013 Rules") express the requirement in rule 1.3 more widely. It appears that unless a solicitor, REL or RFL is a principal, they are no longer bound by these rules in respect of their regulated activities in private practice.

2 Draft Rule 2: Obligation to effect insurance

2.1 The obligation to take out and maintain qualifying insurance is placed on the authorised body. This appears to rely on the principal's obligation to ensure the compliance of an authorised body with all rules rather than impose the obligation directly. The 2013 Rules required the policy to be with a "participating insurer" but this appears to have been dropped and qualifying insurance now simply refers to the MTC.

In the new rules "carrying on a practice" is used whereas in the existing rules (rule 1.3) the term used is "in private practice". Both are defined in the SRA Glossary and are different.

2.2 Draft rule 2.2 puts considerable weight on the words "conveyancing services" to identify whether the special endorsement of extension for such services is required. The definition appears in the glossary:

"*conveyancing services* means dealing with transfers, conveyances, leases, contracts, deeds, grants, mortgages, charges, licences and other documents in connection with, and other services ancillary to, the disposition, acquisition or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in land"

There are a number of potential problems with this approach which is necessarily based on a wide definition:

(a) "dealing with" may be considered to include advice as well as transactional work.

(b) "licences" in the sense of contractual permissions to enter or remain on land (including offices or shops) may feature in a wide range of commercial transactions. It might be said that licences do not create interests in or over land in which case their inclusion is puzzling. Licences may also be used to refer to other sorts of permission such as licences to assign leases. Licences of intellectual property, for example, for signage attached to franchised outlets may be in connection with the acquisition of land by the licensee. The definition does not appear to exclude the licensor's solicitor. The inclusion of "other documents" combined with the reference to "other services ancillary to" potentially creates a very wide and uncertain feel.

(c) On the basis of this definition it is hard to think of any kind of practice which would never potentially stray into conveyancing services. An immigration practice that provided advice on the implications of a house purchase in which they were not acting might be said to be included. A criminal firm acting in opposition to confiscation proceedings of land might be said to be included.

(d) Even more broadly, it is difficult to see why wills, probate and trusts would be excluded where any of the assets included land.

(e) The application of the definition to the sale and purchase of shares in companies would tend to be uncertain.

(f) "primary asset" may be intended to refer to value. This is a far wider class than companies which are simply vehicles for the holding of property or specialist property companies. It is not uncommon for long-established small companies to have acquired freehold premises historically which are worth more than all other assets combined. In any event, it is not clear from the definition whether "primary" means larger than any other asset or larger than all other assets combined. An investment in shares in a restaurant company might, for example, be within the definition. The reference to "the sale and purchase of companies" does not make clear whether the whole of the share

capital must be acquired or only part. It could also be that due to shifting values a transaction could start as not conveyancing but become it where, for example, a company has to stop trading during the course of the transaction.

The result may be that practices will either have to obtain the extension as a matter of prudence or that they will have to be scrupulously careful not to provide their clients with services which might be subsequently argued by insurers to amount to conveyancing services. Without the conveyancing extension, "conveyancing services" are essentially an exclusion from the core policy.

2.3 Draft rule 2.3 touches upon transitional arrangements and is rather obscurely drafted.

"Policy period" means the period of insurance in respect of which risks may attach under a policy. The period of insurance is simply the period for which the insurance operates. The "indemnity period" is specifically defined in the rules as a period of one year starting on 1 October. It is not clear that there is requirement for policy periods to be of any particular length. Cover must be in place during the indemnity period but if policy periods can vary they might extend to two or three years.

The draft rule 2.3 means that a new style policy of qualifying insurance must be obtained from the time that a firm's old policy expires.

3 Draft Rule 3: Adequate and appropriate insurance

3.1 This seems to be a problematic provision. The present position is that solicitors will not be in breach of the rules provided they maintain the minimum cover required by the rules. It is possible that a solicitor would be failing to act in a client's best interest in a particular transaction if they did not point out the risk that that might involve. Draft 3.1(a) requires an authorised body to take out and maintain professional indemnity insurance that provides "adequate and appropriate cover in respect of current or past practice …". Viewed with the benefit of hindsight, any cover which is insufficient to meet a claim is inadequate. This may therefore represent a significant change from the current requirement of "appropriate" cover. Where an authorised body had limited liability, a claim above its insurance may render it insolvent. This would not only then arguably place the authorised body and its principals in breach of rule, but could (in principle) be enough to found a civil liability against those principals.

3.2 Although draft rule 3.2 implicitly allows the exclusion of liability above the minimum level (subject to requirements of best interest and reasonableness), it is not clear how this inter-relates to the duty to maintain adequate insurance. The reference to "any alternative arrangements" by the authorised body or its clients seems rather obscure.

The issue of adequacy with hindsight may also be problematic where inadequacy is unexpected because, for example, aggregation arguments are unexpectedly successful.

4 Draft Rule 4: Responsibility

Draft rule 4.2 is an extension of rule 2.5 and appears not to be directly relevant to the issue of responsibility (rule 4.1 applies to compliance with all rules). Accordingly, the draft rule 4.2 may be more appropriate as a draft rule 2.6.

5 Draft Rule 5: Insolvency of participating insurer

5.1 The existing provision relating to waiver in rule 6.1 no longer appears.

6 Draft Rule 6: Monitoring

6.1 The right to monitor in the new rules has been included to allow a check on compliance beyond simply the existence of a policy.

7 Draft Rule 7: RELs

7.1 No comment. The implications of Brexit generally require further consideration.

8 Draft Rule 8: Use of information

8.1 The new rule 8 is much reduced. The obligations on insurers to provide information have been removed. The participating insurers' agreement should contain adequate provisions to replace the MTC obligations which have been removed. There may also be a question of whether the participating insurers agreement binds the insured to permit insurers to provide information – it probably does not.

8.2 The draft rule 8.2 no longer contains a confidentiality requirement on the SRA in relation to insurers and insured's further information. The qualification to the confidentiality requirement to allow for disciplinary proceedings has consequentially been removed. It is not clear why this has been done.

9 Draft Rule 9: Details of participating insurer

The inclusion of this section suggests that the omission from rule 2 of reference to a participating insurer is an error. It is not clear that there is a route through the definitions to show that only a participating insurer may provide insurance under the MTC. Clearly the absence of a requirement for a participating insurer would create a major gap in the regulation of the insurance provision presently based on the participating insurer's agreement.

Waivers of rules

The provisions of rule 19 of the 2013 Rules allowing the Council power to waive rules in whole or in part appears to have been omitted. Generally the ability to waive a rule needs to be recorded but it is possible that some other provision is relied on.

Accountant's Certificate

The mechanism for the provision of an accountant's certificate of insurance in the existing rule 20 appears to have been dropped.

Draft Appendix 1 – SRA Minimum Terms and Conditions of Professional Indemnity Insurance

1. Scope of cover

Clause 1.1 in relation to Civil liability relates to civil liability arising from "private legal practice in connection with the insured firm's practice". Consideration should be given as to whether the contrast between the definition of practice relevant to the Proposed Rules and the definition of "private legal practice" in the MTC has any effect.

2. Limit of insurance cover

Clause 2.1 deals with the two proposed levels of cover and reinforces the point made previously in relation to the wide definition of conveyancing services. To require the £1m level of cover, the claim may not only simply arise from conveyancing services but also is in "any way connected with conveyancing services". This is obviously very broad. Insurers are likely to rely upon it in relation to the exclusion of liability under the core policy (see exclusions at clause 6.2).

Clause 2.6.1 states that insurance may be underwritten by more than one insurer (provided each insurer is a participating insurer and the insurance is fully underwritten). Whilst this is relevant to clause 2.6.2 which requires the policy to identify a lead insurer, these requirements may be more appropriately provided for in the Rules.

4. Special conditions

Clause 4.8 includes an altered mechanism for the resolution of disputes between insured and insurer. Under the current MTC the SRA is able to make a determination in its absolute discretion but under the new provisions the dispute is to be determined by reference to a mutually appointed QC (or nominated by the Bar Council in the absence of agreement). It is not clear if this is to be a confidential dispute resolution process (by way of arbitration) or another form of legal determination.

Clause 4.11 provides that the provisions of the MTC will prevail with any insurance to be construed or rectified so as to comply. In these circumstances, a provision providing lesser cover will be rectified, as the MTC should prevail. However, where an insurer seeks to alter the provisions of the insurance and the effect is a more advantageous provision to the insured (and therefore the insured's clients, the public and the Compensation Fund) than the provisions in the MTC, it may not be sensible to provide that the MTC prevail. The MTC are expressed to be minimum terms of cover rather than absolute terms.

6. Exclusions

The wording of clause 6.2 of the Proposed MTC does not appear to be clear when read in conjunction with clause 6. It appears to be intended to provide that insurance in connection with conveyancing services may be excluded unless the firm has obtained an endorsement. Conveyancing services may be defined but work in connection with conveyancing services leaves ambiguity and room for dispute. Insurers may seek to rely on the Conveyancing exclusion in a wide area of types of work.

Clause 6.3 appears to allow an insurer to limit liability to an insured where the client of the insured has a turnover exceeding £2m. The rationale for this exclusion is not clear. A turnover of £2m might be considered to be a relatively modest figure including many owner managed businesses. The identification of the relevant year in

which turnover is to be assessed may appear arbitrary – turnover may change from year to year. It is not clear whether the relevant financial year is that most recent to the retainer, the negligence, the claim against the insured, notification to the insurer or indemnity being due under the policy. The words "or in any way in connection with the provision of services…" are very broad indeed.

Ancillary issues:

The Terms of the Retainer

Solicitors would be able to change their terms of business for new matters but would continue to be bound by the existing contractual terms with their client. Solicitors who had limited their liability to £2m may consider themselves well advised to maintain that level of cover until the possibility of claims under the relevant matters ended. That could be six years or more. If they drop their level of cover to the new minimum, there would be a gap between the contractual limit and the actual level of cover when any claim was made.

Claims made basis

The implication of the "claims made" basis of PII is also important for the conveyancing exclusion. The relevant insurer (and level of cover) is that when a claim is made or circumstances notified to the insurer. A firm which had delivered any conveyancing services in a period still within limitation in relation to a claim which had not previously been notified, would be uninsured without the extension even if the claim related to historic errors.

Compensation Fund and uninsured "conveyancing service" claims Under the draft rule 5.2 of the proposed Compensation Fund Rules, a grant may be made in circumstances where the defaulting practitioner in accordance with the SRA Indemnity Rules should have had, but did not have, in place a policy of qualifying insurance and the liability in question would have been covered by such a policy. A policy of qualifying insurance means a policy that provides professional indemnity cover in accordance with the MTC but only to the extent required by the MTC. A policy under the MTC without the conveyancing extension is such a policy and therefore 5.2 does not apply and no grant may be made on that basis. It is possible that a grant may be possible on some other basis because, for example, the loss arose from a solicitor's dishonesty. The exclusion at 11.1 of the draft Compensation

Fund Rules applies to losses that arise **solely** by reason of professional negligence other than under 5.2.

SRA CONSULTATION

PROTECTING THE USERS OF LEGAL SERVICES: BALANCING COST AND ACCESS TO LEGAL SERVICES

RESPONSE FROM LAWNET LIMITED

Introduction - about LawNet

LawNet is a member-owned network of 72 solicitors firms in the UK and Ireland, of which 66 are domiciled in England & Wales, and regulated by the SRA. Established in 1989, LawNet supports its members in a variety of ways summarised on the attached **'Benefits of Membership' infographic in the Appendix.** The company is limited by guarantee, and therefore has no shareholders and no profit motive. Member firms join in order to be able to achieve more collectively than they could individually.

Membership is by invitation, and the characteristics we look for in member firms include turnover usually between £2m-£25m, sound finances, good PII claims records and a progressive mindset. We are unlikely to seek actively new members in a town where we already have one, but there is no 'black ball'; rather, we have a consultation process which allows existing members within a given radius to express any concerns they might have about a potential new member. The reputation of the group is taken seriously and highly valued.

Our membership is spread across England & Wales, though there are some parts of the country where our membership is weaker than others – inevitable perhaps given the distribution of firms having the characteristics described above. Even so, **LawNet is a good proxy for the views of medium-to-large SME firms, with more than £300m of turnover and around 2,000 lawyers in the network.**

On joining LawNet, firms must: -

- Achieve our **mandatory ISO9001 Quality Standard**, within two years, and maintain it subsequently
- **Commit to our Excellence Mark requirements**, involving a package of tools to measure the customer journey, including mystery shopping and online client satisfaction surveys. Over the past 4 years, LawNet firms have undertaken more than 3,000 mystery shopping interactions and over 50,000 client satisfactions surveys. LawNet firms have been active in using the learning arising from these initiatives to take steps to improve customer service in their firms, and it has been pleasing to see

scores from mystery shopping and satisfaction surveys improving over that period and exceeding those seen outside of our network.

- **Maintain PII cover of at least £10m per claim** – many member firms choose to top up above this level, reflecting the work they do, the clients they serve and the risk of aggregation that can arise from seemingly lower-value work. While not mandatory, LawNet offers members the opportunity to take part in our Group PII Scheme, which allows them to purchase PII cover in a unique environment and benefit from consistency and a broker-written policy which exceeds SRA MTCs.

With Quality processes, externally-measured client satisfaction and superior client protection at the heart of our network, our members send a positive message to clients and potential clients in their chosen markets. Although the proposals for 'flexibility' in your consultation regarding PII would be of no interest to LawNet members, they nonetheless have grave concerns regarding the consequences of these for clients in the broadest sense and for the reputation of solicitors as a whole.

This response is informed by discussions with LawNet members, with our Group PII scheme brokers and other brokers, with our PII scheme underwriters and with several external experts, some of whom have published or shared with us their own responses to your consultation.

Executive Summary

The proposed transfer of risk from solicitors and their insurers to clients in exchange for an illusory reduction in the price of legal services is ill-advised, perverse, damaging to clients and contrary to the SRA's Regulatory Objectives

LawNet firms are enlightened legal services businesses who are not interested in preserving archaic practices or in protectionism.

Our members' commitment to client satisfaction is matched only by their commitment to high levels of client protection. They submit to external assessment of their operating processes through our ISO9001 Quality Standard but recognise that mistakes can be made and that clients must be properly protected from the consequences of those mistakes. Their membership of LawNet means that they must carry a minimum of £10m per claim PII cover, and many top up considerably above that level, deciding on protection that is appropriate for the work types they undertake, the clients they serve and the risks that exist in relation to aggregation, defence costs and other issues.

This sensible approach to risk management, the efforts made towards minimisation of errors and superior client protection arrangements do not however insulate our members from the consequences of the proposals you make in this consultation.

We do not agree that these proposals are likely to achieve the outcomes that you seek, and we believe that the most likely effect of these would be a significant **transfer of risk** from law firms and their insurers **to clients, for no demonstrable or worthwhile gain**, in terms of access to legal services or their price.

We do not find the data at all convincing, as it excludes insurers who have exited the market, does not consider maturing claims and is dated. **We see no new compelling reasons for change** since your last consultation on this issue which the Legal Services Board rejected in 2014. We note also that the Legal Services Consumer Panel expressed its opposition on that occasion and we expect them to do so again in the absence of fresh and compelling arguments.

We have been able to read some responses submitted to you by others and **would like to express our particular support** for comments made by: -

The Law Society of England & Wales

- These proposals are likely to undermine Regulatory Objectives 1,3 & 8;
- the evidence offered is unclear, insufficient and incomplete;
- more differentiated cover requirements would increase burdens for clients in terms of identifying a firm with appropriate protection;
- current MTCs are proportionate;
- competition is delivering value in PII provision;
- sole practitioners would be disadvantaged by these proposals from a bargaining perspective with insurers;
- premium cost savings are significantly over-estimated and even if achieved would be outweighed by increased top-up cover costs;
- savings for consumers would be negligible / nil & there would be no improvement in access to legal services flowing from this;
- the £500,000 minimum cover proposed is at odds with the claim that 98% of claims are settled for less than £580,000. Here it is important to note that this percentage assesses claims by number, rather than by value. See below for our further comments on this;
- these changes are unlikely to have any effect on the attractiveness of the sector to new entrants – CMA December 2016.

JLT Specialty Limited

- Notwithstanding the 98% figure quoted by you regarding claims numbers, only 53% BY VALUE would have been met within £580,000;
- given its weaknesses, the data cannot be deemed to be comprehensive;
- it is proposed that the SRA would take a robust stance on ensuring firms buy the correct cover. This can only be after the event – too late for clients to receive adequate protection;
- little thought appears to have been given to aggregation;
- removal of Financial Institutions from cover would require firms which have previously acted for such clients to seek cover anyway;
- consumer choice for conveyancing services would reduce;
- if 98% by number of claims fall within £580,000, then it follows that 98% of the premium relates to the first £580,000 of cover. In other words, the cost of the remaining £2m/£3m is negligible;
- premiums are unlikely to fall through excluding financial institutions from cover because claims arising from this client type are almost exclusively in conveyancing;

- transferring the risk to the client in exchange for an illusory promise of lower legal fees is not in the clients' interests;
- the proposals would impact negatively on Regulatory Objectives 1,3,4,5,6 & 8.

Legal Risk LLP

- Sums in excess of £1m have been experienced in all types of claim listed in the SRA data;
- the proposed £2m turnover ceiling for SMEs to continue to be protected is too low, and there are problems in any event with any arbitrary turnover level, as clients' circumstances change, and given the 'claims made' basis of PII cover;
- the range of possible PII protections available from clients would be confusing and irrational;
- a run-off cap would lead to a 'race to judgment' whether or not clients would be aware of it;
- the assumption by the SRA that top-up cover would be readily accessible is untested;
- the SRA's objective of achieving lower premiums for firms doing low risk work is already achieved through current premium pricing;
- disputes between insurers, whether previous or current, or primary vs excess layer, are likely to increase, with detriment to client protection;
- the inevitable reluctance on the part of firms to rely on other firms' undertakings would slow processes, add cost and damage trust between professionals.

LawNet sees no merit in the vast majority of **these proposals which would reduce client protection and place a burden upon clients that is unreasonable and unrealistic** in terms of most clients' ability to make informed risk-based decisions in choosing a legal services provider. Most clients would simply not be in possession of enough relevant information to make such a choice and the status quo provides a more readily understood and reliable indication of the protections available to them.

We see only negative outcomes arising from most of the proposed exclusions from cover, each damaging to client choice, access and protections.

We have answered your specific survey questions below.

SECTION ONE: CHANGES TO PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS

Question 1

To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

LawNet **STRONGLY DISAGREES**

We agree there is a need for an appropriate minimum sum insured. The current levels for unincorporated and incorporated entities were considered appropriate when they were last reviewed, and we see no evidence in your consultation paper or elsewhere to lead us to believe these minima should be reduced. Insurers understand well the dynamics of where claims fall and that is reflected in premiums. There is no evidence to suggest that premiums would fall if the minimum levels of cover were to be reduced

Question 2

To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

LawNet **STRONGLY DISAGREES**

Firms which do not act for businesses see that reflected already in their PII premiums. Claims data suggests that most claims do, in any event, relate to work undertaken for private individuals with conveyancing and wills/probate being the major areas for claims. Given this, we do not understand the motivation behind this proposal – it seems to be a solution for a problem that does not exist.

If Financial Institutions are to be excluded, this would mean that firms would be unable to act for both buyer and mortgage provider for residential conveyancing matters. The result for clients would be added costs and dealing with two separate firms of lawyers. Or alternatively, choosing a firm that the lender is content with from a PII perspective. Firms unable to do 'bread & butter' residential conveyancing work may struggle to remain viable and therefore be unable to continue to offer other areas of legal service, leading to firm failures (and associated job losses) and a lessening of access to justice.

A lower minimum level would reduce the point at which the purchase of top-up cover becomes necessary. This is known to be more expensive than the basic layer, is in some cases difficult to secure and may offer protection below MTCs. Even in the highly unlikely event that cover at £500k were to cost less than £2m/£3m, any saving would be likely to be offset or exceeded by a higher price for top-up insurance.

Question 3

Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

NO.

Many thousands of small owner-managed businesses are captured within your definition. Turnover of £2m per annum is not a large sum and such businesses are most unlikely to have the level of sophistication you suggest in your rationale. HMG and the banking and accountancy sectors tend to define SMEs as £2m-£25m turnover. In local markets the legal needs of small businesses and the private individuals who own them are intertwined and if firms are unable from an insurance perspective to act for small businesses they would be very likely to lose the opportunity to act for the individuals who own and work for them.

Currently these client types are protected by PII – to remove this would, perversely, be likely to achieve the opposite of what you seek to achieve, i.e. insurers may seek an additional premium for something that is presently covered automatically.

Question 4

To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

LawNet **STRONGLY DISAGREES**

Insurers know which firms are doing conveyancing work and premiums already reflect this – it is after all universally known to be the major source of claims. Those firms which do not undertake conveyancing work will see that reflected already in their PII premium. If mortgage lenders cannot be sure whether firms are insured (and to what level) for residential conveyancing work, they will remove them from their panels because they won't be able to rely upon their undertakings. Trust between firms of solicitors, and the smooth workings of the residential conveyancing process are dependent on firms being able to rely upon each other's undertakings. These changes would cause mistrust, confusion and delay. Some insurers may see such a change as an opportunity to seek higher premiums for this work.

Question 5

Do you think our proposed definition of conveyancing services is appropriate?

N/A – LawNet has no view because we believe the idea of removing conveyancing from scope is seriously flawed.

Question 6

Do you think there are changes we should be making to our successor practice rules?

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Even if – and we have no confidence whatever that it will happen – such savings were to be achieved, these would clearly be of no consequence and allow no real scope for anything to be passed on to clients.

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evidence that larger firms recognise the need to support a framework that protects the reputation of all solicitors.

Question 20

What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

LawNet is not qualified to express an opinion on this. However, the SRA might usefully engage with regulators in the IFA world for insights. In that environment, principles of differentiating between 'advice' and 'execution only' apply, and it seems to us that if a solicitors firm 'actively' does not recommend an investment scheme and has documented that clearly in client communications and file notes, obtaining client acceptance of that, then it ought to be difficult to prove any malpractice on their part.

Question 21

Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

YES

Question 22

Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

We have commented above regarding the dangers to smaller firms arising from these proposals. BAME firms tend to be smaller and it is therefore likely that these firms would suffer any consequences (intended or otherwise) disproportionately.

Question 23

Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Training, penetration testing and more training. At all levels within the firm. The SRA could choose to take an active role in requiring firms to demonstrate that such training has taken place on an annual (or more regular) basis.

SRA CONSULTATION

PROTECTING THE USERS OF LEGAL SERVICES: BALANCING COST AND ACCESS TO LEGAL SERVICES

RESPONSE FROM LAWNET LIMITED

Introduction - about LawNet

LawNet is a member-owned network of 72 solicitors firms in the UK and Ireland, of which 66 are domiciled in England & Wales, and regulated by the SRA. Established in 1989, LawNet supports its members in a variety of ways summarised on the attached **'Benefits of Membership' infographic in the Appendix.** The company is limited by guarantee, and therefore has no shareholders and no profit motive. Member firms join in order to be able to achieve more collectively than they could individually.

Membership is by invitation, and the characteristics we look for in member firms include turnover usually between £2m-£25m, sound finances, good PII claims records and a progressive mindset. We are unlikely to seek actively new members in a town where we already have one, but there is no 'black ball'; rather, we have a consultation process which allows existing members within a given radius to express any concerns they might have about a potential new member. The reputation of the group is taken seriously and highly valued.

Our membership is spread across England & Wales, though there are some parts of the country where our membership is weaker than others – inevitable perhaps given the distribution of firms having the characteristics described above. Even so, **LawNet is a good proxy for the views of medium-to-large SME firms, with more than £300m of turnover and around 2,000 lawyers in the network.**

On joining LawNet, firms must: -

- Achieve our **mandatory ISO9001 Quality Standard**, within two years, and maintain it subsequently
- **Commit to our Excellence Mark requirements**, involving a package of tools to measure the customer journey, including mystery shopping and online client satisfaction surveys. Over the past 4 years, LawNet firms have undertaken more than 3,000 mystery shopping interactions and over 50,000 client satisfactions surveys. LawNet firms have been active in using the learning arising from these initiatives to take steps to improve customer service in their firms, and it has been pleasing to see

scores from mystery shopping and satisfaction surveys improving over that period and exceeding those seen outside of our network.

- **Maintain PII cover of at least £10m per claim** – many member firms choose to top up above this level, reflecting the work they do, the clients they serve and the risk of aggregation that can arise from seemingly lower-value work. While not mandatory, LawNet offers members the opportunity to take part in our Group PII Scheme, which allows them to purchase PII cover in a unique environment and benefit from consistency and a broker-written policy which exceeds SRA MTCs.

With Quality processes, externally-measured client satisfaction and superior client protection at the heart of our network, our members send a positive message to clients and potential clients in their chosen markets. Although the proposals for 'flexibility' in your consultation regarding PII would be of no interest to LawNet members, they nonetheless have grave concerns regarding the consequences of these for clients in the broadest sense and for the reputation of solicitors as a whole.

This response is informed by discussions with LawNet members, with our Group PII scheme brokers and other brokers, with our PII scheme underwriters and with several external experts, some of whom have published or shared with us their own responses to your consultation.

Executive Summary

The proposed transfer of risk from solicitors and their insurers to clients in exchange for an illusory reduction in the price of legal services is ill-advised, perverse, damaging to clients and contrary to the SRA's Regulatory Objectives

LawNet firms are enlightened legal services businesses who are not interested in preserving archaic practices or in protectionism.

Our members' commitment to client satisfaction is matched only by their commitment to high levels of client protection. They submit to external assessment of their operating processes through our ISO9001 Quality Standard but recognise that mistakes can be made and that clients must be properly protected from the consequences of those mistakes. Their membership of LawNet means that they must carry a minimum of £10m per claim PII cover, and many top up considerably above that level, deciding on protection that is appropriate for the work types they undertake, the clients they serve and the risks that exist in relation to aggregation, defence costs and other issues.

This sensible approach to risk management, the efforts made towards minimisation of errors and superior client protection arrangements do not however insulate our members from the consequences of the proposals you make in this consultation.

We do not agree that these proposals are likely to achieve the outcomes that you seek, and we believe that the most likely effect of these would be a significant **transfer of risk** from law firms and their insurers **to clients, for no demonstrable or worthwhile gain**, in terms of access to legal services or their price.

We do not find the data at all convincing, as it excludes insurers who have exited the market, does not consider maturing claims and is dated. **We see no new compelling reasons for change** since your last consultation on this issue which the Legal Services Board rejected in 2014. We note also that the Legal Services Consumer Panel expressed its opposition on that occasion and we expect them to do so again in the absence of fresh and compelling arguments.

We have been able to read some responses submitted to you by others and **would like to express our particular support** for comments made by: -

The Law Society of England & Wales

- These proposals are likely to undermine Regulatory Objectives 1,3 & 8;
- the evidence offered is unclear, insufficient and incomplete;
- more differentiated cover requirements would increase burdens for clients in terms of identifying a firm with appropriate protection;
- current MTCs are proportionate;
- competition is delivering value in PII provision;
- sole practitioners would be disadvantaged by these proposals from a bargaining perspective with insurers;
- premium cost savings are significantly over-estimated and even if achieved would be outweighed by increased top-up cover costs;
- savings for consumers would be negligible / nil & there would be no improvement in access to legal services flowing from this;
- the £500,000 minimum cover proposed is at odds with the claim that 98% of claims are settled for less than £580,000. Here it is important to note that this percentage assesses claims by number, rather than by value. See below for our further comments on this;
- these changes are unlikely to have any effect on the attractiveness of the sector to new entrants – CMA December 2016.

JLT Specialty Limited

- Notwithstanding the 98% figure quoted by you regarding claims numbers, only 53% BY VALUE would have been met within £580,000;
- given its weaknesses, the data cannot be deemed to be comprehensive;
- it is proposed that the SRA would take a robust stance on ensuring firms buy the correct cover. This can only be after the event – too late for clients to receive adequate protection;
- little thought appears to have been given to aggregation;
- removal of Financial Institutions from cover would require firms which have previously acted for such clients to seek cover anyway;
- consumer choice for conveyancing services would reduce;
- if 98% by number of claims fall within £580,000, then it follows that 98% of the premium relates to the first £580,000 of cover. In other words, the cost of the remaining £2m/£3m is negligible;
- premiums are unlikely to fall through excluding financial institutions from cover because claims arising from this client type are almost exclusively in conveyancing;

- transferring the risk to the client in exchange for an illusory promise of lower legal fees is not in the clients' interests;
- the proposals would impact negatively on Regulatory Objectives 1,3,4,5,6 & 8.

Legal Risk LLP

- Sums in excess of £1m have been experienced in all types of claim listed in the SRA data;
- the proposed £2m turnover ceiling for SMEs to continue to be protected is too low, and there are problems in any event with any arbitrary turnover level, as clients' circumstances change, and given the 'claims made' basis of PII cover;
- the range of possible PII protections available from clients would be confusing and irrational;
- a run-off cap would lead to a 'race to judgment' whether or not clients would be aware of it;
- the assumption by the SRA that top-up cover would be readily accessible is untested;
- the SRA's objective of achieving lower premiums for firms doing low risk work is already achieved through current premium pricing;
- disputes between insurers, whether previous or current, or primary vs excess layer, are likely to increase, with detriment to client protection;
- the inevitable reluctance on the part of firms to rely on other firms' undertakings would slow processes, add cost and damage trust between professionals.

LawNet sees no merit in the vast majority of **these proposals which would reduce client protection and place a burden upon clients that is unreasonable and unrealistic** in terms of most clients' ability to make informed risk-based decisions in choosing a legal services provider. Most clients would simply not be in possession of enough relevant information to make such a choice and the status quo provides a more readily understood and reliable indication of the protections available to them.

We see only negative outcomes arising from most of the proposed exclusions from cover, each damaging to client choice, access and protections.

We have answered your specific survey questions below.

SECTION ONE: CHANGES TO PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS

Question 1

To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

LawNet **STRONGLY DISAGREES**

We agree there is a need for an appropriate minimum sum insured. The current levels for unincorporated and incorporated entities were considered appropriate when they were last reviewed, and we see no evidence in your consultation paper or elsewhere to lead us to believe these minima should be reduced. Insurers understand well the dynamics of where claims fall and that is reflected in premiums. There is no evidence to suggest that premiums would fall if the minimum levels of cover were to be reduced

Question 2

To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

LawNet **STRONGLY DISAGREES**

Firms which do not act for businesses see that reflected already in their PII premiums. Claims data suggests that most claims do, in any event, relate to work undertaken for private individuals with conveyancing and wills/probate being the major areas for claims. Given this, we do not understand the motivation behind this proposal – it seems to be a solution for a problem that does not exist.

If Financial Institutions are to be excluded, this would mean that firms would be unable to act for both buyer and mortgage provider for residential conveyancing matters. The result for clients would be added costs and dealing with two separate firms of lawyers. Or alternatively, choosing a firm that the lender is content with from a PII perspective. Firms unable to do 'bread & butter' residential conveyancing work may struggle to remain viable and therefore be unable to continue to offer other areas of legal service, leading to firm failures (and associated job losses) and a lessening of access to justice.

A lower minimum level would reduce the point at which the purchase of top-up cover becomes necessary. This is known to be more expensive than the basic layer, is in some cases difficult to secure and may offer protection below MTCs. Even in the highly unlikely event that cover at £500k were to cost less than £2m/£3m, any saving would be likely to be offset or exceeded by a higher price for top-up insurance.

Question 3

Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

NO.

Many thousands of small owner-managed businesses are captured within your definition. Turnover of £2m per annum is not a large sum and such businesses are most unlikely to have the level of sophistication you suggest in your rationale. HMG and the banking and accountancy sectors tend to define SMEs as £2m-£25m turnover. In local markets the legal needs of small businesses and the private individuals who own them are intertwined and if firms are unable from an insurance perspective to act for small businesses they would be very likely to lose the opportunity to act for the individuals who own and work for them.

Currently these client types are protected by PII – to remove this would, perversely, be likely to achieve the opposite of what you seek to achieve, i.e. insurers may seek an additional premium for something that is presently covered automatically.

Question 4

To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

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Insurers know which firms are doing conveyancing work and premiums already reflect this – it is after all universally known to be the major source of claims. Those firms which do not undertake conveyancing work will see that reflected already in their PII premium. If mortgage lenders cannot be sure whether firms are insured (and to what level) for residential conveyancing work, they will remove them from their panels because they won't be able to rely upon their undertakings. Trust between firms of solicitors, and the smooth workings of the residential conveyancing process are dependent on firms being able to rely upon each other's undertakings. These changes would cause mistrust, confusion and delay. Some insurers may see such a change as an opportunity to seek higher premiums for this work.

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Do you think our proposed definition of conveyancing services is appropriate?

N/A – LawNet has no view because we believe the idea of removing conveyancing from scope is seriously flawed.

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Question 20

What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

LawNet is not qualified to express an opinion on this. However, the SRA might usefully engage with regulators in the IFA world for insights. In that environment, principles of differentiating between 'advice' and 'execution only' apply, and it seems to us that if a solicitors firm 'actively' does not recommend an investment scheme and has documented that clearly in client communications and file notes, obtaining client acceptance of that, then it ought to be difficult to prove any malpractice on their part.

Question 21

Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

YES

Question 22

Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

We have commented above regarding the dangers to smaller firms arising from these proposals. BAME firms tend to be smaller and it is therefore likely that these firms would suffer any consequences (intended or otherwise) disproportionately.

Question 23

Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Training, penetration testing and more training. At all levels within the firm. The SRA could choose to take an active role in requiring firms to demonstrate that such training has taken place on an annual (or more regular) basis.

Supporting independent law firms for over 25 years

LawNet

LawNet is passionate about helping its firms grow and be successful in their individual markets. Our aim is to help you achieve excellence, win and retain clients, reduce costs and increase your profitability

Today, with more than 70 member firms ranging in size from £2M - £25M in turnover, the network delivers a range of powerful benefits for its members and their clients.

Not for profit

Investing in member services and delivering value

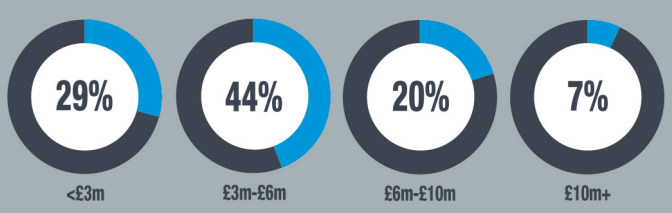
NEARLY **70%** have been members for more than 10 years

2000 lawyers at **140** locations

with **c £300m** combined turnover

Inside the network

Percentage of firms by turnover



LawNet members geographical spread

Wales - 3%	2
South West - 10%	7
South East - 36%	27
Ireland, Scotland & IOM - 9%	6
North - 16%	11
East/East Midlands - 19%	13
West Midlands - 7%	5

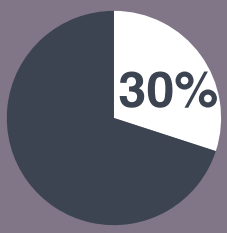
Insurance

Play Video

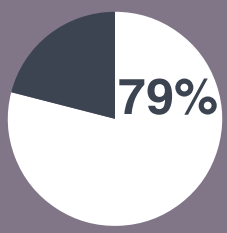
£1bn+ PII scheme
LARGEST
group placing in legal sector

- Unique, stable, consistent scheme
- Broad, flexible policy - beyond SRA's MTCs
- Superior claims handling

On average, members pay **2.51%** of fee income for **£10m** of cover



pay < 2%



pay < 3%

Learning

Play Video

Technical updates, skills-based management & leadership

Over **60** events each year

95% rated seminars as good/excellent

Helping firms meet SRA Continuing Competence regime

Shaping agenda of future learning in sector

Networking

Play Video

Hard to measure, valued the most

openness
referrals
exclusive
Eurojuris
strategic alliances
sharing
family
collaboration
community
practice groups
challenge
ideas
mentoring
annual conference
member-only

Risk Management

Play Video

Helping you embed a risk management culture

Every firm committed to LawNet's ISO.9001 standard (LQS)

LQS incorporates ISO, Lexcel and OFR requirements

Free quality management review

A varied package of support for your COLP, COFA, MLRO

Business Support

Play Video

LAWNET PREFERRED SUPPLIER

Reducing costs through exclusive member discounts with vetted suppliers

Improve performance through annual financial benchmarking with tailored dashboard and free specialist feedback

Award-winning centrally funded client care package including £3,500 of tools to measure and improve your client experience

Marketing Support

Play Video

Freeing up your marketing staff with benefits that include:

High quality individually branded magazines keeping you in front of your SME clients worth over £10,000

Range of customised service brochures in your firm's livery worth c£2,500

Exclusive news stories and expert articles to win PR coverage worth £6,000 per year

All reducing the cost of staying in touch with your clients

Raising your profile and recognising your achievements with national industry award scheme

Protecting the users of legal services: balancing cost and access to legal

Response ID:316 Data

2. About you

1.
First name(s)

Alex

2.
Last name

Moore

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Legal Ombudsman

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Somewhat disagree
Please explain your answer
: 1. The Legal Ombudsman (LeO) was established by the Legal Services Act (2007). Our role is two-fold: to protect and promote the public interest by resolving complaints and providing redress when things go wrong in transactions within the legal services market, and also to feed the lessons we learn from complaints back to the profession, regulators and policy makers to allow the market to develop and improve. 2. We welcome the opportunity to respond to the Solicitors Regulation Authority (SRA) consultation on proposed changes to rules on Professional Indemnity Insurance (PII) and the Compensation Fund. 3. Our interest in this consultation is based on: a) the use of PII and the Compensation Fund as alternative sources of redress. We provide redress for consumers of legal services and are supportive of other measures provided within the regulatory environment which offer alternative forms of redress in situations where we cannot help; b) our commitment to

consumer protection and professional standards in line with the regulatory objectives listed in the Legal Services Act; c) the impact of our work on both PII and the Compensation Fund, and in turn the impact of any changes in the two on our operations; and d) our desire to ensure that costs of legal services (a consistent area of complaint for consumers) are reasonable and clear. 4. At the Legal Ombudsman, we are not champions for the profession or consumers. We see our role as ensuring that there are reasonable options for redress open for consumers. While we very rarely see complaints which go over the proposed PII or Compensation Fund limits, we have looked at these proposals from the wider perspective of whether there is a reasonable path to redress when things go wrong. 5. We broadly support reducing regulatory burdens and allowing the legal profession to flourish with less onerous running costs. However we are concerned that this should not come at the price of consumer protection. We deal with a variety of complaints with a wide range of potential remedy levels; it is our view that minimum requirements should provide reassurance to a range of consumers in order to maintain confidence in the legal profession. 6. Our views are presented in greater detail below. These are based upon insight gained through our operational experience and standard feedback mechanisms. We look forward to discussing the proposals further with the SRA and considering how they might impact on the information we provide to those who contact us. 7. As noted above the types of complaints seen by the Legal Ombudsman rarely reach the financial levels being considered in this consultation, therefore we are commenting on this based on our experience of providing redress to consumers. 8. We agree that it is appropriate to tier the necessary level of cover based on the types of services provided by a firm rather than by its legal structure, as the evidence presented shows that this is largely where risks lie. 9. The consultation proposes to reduce the minimum cover because 98% of claims fall under the threshold of £500,000. We are concerned that this still excludes 2% of claims, and these are by their nature cases where the financial loss suffered is greatest. It would be useful to understand why the SRA is content to exclude these particular cases, and to clarify whether this 2% relate to investments in the dubious investment schemes referred to in the consultation. 10. The evidence presented in the proposal suggests that there were 442 claims which would not be covered under the new rules. It is not clear how far over the proposed new limit these claims might have been, and therefore the level of losses consumers would have to bear themselves. Finally, it is not clear to us that there will be a significant enough reduction in premiums for firms to justify reducing the protections available to consumers.. As the paper acknowledges, evidence shows that insurers already factor in the likelihood of receiving a high claim when they set their premiums. Therefore we are not clear that these changes would encourage insurers to introduce a further drop in premiums.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Please explain your answer

:

12.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree

Please explain your answer

: 11. Having a separate component for conveyancing appears sensible given the figures reported in the consultation. However, it is not clear why there will not be a similar increase in the minimum level of PII cover for commercial claims, which are also noted as being high value. It would be useful to understand the SRA's position on this, given that not all commercial legal services will be excluded on the basis of the large business exclusion. 12. We are pleased to see that measures have already been proposed for monitoring which firms purchase the conveyancing top-up. This will be important to ensure that consumers are given the correct information about the minimum cover they can expect from firms offering conveyancing services.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

15. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

16. Please explain what these are and provide any evidence to support you view

14. While we are not proposing formal changes to the SRA's successor practice rules, we believe this is an appropriate place to note some potential divergence between our approach to successor practices and the SRA's. We are aware of situations where the SRA has not recorded a firm as a successor practice, when it has acquired a closing firm. However under our scheme we would regard them as a successor practice. This can create confusion for the firm, and challenges if enforcement actions are needed on our part.

15. We have agreed with you that we will discuss our mutual approaches to successor firms, and understanding differences in our approach and challenges this may create. It is important to ensure that we minimise any possible gaps in consumer protection in this area.

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: 16. We agree and are supportive of any measures which simplify terms and definitions.

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Somewhat disagree

Please explain your answer

: 17. As noted above, while the headline measure of reducing minimum levels of cover clearly provides more flexibility, it does not guarantee lower insurance costs. 18. On this point, the consultation document also appears to be missing some data. Paragraph 70 notes that the previous increase in the level of cover from £1m to £2m/£3m resulted in an increase in premiums but does not give a percentage figure. We would also be interested to see what the increase was, in order to see more clearly the way the SRA has reached their estimation of 5-10% reduction in premiums from these reforms. 19. We note that on page 52, the SRA has recognised that in practice, not all firms would reduce their level of cover because they would buy additional cover to ensure greater protection. It would be useful to have an indication of the proportion of firms that might reduce their cover if the rules were to be changed. 20. This might create an environment in which legal services are offered more cheaply where there is a lower level of protection, and PII cover at current levels would be available only to those who are able and willing to pay more.We would want to be sure that consumers understand the different levels of protection so that they can make an informed choice about how much they wish to spend. 21. We are supportive of the SRA's proposal regarding flexible defence costs arrangements as a better way of reducing premiums than measures that come at the expense of consumer protection.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: 22. We appreciate that the same rationale has been used here as with the limits on minimum PII cover, and so we have the same concerns in relation to claims which fall outside of the minimum limit. The SRA may wish to consider how the data in the consultation specifically supports this proposal and it is unclear from the documentation. It is not clear why run-off cover would be comparable to general PII cover, especially as there may be extra risks related to firms closing poorly. We are concerned

that the firms expected to be impacted by this (ie sole practitioners and small firms in high-volume claim areas) are those where consumer protection is most needed. We recognise the importance of allowing solicitors to retire and firms to close when they want. It is undesirable for them to be prevented from doing so by high run-off costs. However it would be helpful to ensure that there is a balance between this and consumer protections. 23. As identified on page 53 of the consultation, the challenge with this proposal is the potential for differential outcomes according to the timing of claims. The mitigation of phasing cover over six years does not address this fully as there is no way of knowing that claims will be staggered evenly across the years. 24. If indeed consumers are expected to rely on firms paying an additional top-up premium to provide additional cover then it follows that the proposal would not in itself help to reduce the cost burden on firms.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: 25. Generally we think a competitive environment which could allow for this would be positive, but we have no evidence to say that these proposals will make a difference to the number of news firms emerging.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

: 26. These changes do clarify that it is a fund available to those in situations of hardship but it is unclear how we can decide who is most 'deserving' of their money. Regardless of the consumer's level of income, all of these claims arise from situations where a consumer has suffered a quantifiable loss. 27. We would also be keen to ensure that there is appropriate communication with consumers about how to apply to the Compensation Fund and who can help them with this. It is important to ensure that they have a good understanding of varying regulatory protections and how this relates to access to the Compensation Fund as well.

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat agree

Please explain your answer

: 28. On the face of it, it seems appropriate that the Compensation Fund should be made available to those who are less able to sustain financial losses, especially as the SRA wishes to strengthen the Fund as a source for those in hardship. However it should still be acknowledged that if all of these proposals go forward, the high value claims which would be excluded from the minimum PII cover would potentially come from people who are then also excluded from the Compensation Fund. 29. We hope that the proposed measure for creating a threshold is robust enough to provide assurance that only those who have the capability of pursuing losses through the court system would be in this position. The central issues here should be access to redress and impact of a loss on any given consumer, rather than an objective measure of financial assets.

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

29. Please explain why.

30. No, as in the scenarios provided, the beneficiaries are disadvantaged by being treated with a singular cap. They may have no connection with each other.

31. It is also unclear what the process might be if a beneficiary made a claim, was awarded a maximum payment of £500,000, and then another beneficiary attempts to make a claim at a later date. Would they be precluded from claiming because the full amount had already been paid out? If so, we would be keen to understand what initial steps the SRA might take to identify any other people affected by a particular solicitor's actions before making a payment.

32. If they would not be precluded from claiming, it would then seem that beneficiaries were disadvantaged by claiming together.

33. In general, we would provide the same comment on this proposal as on the suggestion to lower the minimum PII cover: it may be that historically the claims have not been this high, but this does not necessarily justify lowering the cap. There will be still be a number of consumers losing out, and these will be the people who have suffered the greatest financial loss. There is already a suggested measure to ensure that help is targeted at the most financially needy, so this could potentially affect those who have lost a lot of money all at once and do not have the financial cushion to sustain it.

30. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

31. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

34. The steps laid out in the consultation appear reasonable and we are supportive of the proposal to exclude these kinds of claims from the Compensation Fund.

32. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: 35. Yes, on the whole these are clearly expressed and seem appropriate. 36. Our joint Better Information research indicates that there needs to be clearer explanations about which firms are regulated and what protections they offer – including access to the Compensation Fund. It is therefore vital that there is clear guidance available to show the criteria applied in determining eligibility and payments. 37. Thank you for the opportunity to comment on the Solicitors Regulation Authority's proposals for reforming PII requirements and access to the Compensation Fund. 38. Overall, we are supportive of policies that aim to reduce regulatory burdens on the profession and allow competition to flourish, but we are concerned that some proposals may create a gap in consumer protection in certain areas. We urge the SRA to ensure that there is a balance between consumer protection and benefits for the profession. In particular we are concerned about the lowering of minimum PII cover

and the cap on claims from the Compensation Fund. 39. We look forward to working with the SRA on these matters to identify ways to overcome new challenges, in order to ensure that consumer protection is maintained and that the profession remains strong, diverse and effective.

33. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

34. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:117 Data

2. About you

1.
First name(s)

Frank

2.
Last name

Maher

6.
I am responding..

on behalf of an organisation

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

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: Please see our emailed letter dated 15 June 2018 which accompanies this response and provides general comment on the proposals. The SRA's own figures show that 98 per cent of claims are in the bracket to £580,000. All firms will be required to obtain 'adequate and appropriate cover', so most firms will need to buy top up insurance. The cost of this will far exceed any saving from reducing the minimum, and a top up policy may offer far less protection: if a fee earner fails to disclose a mistake, for example, there is a far greater risk that the claim may not be covered. At present, the market for top up insurance is showing signs of shrinking, with two insurers having pulled out of the first excess layer market, so firms should not assume it will be readily available. Even firms which close with a successor practice will have to try and purchase expensive run-off cover (if it is available) to plug the gaps left by the proposed changes. The proposal to reduce basic cover to £500,000, when the SRA has itself identified that 98% of claims are under £580,000, is irrational. Insurance is intended to protect against extremes and volatility. There is no rational basis for selecting 98%, and the claims data is in any event insufficient evidence for the proposed changes, as the figures exclude insurers which have left the market (in all probability due to adverse claims experience), and exclude the increased impact in claims arising from identity fraud and cyber attacks. When the limit was last increased, The Law Society's Gazette of 27 January 2005 reported "…The index contains elements which are not relevant to claims against solicitors and omits relevant elements, such as the value of property and the level of personal injury claims. Property values generally have more than doubled since 1989 and, ignoring the impact of structured settlements, maximum personal injury awards now exceed £3 million." That applies with even more force given the passage of a further 13 years. The LSB Final Decision Notice 26 November 2014 stated: "28. The LSB shares the concerns raised in a number of the submitted responses to the SRA's consultation and the correspondence received by the LSB, about the lack of evidence and the use of out-of-date evidence, notably the reliance on Solicitors Indemnity Fund (SIF) figures for conveyancing which are 15-25 years old, which necessarily gave little indication of the likely level of claims over £500,000 given the subsequent rise in property prices and developments in the personal injury sector. Using the SRA's own assumptions and Land Registry figures provided to the LSB on 22 September 2014 as additional information to the original application, it may imply that not only will there already be a large number of transactions (particularly in London) over the £500,000 threshold, but that the average property price may exceed this within two years and the average conveyancing claim exceed the threshold by 2022. If a minimum level is to be set, the LSB considers that one factor to be considered, alongside cost impact and consumer expectations, is the need for a mechanism for 'future proofing' any minimum level of cover to be identified, such as to provide regulatory certainty and encourage market entry. It is far from clear that the present proposal has considered the issue of future-proofing to any material extent." The consultation does not address those concerns. Forcing more firms to rely on top-up insurance will increase their exposure to coverage disputes, either from insurers taking aggregation points following the decision in AIG v Woodman. [2017] UKSC 18 We anticipate that as the market develops, the changes will meant that firms will be faced with a confusing array of policy terms. They may, for example, be offered cheaper premiums, but face onerous notification requirements and coverage exclusions (for non-MTC protected claims) along the lines of those faced by IFAs. Lenders may remove small firms from their panels, either cutting firms out of conveyancing, or forcing consumers to pay two sets of legal fees. Solicitors and staff who leave firms or retire may need to take out expensive run-off cover – even if the firm continues or there is a successor practice. If they can buy it at all, it may be expensive and may only be available for one or two years at a time, dependent on claims experience. Reliance on undertakings will become far more risky, and some firms may not be prepared to accept them, particularly from smaller firms. Expect more coverage disputes, and where there is a dispute between insurers, if the claim is outside the compulsory cover, the provision under which an insurer may be compelled to handle the claim and seek reimbursement from the other insurer later will not apply. The proposals are based on flawed data on the size of claims which largely omit data from insurers who have left the market – the very insurers who have almost certainly suffered the largest losses - and the more recent trend in cyber and bank scam claims. Firms are prevented from limiting liability below the current minimum cover, but a lower limit applying in future could mean both clients and law firms are caught out and find that the available cover is less than the limit they had agreed. This may put the SRA in breach of the right to property under Article 1 of the First Protocol ECHR as solicitors have been prevented from limiting liability below the minimum yet may find they have no or inadequate cover, through no fault of their own (because they may have no control over the applicable limit and breadth of cover). It is improbable that the proposals will achieve their intended aim of encouraging new entrants to the profession. The only winners, if any, will be firms offering criminal law (and it is improbable that any new entrants will want to do that in the current environment), or immigration. One cannot assume that firms will know how much cover to buy, despite the requirement to buy an 'appropriate' amount. Insurance brokers will generally not advise on appropriate limits. One cannot assume that firms will be able to appreciate the potential size of claims: large claims can arise from what firms think is low value work. I have defended a £3m claim from a £25,000 purchase, and am aware of a £2m claim from personal injury case settled for £2,000. Multiple different levels of insurance will also lead to confusion - - Nil – for

clients >£2m turnover - Nil - where run-off is capped - £500,000 – standard cover - £1m - conveyancing - €1,250,000/ aggregate €1,850,000 under the Insurance Distribution Directive (which, as the SRA itself has identified, will impact firms doing litigation, conveyancing and probate). In reality, the SRA has no control over how much cover a firm buys after it has ceased to practise. When the SRA intervened in AIG v Woodman, Mr David Edwards QC, leading counsel for the SRA submitted - "The basis for the SRA's intervention has been twofold. First of all the SRA has been the statutory trustee of the compensation fund and as you will know My Lords the fund does not generally respond to claims for which insurance is available… "But my lords, secondly, and more importantly, the SRA intervenes as the body responsible for regulating the solicitors' profession and as the body responsible for setting the Minimum Terms and Conditions. So far as that is concerned, my lords, as regulator the SRA is obliged by s.1 of the LSA 2007 to act compatibly with certain regulatory objectives which include protecting and promoting the public interest, protecting and promoting the interests of consumers, and encouraging an independent, strong, diverse and effective legal profession. In short my Lords the SRA has to have regard to the interests of solicitors, consumers and indeed the broader public interest." This submission was based on the decision in Swain v The Law Society [1983] 1 AC 598. The proposals fail to ensure the protection not only of consumers of legal services, but also solicitors and their staff, the majority of whom have no say in the cover which is provided to them through their firms. It is generally not possible for individuals to buy additional cover if their firms fail to buy adequate protection. Claims can be made against individuals as well as their firms, as happened in the valuer's case of Merrett v Babb [2001] EWCA Civ 214 (though the Court of Appeal fell into error in assuming, in obiter dicta, that the employee could have bought his own insurance). Any decision on reducing cover must therefore take account of the risk not only to consumers, but to solicitors and their staff who are unable to protect themselves - at any price.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: Lenders may remove small firms from their panels, either cutting firms out of conveyancing, or forcing consumers to pay two sets of legal fees. The proposal ignores the claims made basis of insurance: solicitors and clients may have proceeded on the basis that services would be subject to compulsory insurance, only to find out subsequently that they are not. This may put the SRA in breach of the right to property under Article 1 of the First Protocol ECHR as solicitors have been prevented from limiting liability below the minimum yet may find they have no or inadequate cover, through no fault of their own (because they may have no control over the applicable limit and breadth of cover). (See our covering letter.)

15.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

There should not be such an exclusion for the reasons identified above. Potential claimants may drift in and out of MTC protection with the passage of time.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: The cost of conveyancing claims is already addressed by insurers' pricing models. The proposal creates a risk of firms not obtaining the requisite conveyancing cover because they may not be aware of their exposure, whether through successor practice risk, or an individual 'dabbling' in conveyancing, or potentially through an unanticipated consequence of the drafting of the exclusion. It would be far better if the SRA were to audit firms supplying conveyancing services to target the causes of claims. Apart from identity fraud and cyber claims, these are largely unchanged from the large volume of claims faced by SIF in the 90s.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

There is scope of argument about whether services are or are not 'ancillary' to conveyancing, such as advice on SDLT mitigation, are within the definition.

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

No

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: The proposals are deeply flawed and reflect a fundamental failure to appreciate - - The true nature of claims made insurance and the impact which the proposals will have on claims arising from work already undertaken. - The probable increase in insurance costs, particularly to small firms, through the need to buy top-up insurance which will inevitably cost more than any saving, if it is available. - The likelihood of a significant increase in coverage disputes; the current provision in clause 12 of the PIA on Disputes as to insurer would not apply in many cases.

22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Few if any firms would benefit from lower insurance costs. It is for the insurers and brokers to provide evidence on this, but we expect that only those providing criminal or immigration services would have any prospect of saving on costs, and then only if they had no legacy or successor practice risk of other work types, particularly conveyancing, which would expose them to the predicted risk of increase in insurance costs.

23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The proposal would expose a random selection of claimants and solicitors to the risk of claims being uninsured. This would make it more desirable for clients to instruct large firms rather than small ones, which broadly carry a higher degree of risk of closure, potentially distorting the market in legal services. It would also mean that all firms which close would need to try and obtain additional run-off cover at great expense. However, if the cap were exhausted, the claims record would make it unlikely that they could buy replacement cover.

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: It is highly improbable that the proposals would achieve this result. Only firms providing criminal or immigration services are likely to have any prospect of saving on insurance costs, and it is improbable that new firms would seek to provide criminal services in the current environment.

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

26. Please explain what you think these impacts are

The impact will be greatest on small firms, increasing their insurance costs, and reducing the likelihood of them being instructed, particularly in conveyancing because of the lack of assurance provided to lenders. It is inevitable that ethnic minority firms would be hit by this.

27. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The market is generally working well and statistics provided by the Law Society show that the premiums paid by the profession as a proportion of gross fees have reduced since SIF. Insurance brokers have indicated that overall savings are unlikely - see for example Miller Insurance, Back to the future - do the SRA's proposals achieve its objectives? https://solicitors.miller-insurance.com/Insight/SRA-Consultation

28. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The Law Society have doubted the SRA has power to do this. The proposal's reliance on 'household assets' risk having a random impact on claimants. See http://www.lawsociety.org.uk/policy-campaigns/documents/sra-pii-compensation-fund-reforms/

29. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

We have no proposals on this.

30. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: As explained in the Law Society's slides referred to above, the impact may be random.

6. Questions continued

31. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

32. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

See previous response.

33. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a

payment?

No

34. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

35. Please explain why.

As a matter of logic, we do not disagree with the scenarios in para. 111 of the consultation, but consider the limit to be flawed in principle.

36. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

We have no comment to make.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: No comment

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

40. Please explain what you think these impacts are

The proposals risk reducing the trust placed in small firms. Ethnic minority firms are often small.

41. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

This is mainly a training and awareness issue. The SRA could engage a commercial provider of test phishing emails. Support for smaller firms on raising the level of IT protection might pay for itself.

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

By email only to protectlegalusers@SRA.org.uk

15 June 2018

Dear Sir/Madam

Response to the SRA consultation on protecting the users of legal services: balancing cost and access to services.

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Solicitors Regulation Authority's (SRA) consultation on proposals to review and change its Professional Indemnity Insurance (PII) and Compensation Fund arrangements.

The requirements for solicitors to have PII, and to contribute to a Compensation Fund offers protection to solicitors and consumers alike. Regulatory prescription for insurance cover safeguards solicitors and consumers against loss, allowing them to contract with greater confidence and peace of mind. Liabilities following mistakes can lose solicitors their business and their reputation, and consumers can suffer significant financial loss as a consequence of errors or omissions.

In a changing landscape, with growing external uncertainties, new regulatory flexibilities and diverse partnerships, the risks are as significant as ever. A scandal affecting a single firm can erode public confidence in legal services if financial protection arrangements are not robust. That said, we are sympathetic to attempts to assess whether current requirements are prohibitive, inflexible and costly or discriminatory, and to alleviate these where necessary and feasible.

The main proposals in relation to PII and Compensation Fund cover are:

1. To reduce the compulsory minimum level of PII to £500,000, or £1m if a firm does conveyancing work;
2. To cap the total level of compulsory run-off cover at £3m for conveyancing firms and £1.5m for all other firms in aggregate over six years.
3. To remove the protection of the SRA-prescribed minimum policy to commercial customers with a turnover in excess of £2m.
4. To re-designate the Compensation Fund as a hardship fund.
5. To limit eligibility to the Compensation Fund to those whose household assets are less than £250.000 and exclude lost fees of barristers or experts
6. To reduce the maximum Compensation Fund payment to £500,000 from £2m.

Overview of the Consumer Panel's concerns

Evidence from the Law Society's data shows that 4.8 per cent of total turnover in the legal services market goes on purchasing PII cover. We agree that this is substantial, but this expense has to be considered alongside the value it provides: consumer and solicitor protection, and wider market confidence. The SRA asserts that PII is the single biggest cost of regulation, with small firms particularly affected. However, we know that some small firms are able to negotiate lower premiums when low risk work is involved.

The SRA states that reducing the compulsory level of PII cover to £500,000 would lead to a reduction in premiums, which would be passed on to consumers, resulting in a reduction in legal costs. However, the SRA itself states that there is no evidence or guarantee that these savings would be passed on to consumers.

Moreover, evidence from the Law Society shows that even if the SRA reduces compulsory levels of cover to £500,000, the savings passed on to consumers will be negligible. In its response to the SRA, the Law Society convincingly demonstrates that a 9 to 17 per cent saving as predicted would lead to a reduction in fees of 0.4 to 0.8 percent[1]. This translates to a saving of £5.30 in legal fees for a conveyancing transaction costed at £650, and a saving of £5.88 on a divorce service costed at £721[2].

More worryingly, the savings anticipated have not been balanced against other costs which are likely to be incurred (and indeed likely to increase), specifically, the cost of top-up covers. At present firms are obligated to buy top-up insurance cover if, after an internal assessment, the minimum level of cover is deemed insufficient for their practice. The SRA argues that this duty will continue under the new regime, so that firms, where necessary, will be under a regulatory obligation to purchase insurance above the £500,000 or £1m minimum claims limit stipulated by the SRA. However, evidence from the Law Society's response shows that the cost of top-up cover has been rising for a number of years[3]. This means that savings on premiums are likely to be even more conservative than the 9 to 17 per cent anticipated by the SRA. The Law Society notes that *"at present, only 22 per cent of firms purchase top-up cover. But, top-up cover will assume a new significance if the reforms go ahead, as the SRA is proposing sizeable cuts to solicitors' indemnity limits, from the current levels of £2 million or £3 million, to £1 million for solicitors that offer conveyancing services, and just £500,000 for everyone else".*

The Panel notes that the SRA proposes to establish a separate minimum level of cover for conveyancing services of £1m. We do not believe that this is adequate for conveyancing work, particularly in regions where house prices are high.

With regards to proposed changes to the Compensation Fund arrangements, the Panel is very concerned that such extensive reduction in consumer protection, removing groups of individuals including those who suffered ordinary income

[1] The Law Society's response to the SRA's consultation document, 7 June 2018
[2] Ibid
[3] While the cost of premiums fell 7.7 per cent from 2014-15 to 2015-16, the cost of top-up cover over the same period increased 9.9 per cent. Similarly, although there was a 1.3 per cent fall in the cost of mean premiums from 2015-16 to 2016-17, the price of top-up cover went up by 2.3 per cent

losses, has not been backed by research, evidence or detailed analysis. Research centred on consumers who have previously accessed the fund would have aided understanding of consumers' needs in this area. Without it, the Panel cannot support any of the proposals where the risks appear to be overwhelmingly redirected towards consumers.

Overall, the SRA's PII and the Compensation Fund proposals highlights areas of significant reduction in consumer protection. In arriving at its position, the Panel considered whether the appropriate balance of responsibility and indeed risk has been struck between consumers and providers, taking into consideration consumers' lack of expertise and experience in dealing with legal matters. No evidence in the consultation suggests that the balance is correct.

We offer reflections on key aspects of the proposals below. We hope that the SRA will consider carefully what we say before making its final decision.

Reflection on the key areas

Claims limit

The Panel is reluctant to support the proposal to lower the level of minimum compulsory cover to £500,000 for any one claim and we do not believe that the £1m cover for conveyancing is adequate. We accept some of the arguments put forward by the SRA, but for us to support a decision of this magnitude – that involves transferring substantial risk from firms to consumers -we would need to be convinced there would be at least commensurate benefit for consumers. No such evidence has been presented.

We have concerns about the data set that have been used to justify these proposals. As is widely reported, the claims data collated by the SRA does not cover the whole market. It accounts for 75 per cent of insurance policies by premium over a 10 year period beginning in 2004 and ending in 2014. This means that four years' worth of data is not accounted for. Moreover, key data on insurers that have left the market or become insolvent is also missing. Equally concerning is the fact that the SRA now says that 98 per cent of claims fall within the proposed £500,000 limit, but it previously said the figure was £580,000 based on the same data.

Although the SRA notes that there is likely to be a 7 to 19 per cent savings for firms in insurance premiums, as noted above there is no guarantee that firms will pass on these savings to consumers and no comparable evidence from other sectors or jurisdictions that such savings have been passed on. The truth of the matter is that the SRA are proposing that consumers lose current protections, without being certain of gaining anything. The risk of being underinsured would be transferred to consumers at marginal or no benefit. This would not be a fair or desirable outcome and we believe it would ultimately erode trust in solicitors and devalue one of the things that sets them apart from other providers of legal services.

We also note that the proposals are not under pinned by consumer research, which is very concerning with change of this magnitude. Our research on Risk and the Role of Regulation[4] showed that consumers across the spectrum expect that when they use a solicitor they will be protected if something goes wrong. They do not think about checking to see the level of protection in place, they simply assume it

[4] Risk and Role of Regulation

will because they are solicitors. Furthermore, there are a number of risks which consumers do not consider at all, such as fraudulent activity by a lawyer, meaning they are not able to make empowered choices in this context.

Although the SRA notes that only 2 per cent of claims are above £500,000, it is significant to note that this 2 per cent accounts for a substantial proportion of claims by value, 47 per cent to be precise. The Panel is concerned that unless firms make a realistic and honest assessment of cover required, at each renewal date or during the year and top-up their insurance cover, there may be insufficient insurance to cover the number of claims above £500,000.

Throughout the consultation document the SRA has referred to the obligation on firms to have appropriate insurance in place. The SRA has noted that this is often achieved with the procurement of top-up insurance. However, evidence suggests that top-up insurance is often more expensive than the baseline cost of insurance. Therefore, it cannot be certain that firms will readily choose this option. Moreover, the SRA has not outlined any proposal to focus supervisory activities on ensuring that firms have appropriate cover.

If, the SRA decides to go ahead with the proposed changes, it would be very important to impose an information duty on lawyers. This would mean lawyers would have to make it very clear to consumers when their insurance cover was not high enough to cover the consumer's assets, and should be done before work was started (where possible) to allow the consumer to switch to a lawyer with a higher level of cover if they wanted to.

Where information was not provided, or not provided in a clear and noticeable way, any shortfall where a problem did materialise should fall on the compensation fund (where the sum exceeds the maximum that can be awarded by the Legal Ombudsman). However, if the SRA goes ahead with the changes it proposes to the compensation fund eligibility this would be futile, and leave some consumers open to little or no regulatory redress.

Aggregate cap for Run off cover

The SRA proposes to introduce an aggregate cap on the level of claims made over the six years period of run off. The current limit for any one claim is £2m, but there is no limit to how many claims an insurer can pay over the period of insurance. Insurers complain they are unable to predict how much they could ultimately have to pay out. The risk to consumers is that where very large losses arise, there is a possibility that individual claims may not be met. Losses could arise from systematic fraudulent or negligent activity in a firm. Simultaneous proposals, to limit access to the Compensation Fund (discussed below) means that consumers may find themselves with no protection. The Panel is strongly against this proposal. We note that in conveyancing aggregate claims can quickly exceed £3m.

The Council for Licensed Conveyancers have changed their scheme so that run-off premiums are built into PII and not paid by firms as a one off payments, this is the type of solution we would expect the SRA to explore. This is the type of solution we would expect the SRA to explore as a way of maintain consumer protections whilst spreading provider costs over a period of time.

Excluding financial institutions and large business clients

The Consumer Panel itself has a remit to represent the interests of a wide range of consumers but we prioritise those consumers who are less able to give voice to their own interests. Our 2013 publication on Financial Protection Arrangements[5] explicitly focused on individual consumers, small businesses and small charities. We recognise that large corporate buyers are better able to assess risks and suffer less from the information asymmetries that are present for smaller consumers in the legal services market. Larger buyers may also have the market power to demand changes to standard terms where these do not provide them with adequate protection.

We are sympathetic with the proposal but believe the definition of a large business may be overly restrictive. We are not convinced that using turnover figure to set the threshold for large business clients is appropriate, particularly when this is set at £2m, which we consider low. We do not believe that many businesses with turnover of £2m plus are sophisticated buyers of legal services and so we would have liked to see the justification for this baseline rooted in a carefully assessment and evidence.

We would also like to note that the Companies Act definition of SMEs is that they meet two of the following criteria:

1. Turnover less than £25m
2. Less than 250 employees
3. Gross assets less than £12.5m

The policies of government and other regulators are often guided by these criteria, we would suggest that they should be used as the cut-off in this case as well unless there are clear reasons not to.

Compensation Fund arrangements

On considering all the arguments, the Panel cannot support any of the proposals relating to changes to the Compensation Fund arrangements. It is difficult for the Panel to provide an informed view on the Compensation Fund proposals because there is little to no information to support the extensive reduction in consumer protection and collateral damage suffered by other suppliers. The document does not offer any convincing rationale for the proposed changes, no analysis of the advantages or disadvantages, no quantified costs and benefits, and no historic data on claims made or grants awarded.

It is important to note that the Compensation Fund already operates on a discretionary basis without any guarantees that money will be paid out to those who have suffered financial loss as a result of a solicitors' dishonesty or fraud. Dishonesty and fraud are not covered by the Minimum Terms and Conditions of PII arrangements. Therefore, the Compensation Fund acts as an essential part of the overall consumer protection landscape.

There is limited information on the number of claims that the SRA receives, processes and settles. However, the SRA is proposing to reduce the maximum payment of £2m

[5] Financial Protection Arrangements, LSCP, 2013

to £500,000. The SRA states that only a few payments have been for more than £500,000, but there is little data or analysis for the Panel to assess, hence our concern that the full impact of this proposal on consumers suffering high loss has not been adequately understood or taken into account.

The SRA proposes to target the fund on those who need it the most by introducing a ban on individuals with "*net household financial wealth – which excludes physical wealth, property and pension assets – of over £250,000"*. It said this was about 5 per cent of the population but the Panel fundamentally objects to a proposal that would see some consumers, who have suffered loss as a result of a solicitor's dishonesty or fraud uncompensated because they are deemed wealthy enough to bear the loss. We are not aware of other sectors where such a rationale is successfully applied and no examples are given in the consultation. It is akin to saying that if one driver is negligent and harms another driver and her vehicle, the errant driver should only pay compensation if the injured driver is not a high earner.

The Panel has raised concerns in the past about the lack of transparency in the way the Compensation Fund is dispensed and there is nothing in this set of proposals to alleviate the lack of transparency. In fact, the proposals are likely to make the arrangements even more opaque. We are also mindful of the argument made by the Law Society that these proposals are likely to lead to unintended and perverse consequences for consumers.

Conclusion

There is a need for the SRA to be realistic about the risks that consumers can reasonably be expected to both understand and manage. There was little recognition in the proposals of the importance of ensuring consumers can understand where and to what extent they are and are not protected when choosing a solicitor.

We believe that much more needs to be done to get the balance right for consumers who will be exposed to higher risks and reduced redress mechanisms, if these proposals are implemented as proposed.

Yours sincerely,

S Chambers

Sarah Chambers
Chair
Legal Services Consumer Panel

SRA Consultation

Protecting the users of legal services: balancing cost and access to legal services

Response by Leicestershire Law Society

About Leicestershire Law Society

Leicestershire law Society was founded in 1860 as an organisation for local solicitors. Its current objects include representing the interests of its members locally and nationally. More information can be found at www.leicestershirelawsociety.org.uk.

RESPONSE

Our geographical legal sector area Leicestershire and Rutland is heavily populated with the smaller entities (niche, sole practitioner, small High St LLP) many owned by ethnic minority solicitors and looking after vulnerable individuals. We reproduce below the statistics collated by The (national) Law Society indicating that the vast majority of local entities are small firms with less than 4 partners with more than a third of the individual solicitors identifying as BAME.

Number and size of firms in Leicestershire as at August 2017

Region_name	Sole	2-4 partners	5-10 partners	11-25 partners	Zero partners	
East Midlands	84	57	12	2	1	

Individual PC holders in private practice in Leicestershire at January 2018

Gender and ethnicity of Private Practitioners in Leicestershire at January 2018

	Leicestershire			
	Female	Male	Total	
BAME	129	113	242	
White / European	245	254	499	
Unknown	56	56	112	
Total	430	423	853	

Gender and age of Private Practitioners in Leicestershire at January 2018

	Leicestershire			Northamptonshire		
	Female	Male	Total	Female	Male	Total
25 and under	4	5	9			
26-30	62	27	89			
31-35	95	35	130			
36-40	92	57	149			
41-45	54	55	109			
46-50	42	62	104			
51-55	48	53	101			
56-60	20	64	84			
61-65	9	36	45			
66-70	2	20	22	0	11	11
71 and over	2	9	11	0	5	5
Total	430	423	853	190	162	352
Average (mean age)	40	48	44	41	49	45

Law Society, Management Information (January 2018)

Drawing on that specialist knowledge we have read the Response submitted by The (national) Law Society. We endorse everything they have said in particular in response to Question 11 on the EDI impact of the proposed changes to PII namely that small firms will not benefit, premiums will not go down and insurance providers will leave the market. In response to question 22 on the EDI impact of the proposed changes to the Compensation Fund The Law Society has requested more quantification of impacts but our view as stated above is that there will be greater adverse impact on the local small BAME firms and their clients.

Numerous local firms have closed over the past few years and we believe that momentum will continue if the proposed changes are implemented reducing both competition and provision of legal services.

Leicestershire Law Society
Non contentious business sub committee
June 2018

Protecting the users of legal services: balancing cost and access to legal

Response ID:229 Data

2. About you

1.
First name(s)

Sarah

2.
Last name

Poblete

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Liverpool Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: Please see The Law Society's response.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: Please see The Law Society's response.

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

13. Please provide an alternative way of drafting the exclusion definition.

Please see The Law Society's response.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: Please see The Law Society's response.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

16. Please explain what you think should be an alternative definition.

Please see The Law Society's response.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

18. Please explain what these are and provide any evidence to support you view

Please see The Law Society's response.

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Please see The Law Society's response.

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree
Please explain your answer
: Please see The Law Society's response.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree
Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Please see The Law Society's response.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Please see The Law Society's response.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

24. Please explain what you think these impacts are

Please see The Law Society's response.

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Please see The Law Society's response.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: Please see The Law Society's response.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Please see The Law Society's response.

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Please see The Law Society's response.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

Please see The Law Society's response.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

32. Please set out your suggestions and reasons for the change

Please see The Law Society's response.

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

Please see The Law Society's response.

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

36. Please explain you answer and any suggestions you have for alternative approaches

Please see The Law Society's response.

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Please see The Law Society's response.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Please see The Law Society's response.

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

40. Please explain what you think these impacts are

Please see The Law Society's response.

41. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Please see The Law Society's response.

Protecting the users of legal services: balancing cost and access to legal

Response ID:239 Data

2. About you

1.
First name(s)

Nigel

2.
Last name

Lloyd

6.
I am responding..

on behalf of an organisation

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)

77296

9.
Please enter your organisation's name

Lloyd Rehman & Co.

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: It is a retrograde step to reduce the minimum cover in this way. There is likely to be an increase in Solicitors being found liable to meet sums in excess of the minimum cover.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: In order to carry out work on behalf f such institutions e.g. Mortgage Lenders, the Solicitor will still require to have cover in place which includes potential liability to such Lenders.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

They should not be excluded at all

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: The proposed definition of conveyancing services is extremely wide and imprecise. It would be extremely easy for a "Non-Conveyancing" Firm to unwittingly carry out legal services which were later deemed to be "Conveyancing Services".

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

A much narrower workable definition

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

21. Please explain what these are and provide any evidence to support you view

The run off market is distorted by the inability of Insurers to ever recover a large percentage of Run Off Premia. In the days of SIF Run Off Cover came at no cost. Three may be a way of having a small levy year by year which would go towards providing Run Off Cover upon cessation of the firm without a Successor Firm taking over the liabilities of the old firm.

22. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: See the whole set of responses. There will be absolutely no benefit to the Profession nor to Consumers in a notional decrease in the cost of PI Cover. it is a badly thought out idea based upon a fallacious understanding of the marketplace and the need for Solicitors to have adequate Insurance in place to cover all, not just the bulk of Insurance Claims against them

23. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Firms will have to purchase additional layers of cover to protect themselves against potentially being wiped out by a large Claim. Alternatively every firm will have to incorporate or become an LLP in order to protect themselves against this prospect.

24. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The cap needs to be at the current levels. It needs to protect retired Solicitors from potentially being bankrupted by a single large Claim appearing many years after they have retired and ceased earning.

5. Questions continued

25. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: The supposed savings are minimal, as against the risk of leaving the bulk of the Profession under-insured and personally exposed in respetc of large Claims.

26. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

27. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

On the basis of the flawed logic you have put forward, we should abolish PI Cover in its entirety as that would allow more entrants to the marketplace and in theory would reduce costs and maybe fees charged. It would also leave the whole of the Profession save for those incorporated or in LLP's totally exposed to 100% of the liability for all Claims against them. LLP's and Companies could of course operate with impunity and just be trashed as and when a large Claim/ Claims materialised and the Principals could just evade all liability by setting up a Newco.

28. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: Claimants on the fund should not be means tested. If a Solicitor has been dishonest and a Client has suffered loss not covered by normal PI Insurance, then either the Compensation Fund should meet the Claim for the good of the Profession, or the whole concept of a Compensation Fund should be done away with. We cannot have a situation where a Client does not know whether or not they are one of the "deserving poor" who would be covered by the CF in the event of a theft by their Solicitor. It would be far too uncertain for a Client as to whether they might or might not be covered in the event of a Claim on

the CF.

29. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

See above.

30. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: See above

6. Questions continued

31. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

32. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

I disagree with the whole concept.

33. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

34. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

35. Please explain why.

36. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

It depends who the someone is - lay person, sophisticated Investor and what the scheme/ transaction consists of. It is not possible to provide any meaningful response to such a widely drafted hypothetical question.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

:

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

40. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

This is a fast evolving area and the criminals are becoming more and more sophisticated. All that can realistically be done is to regularly circulate details of the methods being used by criminals and as and when new methods/ variations are detected ensuring that that information is disseminated throughout the profession as widely as possible, so that firms are aware of the new types of scam, rather than reading about it on the National Press/ Online.

Protecting the users of legal services: balancing cost and access to legal

Response ID:325 Data

2. About you

1.
First name(s)

Tony

2.
Last name

Ellwood

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative industry group

8.
Please enter the name of the group

Lloyd's Market Association

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: Regulated law firms should be required to purchase limits which reflect their exposure to the services which they provide. A proposed reduction in limit would be disingenuous to a potential personal injury claimant, for instance, who was deprived of compensation through an inadequate limit alone being purchased by a practicing firm. Given that many firms purchase higher limits above the current minimum terms this would suggest that firms also agree with a need to protect themselves with a higher level of cover. Having a higher limit for conveyancing: Providing that this element of cover can be segregated from those who do not provide conveyancing services, then there may be a transfer of risk pooling to those directly exposed. However, it is not regarded that the proposed minimum limit of £1,000,000 would be reflective of current needs.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree

Please explain your answer

: We would endorse DACBeachcroft's comprehensive response on this point : any additional complexities around a firm's commercial arrangements with their clients, who would undoubtedly require cover over and above the minimum terms, would lead to additional costs rather than any simplification and cost reduction. In addition, any separate indemnity arrangements risks divisions in cover and the potential for coverage disputes.

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

13. Please provide an alternative way of drafting the exclusion definition.

As per the responses to the previous question, the proposed definition risks excluding businesses who are considered to be neither large nor sophisticated : see the FOS Consultation for bringing SME's further into scope.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree

Please explain your answer

: This would be acceptable to insurers providing that any limitations or exclusions are watertight – i.e. that would not fail on any application Insurance Act 2015 – Duty of Fair Presentation. However, this may also lead to a shift of increased premiums to those providing those services and risks concentrating a high proportion of potential claims into one area. Additionally, as policies are written on a claims-made basis there would be an undetermined transitional period and complexities around providing cover for past work.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

16. Please explain what you think should be an alternative definition.

There is concern as to whether the proposed definition lacks clarity as clearly it is not in any party's interests for there to be legal disputes over the provision of cover for certain services or past activities including those of associated activities.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

18. Please explain what these are and provide any evidence to support you view

We would defer to DACBeachcroft's comprehensive response on this point.

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Whilst there would seem to be scope to bring the MTC's up to date, the draft MTCs and PIA have not been reviewed.

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: The SRA's suggestion of a reduction in premium of anything near 9 to 17% is not recognised by the member firms which we represent : indeed there is an argument that the SRA's proposal may lead to an increase in premium base costs. If claims are concentrated at the sub - £500,000 level, then limiting cover to that level (except for conveyancing claims) will do very little to reduce the financial exposure of the insurer. Given, as noted elsewhere, that Regulated firms are likely to purchase cover in excess of the proposed minimum level, then separating that cover may lead to an increase in premium for the higher limits as that would then need to be priced separately especially if provided by a different insurer. The argument for a reduction in premiums is flawed if nothing is done to reduce the level of claims and hence insurers' exposure. Ultimately the level of premiums simply reflects the costs of the claims plus insurers' expenses and overheads. If the cost of those claims is not reduced, then insurers, who aggregate or pool the exposure, will simply have to redistribute those costs amongst the purchasing pool. This is likely to be particularly the case in the short term whilst existing IBNR (Incurred But Not Reported) claims filter through the system.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: We would refer to DACBeachcroft's comprehensive response.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: Given our responses to the previous questions it is unclear as to why this should lead to an increase in new firms.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

None identified.

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Please explain your answer

:

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we

should consider further?

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Please explain your answer
:

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer
:

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:209 Data

2. About you

1.
First name(s)

Steve

2.
Last name

Holland

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

PII broker

8.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

9.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The only extent to which the proposed changes may provide an appropriate level of cover is for the lowest risk firms who have never had a claim and see the purchase of PII as a necessary cost of being regulated. An example of such a firm is a 100% criminal law firm. Although in theory firms specialising in lower risk work could see the greatest reduction in cost, these firms are already being discounted by insurers to reflect the risk. For example a small low risk firm paying a £3000 premium may at best see a 5% to 10% saving. The £150/£300 reduction in premium is simply not worth the loss of protection proposed by the SRA. Only those firms who have not acquired other practices and who specialise in particular discrete low risk areas of law and know they have never undertaken any other types of work, would find the proposed limit of £500,000 adequate. These firms are likely to be small firms who are able to control the intake of clients and the work they do. Our view is that the number of such firms are a small percentage of the profession. To reduce the cover to this level for the profession as a whole is reckless, as it leaves the difficult decision about what is an appropriate level of cover in the hands of solicitors who may not be best informed about the risks that different types of work create. Furthermore, those firms with poor claims experiences or under financial stress, may resort to buying the minimum level of cover to keep the cost of PII down. As quoted in the opening remarks of the consultation document "It is crucial that the public can trust that when things go wrong the right protection is in

place." The report commissioned by Charles Rivers Associates for the SRA in 2010 commented that "We do not find evidence that this should be set at a lower level than at present since 23% of claims relate to claims valued at between £1 million and the £2/3 million minimum". They go on to say that the level of cover should be reviewed over time to make sure that it is in line with typical high value claims for individuals. If anything the limit should be increased to take into account of inflation and the increasing cost of property.The watering down of the minimum level of cover will not benefit consumers or the majority of the profession and its reputation.

10. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: We do not believe the exclusion of cover for financial institutions should be allowed. The unintended consequence of this proposal would essentially result in small high street firms losing their place on lender panels. The larger firms who can afford to extend their policies to cover financial institutions would monopolise this work. This would undoubtedly result in the closure of many high street firms which would in turn restrict consumer access to legal services. Lenders will want evidence that the solicitors have adequate cover in place however they will still be concerned that a firm may not maintain this level of protection in the future . Lenders will face the need to continue to check every year due to the claims made nature of the policy, including the PII arrangements of firms who are no longer on their panel. This may lead to lenders removing the smaller firms from their panels or refusing to appoint them in the first place.

11.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

12. Please provide an alternative way of drafting the exclusion definition.

Although we don't have an alternative draft exclusion, we think the current exclusion needs to address the following points:

The arbitrary cap of turnover at £2M is too "black and white". There will always be businesses who are very close to the threshold who will not know from one year to the next whether they are protected by their solicitor's PII or not.

Although the exclusion states that the turnover is the most recent financial year at the time the act giving rise to a claim occurred, what will be the position if the negligent acts stretch over a period of time that straddles two financial years, one which is more and the other that is less that £2M.

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree

Please explain your answer

: Whilst having a separate limit could be a prudent thing to implement we think the proposed limits are woefully inadequate. Our suggestion would be to propose higher minimum limits than are set today. We believe some firms do not pay sufficient regard or do not understand their obligation under (7.13) to assess and purchase the appropriate level of coverage. As a result some firms will simply revert to the minimum coverage that they have to meet with their regulatory requirements. The consultation documentation suggests based upon the proposed changes 3% of conveyance claims could be uninsured, this equates to 79 claims at £53m. We do not think that it is appropriate for the SRA to propose changes that could result in uninsured losses, which would leave consumers uncompensated and may lead to more firms going into insolvency as a result. One of the major criticisms of the proposals are the significant gaps in the claims data. These gaps arise from the insurers who have exited the market, a number of which have become insolvent. Many of these insurers entered the market by under cutting the more established insurers, only to find that the "liability tail" catch up with them two or three years. The loss making portfolio of these insurers should not be ignored and we believe to dismiss such crucial claims data means any conclusions upon which the proposals are based are fundamentally flawed. By reducing the compulsory Limit of Indemnity by

up to 66.7% from £2m / £3m to £1m, we can categorically state that this WILL NOT have a commensurate impact on premiums. Insurers and their actuaries already factor in the likelihood of claims when they calculate the premium. If only a relatively small number of claims fall above £500,000, any saving to cost to the compulsory primary limit will clearly be modest, with the majority of claims falling into the first £500,000 of coverage. The proposed changes to reduce the limit could have the opposite effect. Some practices will have already experienced some "hardening" of rate for the first excess layer (Top up insurance). There has been an increasing trend for insurers to treat the first £10M as the active working layer, rather than just the first £2M/£3M. Due to the deteriorating claims experience, three of the main insurers have already stopped underwriting this limit leading up to the October 2017 renewal. This includes Brit Insurance, who were the largest provider of excess layer insurance for the Legal Profession of England and Wales. Their exit was primarily driven by the increasing frequency of the severity of claims and modest premium levels being charged. Competition in the first excess layer (above the compulsory limit of £2M/£3M), has been reducing, with the result of rising premiums. If the compulsory limit is reduced, this could see significantly higher increases to the premium charged for this layer but perhaps more alarmingly, the availability of such insurance could become sparse. The SRA has not factored in the following issues which we believe are sufficient to challenge the proposals in their own right: • The rise in House prices – according to Source: HM Land Registry, Registers of Scotland, Land and Property Services Northern Ireland and Office for National Statistics the average UK house price was £150,633 in 2005 compared to £218,255 in Jan 2017, whereas in 2005 the average house price in London was £220,000 and £491,000 in 2017 - an increase between 44.9%21 and 123.2% • The Minimum Terms and conditions includes an aggregation clause which aggregate losses arising from multiple claims so that they are treated as a single claim. This can occur if the losses are linked by a unifying factor of some kind. This can threaten the adequacy of the limit of indemnity and result in a firm being under-insured. If a similar act in a series of related matters or transactions were treated as a single claim under the aggregation rules in the MTC, then a £1m limit for Conveyance practices would not be sufficient, especially based upon the above house prices which could could be as few as two or three properties. • Risk landscape changing- the emergence of new risks now faced by the profession, does not form part of the claims data that the SRA have analysed. "Friday afternoon fraud" and "property hijack" has dominated the headlines in the Gazette and even been reported in the National Press. These types of claims became more prevalent from 2012, Indicators from Lockton's own data suggests that these types of losses did not peak until 2015/16 some two to three years after the claims data the SRA have used as evidence to support the proposals. If a firm were to fall victim multiple times from a concerted attack on the same day, it would not take long for a £1M to be eroded. There is an inherent risk of under insurance when firms acquire other practices as "successor", as they may not know if the previous practice ever carried out conveyancing. Those firms who decide they no longer wish to undertake conveyancing, cannot simply buy a policy without this cover. They will need to continune to buy conveyancing cover for as many years as they have an exposure which could be 15 years to meet the long stop under the Limitation Act 1980. An unintended consequence of these changes may be the death of the high street firm. Lenders will only allow firms on their panels who can provide evidence that are insured for claims made by financial institutions. Those who do not have the extra cover will be removed from the panels. The aim to meet Principle 6, to avoid unintended consequences that impact on law firms and their clients, will be breached and significantly reduce consumer choice, rather than creating more access to affordable conveyance services. The compulsory PII requirements for The Council of Licensed Conveyancers stipulate a minimum limit of £2M and so will provide higher level of protection for consumers than solictors. Another unintended adverse effect may lead to new lender panels to have no solicitors at all on them at all. In response to the next question 5, if the SRA are effectively expanding (or redefining) the definition and ultimately the extent of coverage provided under "Conveyance" we don't believe the limit should be reduced at the same time?

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

15. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

16. Please explain what these are and provide any evidence to support you view

We think that your suggestion to prohibit multiple successor practices so that only one firm confirms their position as a

successor practice could work well, bringing certainty to all, as long as the changes are drafted correctly and requires the 'electing' firm to formally confirm their succession, rather than rely on the ceasing firm to do so. It is a simple solution to a problem that, although only occurring rarely, will give certainty to all parties, including clients and insurers.

We do not agree with the suggestion for firms who are closing, merging or being acquired, to purchase run-off cover in respect of just closed client matters, as this would be too complex especially as the aim is to simplify things. It would become complicated and time consuming for both the succeeding firm, the prior firm, clients and insurers. Insurers would undoubtedly require a listing of closed matters or at least a note on how many files were thought to be involved and perhaps the type of work so they can calculate an appropriate premium. Any matter or work type omitted in error will result in firms being uninsured or at best in dispute with insurers. This, if nothing else would make an additional burden for closing firms.

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: The SRA proposals state that they have, in the proposed MTCs: 1. Simplified the terminology and definitions used the MTCs 2. Removed requirements where they relate specifically to our relationship with the participating insurer. We think these sit better in the PIA and should not determine or confuse the scope of cover that is required in the policy of insurance 3. Proposed a more up to date and cost effective method for a law firm and its insurer to resolve a coverage dispute, that a mutually agreed independent Queens Counsel (QC) is appointed to determine the dispute. In respect of 1. and 2. we agree that these are useful amendments, as long as our other comments are taken into account generally when the changes are finalised. In respect of 3., we agree a dispute clause should be incorporated into the MTC subject to sight of the clause to ensure that it refers to any disputes under the policy rather than at the moment where it refers to successor practice disputes only. The MTC has always lacked an appropriate clause for resolving disputes in general and therefore the amendment should go further than suggested and refer to the appointment of mutually agreed Queen's Counsel where the insurer and the insured cannot agree, on the scope of cover or the handling of and settlement of a claim.

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: It is unrealistic to expect that a reduction in the limit of indemnity will produce more than an average 5-10% reduction in premiums, when 98% of claims fall within the first £500,000. Only firms carrying out low risk work such as criminal or Immigration and who are not successors to firms who have undertaken other higher risk work, might a see a small reduction in premiums. Underwriters already calculate their premiums on the historic risk profile of the firm, including the severity of any claim. We think it is unlikely that brokers will advise firms to reduce their limits to either £500,000/£1,000,000 . We believe that savings to the profession from a reduction in cover will be outweighed by the additional premiums charged by insurers to top up back to the current limits. Insurers are likely to take the view that firms topping up their limits are doing so because of a perceived higher risk. As firms are currently prohibited from limiting liability below the compulsory limit of either £2M/£3M, firms will carry an additional uninsured risk for past work if they reduce the cover to the new proposed limits. The claims made basis of the policy means it is not when the work was carried out that determines when cover applies but when the claim is made. Firms will struggle to track the historic exposure on undertakings or limitation of liability from the previous agreed caps on their liability.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: It is suggested that consumers will be given help to understand what protections are in place and so make informed decisions about which solicitor to use. This may be of little comfort when his solicitor ceases to practice and puts his cover into run off. For example, a consumer purchasing a house well under the minimum limit of £1M will be "reassured" that should any thing go wrong he is comfortably protected. However by the time he discovers the solicitor has made a mistake in the conveyancing several years later, the run off policy has been exhausted by payments to other claimants leaving him without any recourse to compensation. Solicitors who have already retired from practice did so in good faith that the minimum level of cover was either £2M/£3M and that if the firm closed there would be the same level of protection for six years. These retired solicitors will face additional exposures that, in all likelihood, will be totally unaware of until it is too late. If the retired solicitor were "fortunate enough" to be warned of the issue, it is unlikely insurers will be willing to top up the run off policy, especially if the current run off has been exhausted by claims. The cost of run off, if available, would be far more expensive than the current arrangements. We don't believe that a run off market would develop as insurers generally are not keen on insuring other insurer's run off. One of the common issues for partners wishing to retire is the cost of run off. One solution that may be worth investigating further would be an agreement with insurers that, if a firm is planning an orderly wind down over say three years, then the insurer would add a loading to their premium for each of the three years prior to the firm ceasing. This would enable the policy to be put into run off at no additional premium. This would give the firm and insurer continuity whilst the practice is being wound down in an orderly manner.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: The insurance market is already supportive of new start up firms and we don't believe they are discouraged by the current minimum PII requirements. If anything, we think the higher limits and wide coverage help to re-enforce the message that the legal services market is not risk free. The current rule requiring firms to arrange an appropriate level of cover is more challenging for start up firms as they don't necessarily have an appreciation of where the inherent risks are in offering legal services. This may be even more so for new business models that don't have the relevant experience and may simply opt for the minimum level of cover without any real thoughts on what is the right level of cover. Start up firms are likely to be more careful about costs and may simply go for the minimum cover to get the firm off the ground again without considering the real risks they face.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Increase the claim limit: From our knowledge and experience it is our understanding that costs associated in the defence and settlement of claims year on year show a trend of increasing. Consideration should be given to increasing the minimum levels of cover not reducing them.

In 2017 three Lloyd's syndicates – Novae, Channel and Brit – all withdrew from writing excess layer professional indemnity insurance. Professional indemnity insurers have experienced rate reductions for many years, suffering double-digit reductions at the peak of the soft market, which have coincided with rising claims severity.

Excess layer cover above the compulsory limit has always been seen as catastrophe protection; however, the increase in the severity of claims has led insurers to rethink their rating and treat the first excess layer as far more vulnerable to being triggered, and to increase the price accordingly.

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: We disagree that the purpose of the proposed changes are to clarify the Fund's purpose as a targeted hardship fund protecting the vulnerable. That is not the current purpose of the Fund. Rather, the proposed changes seek to change the Fund's purpose to be limited to applicants suffering hardship. If that is the intention, further thought needs to be given to directing the Fund towards the expressed intention. We think the proposed changes represent somewhat of a blunt instrument and run the risk of creating unintended consequences for deserving applicants. The average payment from the compensation fund has historically been relatively small with only a few cases since 2011 where the payment has been greater than £500,000. We do not therefore see that there is a case to reduce the limit to prevent the few individuals who have suffered the most.

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Please see our answers in response to question 13 and below.

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer

: There is no restriction or influencing factor which determines whether a consumer should use firm A or Firm B. It is for the consumer to agree an appropriate fee for the legal service, so unless the solicitor is to include within their terms of business that their client will have no access to the Compensation Fund then it seem wholly unfair to restrict the wealthier consumer from seeking the same benefit of redress as the less wealthy client. The SRA's Proposal is to exclude people living in households with net financial wealth above a threshold. The expressed intention is to make sure the Compensation Fund is targeted at people that need the most protection. The SRA has not demonstrated that the structuring of the Fund is such that people who need the most protection have somehow not been able to obtain adequate compensation. In the absence of evidence in supporting that contention, there seems that there is no basis for making the proposed changes at all. The proposal to exclude people living in wealthy households will not necessarily ensure that the Fund is targeted at people that need the most protection. For example young adults living at home with parents, may live in a household with net financial wealth above £250,000. Such individuals who fall victim to identity fraud in a conveyancing transaction, would be justified in obtaining compensation. The current proposals would prevent them from doing so. To take into account household wealth runs the risk of creating an unfair outcome for poorer people living in a wealthy household. The proposals could be aimed at individuals with high financial assets. Other individuals who would also be unfairly excluded from compensation are people who do not have any pensions as they have instead invested their money into rental properties worth more than £250,000. It would not be appropriate to select the figure of £250,000 without proper analysis including a proposal to increase the threshold in line with, for example, RPI. The proposals include no consideration of the extent of the loss suffered, relative to the individual's overall wealth which we would recommend.

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

27. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

There is nothing wrong with the principle that the fund should help those that are most vulnerable and in most need of its help. However we would need to see a clearer definition/criteria as to who is to be deemed as vulnerable. Net financial wealth cannot be the only determining factor for defining vulnerability. Other factors need to be considered for example age and

mental health?

The reduction of the maximum payment from the fund, at the same time as reducing the threshold of net financial wealth to £250,000, would appear to be moving away from the core reason why the fund was initially set up. For example why should a victim of fraud with a fair and legitimate claim be denied a fair outcome just because they are above a set threshold. Each claim should be looked at individually and a decision made based on that claims individual merit.

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

29. Please set out your suggestions and reasons for the change

We disagree that the current rules in relation to eligibility are too generous, if that is what is what is suggested.

There is no evidence that charities with a net annual income in excess of £2 million or trustees of a trust with net assets in excess of £2 million, are better placed to understand the risks of purchasing legal services. If the test is to be based on the ability of charities or trusts to understand the risks of purchasing legal services, we would recommend a threshold far higher than £2 million.

We do not disagree excluding the eligibility of barristers and experts to make a claim except in circumstances where they have been the purchasers of legal services. If they have purchased legal services they should be entitled to make claims like any other applicant.

In addition to the financial criteria on eligibility we would also like to see the this broadened to other aspects. For example, a combination of factors such as financial status, health and age of the applicant should be taken into account.

We do agree in the "Conduct of the applicant" section that a full and frank disclosure by an applicant should be made and that the SRA should have authorisation to do a full investigation into each claim as necessary, in order that the fund isn't used for its non-intended purposes.

Circumstances: all claims should be considered based on their merits rather than discount a claim at the outset due to eligibility.

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

31. Please explain why.

We do not entirely agree with the approach for assessing when a maximum payment has been reached. In the example of the beneficiaries J, K and L it would seem very unfair the individual victims are expected to share the maximum compensation of £500,000. They have both suffured loss and should each be able to claim the maximum.

We also think that it is unjust that at the very time the compensation fund is likely to be used more than before due to the reduction in PII limits, that the safety net of the compensation fund should be reduced as well. We think the maximum payment of the compensation fund should be aligned with the minimum mandatory level of cover for PII.

We think that the current proposals run the risk of creating an unfair situation if there is a requirement that applicants be required to attempt to pursue alternative means of redress without the Fund agreeing to pay the legal costs of that exercise, if it is unsuccessful.

Further, not providing for the payment of legal costs, where an applicant is pursuing alternative means of redress, may discourage applicants where, otherwise, if such action is successful, it would reduce the claims on the Fund.

32. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

33. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

We do not agree that the current proposal, placing the onus on applicants to investigate a scheme or transaction, prior to committing money to it, will produce a fair outcome in all circumstances.

It is likely that consumers will be marketed schemes on the basis that they are low risk. If it transpires that consumers have been fraudulently misled that the scheme is low risk, the current proposals might exclude those consumers as eligible applicants, on the grounds that the scheme was high risk, notwithstanding that they believed the scheme to be low risk.

We do not believe that a subjective assessment of either the applicants themselves or the transactions into which they enter, would be the appropriate method for determining eligibility.

A more appropriate change to the Rules might dis-entitle applicants who recklessly disregard the risks associated with the transaction or the conduct of the solicitor during the transaction.

The proposed changes include consideration of whether a consumer has taken steps to prevent loss (as opposed to mitigate loss). This must involve an analysis of the consumer's conduct prior to retaining a solicitor and conduct during the course of the retainer. Consumers should be able to rely on the confidence of the fact that the solicitor is regulated by the SRA.

As with any investment, individuals should of course take some responsibility to carry out an investigation into the schemes and parties involved. Although many consumers will not have access to search/checking platforms that businesses or large corporations enjoy, they do still have a number of options to consult when carrying out some form of due diligence:
• Law firms/solicitor – check with SRA that the firms and individual is actually registered. Enquiries can be made if there are any investigations ongoing or historical.
• Confirm with the solicitors if they are acting for the sellers (ie property managers) as well as the buyers
• Confirm if there are any conflicts that the consumer should be made aware of
• Investment schemes – check they are registered companies and how long they have been active
• Banks may provide some insight when applying for funding
• Speak with FCA to check if firm has been flagged up to them
• Internet/forum searches on the investment

34. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: There is no objection to clear guiding principles in the Rules, including guidance on how decisions are made. However, our concern is that the proposed changes run the risk of preventing genuinely deserving applicants from receiving just compensation. Further, the expressed intention the Fund being available only to genuinely deserved cases, is not reflected in the proposed changes.

35. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

36. Please explain what you think these impacts are

Vulnerable individuals for whom the compensation fund is designed for may not be aware of the help and advice they are entitled to. The proposed changes may make the fund feel less accessible to these individuals. These individuals need a legal professional to assist in the application process to help and take the burden away from the vulnerable consumer.

There needs to be clear guidelines around the 'Conduct of the applicant' section and when the compensation fund will refuse to pay a claim. If a person who is deemed to be vulnerable has not taken appropriate steps to confirm that the services provided by their solicitors are genuine, will the claim be refused?

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Cyber crime is defined for the purposes of this item as the criminal activities carried out by the means of a computer, the internet or a telephone network.

There is no one approach or strategy that will offer 100% defence against cyber crime. Minimising a law firm's exposure to risk and satisfy clients their data is in safe hands continues to be critical to the law firms' ongoing success.

There is no silver bullet that guarantees defence and the big challenge for law firms continues to be how they maintain an effective defensive posture, which can evolve with time to match an ever-evolving threat seen from an ever more sophisticated criminal willing to investigate tens of thousands of pounds to create hundreds of thousands of pounds through criminal activity.

Firms must make a risk-based decision, understanding the level of risk and putting in place a mitigation strategy that reduces this to an acceptable level.

This means identifying the information that matters most – typically e-mail and document management systems – and putting in place a strategy that prevents the attacks, however if it does occur, detects them quickly so a proactive and effective response can be triggered to minimise the effect of a breach.

The basics are critical and include:
1) use threat intelligence to understand the changing nature of cyber risk
2) develop and maintain cyber security awareness of staff
3) regularly patch IT vulnerabilities
4) keep backups disconnected from the network
5) block executable files, compressed archives and unidentified users
6) ensure the firm controls the encryption key if they use cloud storage
7) restrict remote access and mobile devices
8) share threat information amongst the firms' peer group
9) use penetration testing to test security and monitor the security of the IT networks
10) create and test an incident response and business continuity plan to minimise the impact should the worst happen.

Protecting the users of legal services: balancing cost and access to legal

Response ID:274 Data

2. About you

1.
First name(s)

Charles

2.
Last name

Hawtin

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Managing General Agent

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: We agree with the proposal to remove the requirement for firms with different legal structures to have different limits of indemnity. Under the Solicitors Indemnity Fund (SIF), no distinction was made between firms based on legal structure and it is not clear why such a distinction was subsequently made. We strongly disagree with the proposal to reduce the minimum level of cover to £1,000,000 for conveyancing firms and £500,000 for non-conveyancing firms for the following reasons: 1. Under the SIF all firms were required to have a minimum limit of indemnity of £1,000,000. We are now 18 years on from the SIF and inflation alone would suggest – fairly strongly – that limits should remain above £1,000,000 and not reduce to £1,000,000 or less. 2. If firms have confirmed in their Terms of Business Agreements (TOBA) that they have £2,000,000 or £3,000,000 in place, clients can expect these limits to remain in place for the duration of the limitations period concerned. If limits are

subsequently reduced to £1,000,000 or £500,000, clients could place reliance on the £2,000,000 or £3,000,000 limit detailed in the TOBA and if a firm had reduced its cover to either of the new minimums, they would be under-insured. 3. The claims data used by the SRA is incomplete: We understand that the claims data used by the SRA covers the period 2004 to 2014 and was collected from insurers who were active participants in the market in 2015. This being the case, the data does not include from insurers who had participated in the market between 2004 and 2014 but who had withdrawn from the market by 2015. Given that a large number of insurers pulled out of the market between 2004 and 2014 (more often than not because of unsustainable claims activity) we would estimate that the data only covers 75% of the market and a lower percentage of all claims. 4. The claims data used by the SRA is inconsistent: Example 1: Page 10 of "Reflecting on Solicitors Professional Indemnity Insurance (PII): market trends and analysis of historic claims data" states that there were around 142,000 negligence claims notified in the period 2004 to 2014 and page 15 states that 98% of these were settled for less than £580,000 and, by extension, that 2% were settled for more than £580,000. 2% of 142,000 is 2,840 so the conclusion is that 2,840 claims over the period were settled for more than £580,000. Page 16 of "Protecting the users of legal services: balancing cost and access to legal services" suggests that there were 442 claims where the proposed limit would be inadequate. Example 2: As referenced above, page 15 of "Reflecting on Solicitors Professional Indemnity Insurance (PII): market trends and analysis of historic claims data" states that 98% of all claims were settled for less than £580,000. Page 10 of "Protecting the users of legal services: balancing cost and access to legal services" states that 98% of all claims were settled for less than £500,000. Given the marked difference between the SRAs own figures, we do not think that they can be relied upon. 5. The claims data used by the SRA does not take into account development of claims: Our understanding is the claims data was collected in 2015 meaning that the incurred position for years 2009 to 2015 would not have developed fully – but no adjustment has been made to reflect this. If an adjustment of, say, 35% is applied to take into account the development of claims over the period the incurred position for the period would be 35% higher. So we think that the SRA should have based their assessment of adequacy on claims of between £783,000 (or £675,000), not £580,000 (or £500,000). 6. The SRA has not fully considered claims values by work-type On page 11 of "Reflecting on Solicitors Professional Indemnity Insurance (PII): market trends and analysis of historic claims data" the SRA lists 17 types of claim (excluding block-claims), and the maximum payment value for each. In none of the 17 categories is the maximum payment below £1m. Furthermore, 70% of the 17 categories having a maximum payment value in excess of £2m. These figures alone suggest that the proposed limits of £1,000,000 or £500,000 be inadequate for any type of work.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: In theory, any exclusion and / or limitation of cover will reduce risk to insurers and, by extension, cost. However, if a firm does not work for financial institutions and / or large corporate clients, removing this element of cover would not reduce the risk exposure to insurers. Similarly, if a firm does work for financial institutions and / or large corporate clients they will not be able to remove this element of cover and the risk exposure to insurers remains the same. Looking at the SRA proposals themselves, we do not agree with paragraph 53 on page 38 of "Protecting the users of legal services: balancing cost and access to legal services" which bases the exclusion on the turnover at the time when the act giving rise to the claim occurred. In our opinion, this proposal does not work for professional indemnity claims because these operate on a "claims made" basis i.e. for professional indemnity claims it is the policy in force at the time a claim is made that will respond to a claim. We are also concerned that basing the exclusion on the turnover at the time of the wrongful act (rather than on the turnover at the time when the claim is made) would make it very difficult for firms to manage risk and for insurers to assess risk and to ascertain the level of turnover at the time of the wrongful act and, by extension, to determine whether the exclusion should apply or not. Of further concern is the possibility that this proposal will lead to under-insurance which would lead to increased failure of firms. In addition, it would lead to a two-tier high street: on the one hand we would have large firms able to secure cover on the existing basis (due to premium spend); on the other hand we would have small firms unable to secure cover on the existing basis and being precluded from commercial panels as a result.

12.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: On one level it makes sense for firms that do conveyancing work to have conveyancing cover and for firms that don't do conveyancing work not to have conveyancing cover. However, both conveyancing and non-conveyancing claims will need to be paid by insurers. On this basis, and assuming that underwriters place both conveyancing and non-conveyancing firms, it follows that if premiums for non-conveyancing firms reduce, premiums for conveyancing firms will need to increase. There is also the question of which firms would qualify for the non-conveyancing cover. Because PII operates on a "claim's made" basis it is the policy in force at the time a claim is made that will respond to the claim. So if a firm did conveyancing work 5-6 years ago it could be liable for a claim stemming from that work because the limitation period (6 years) has not expired. What this means is that firms seeking non-conveyancing cover would need to prove - beyond doubt - that both the firm and any Prior Practices to the firm have not done any conveyancing work in the past 6 years. So firms would need to be vetted carefully before being granted waivers in respect of the current requirements. Whether the SRA would be able / willing to vet firms in this way is not known but what is certain is that if firms are not vetted correctly there will be examples of firms that find themselves under-insured for conveyancing claims that exceed their reduced limits and clients who find themselves out of pocket as a result.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

15. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

16. Please explain what these are and provide any evidence to support you view

The successor practice rules have remained largely unchanged since they were first implemented in 2000 and they seek to define every scenario in terms of a rigid formula. However, our experience is that the rules are open to interpretation and, in certain circumstances, can result in odd outcomes.

Our view is that the rules should be less formulaic and suggest the following:

1. If a firm is to be merged with or absorbed into another firm the acquiring firm should decide whether it wishes to take on the past liability or not. Either way, the decision whether to assume past liability or not is a material disclosure to insurers.

2. If the acquiring firm decides not to take on the past liability of the other firm, the other firm should trigger run-off (NB: this is already catered for in the Minimum Terms and Conditions).

3. Any merger or absorption should be approved by the SRA, and the SRA should be satisfied that the past liabilities of the merged or absorbed firm are covered by the acquiring firm under their own policy or that a run-off policy was triggered.

One other problem with the current rules is that the SRA appears to be unwilling to implement the rules themselves and prefer to pass this (regulatory?) responsibility on to the insurance industry. By way of example, we recently asked the SRA to advise on whether "A" was / was not a Successor Practice to "B". The SRA simply replied that "A" was not the Successor Practice to "B" case and caveated their response as follows:

"Guidance only

Please note that the guidance in this response is based on the facts as presented. This guidance should not be treated as a

formal ruling on the matter, and is not binding on solicitors, their clients, the Solicitors Regulation Authority, the Legal Ombudsman, or the Courts. You can access the rules on our website."

This response was less than helpful.

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: We agree that the MTCs and PIA are separate issues and should be treated separately. As things stand the MTCs and PIA intermingle and, in certain cases, this has lead to difficulties with policy drafting which, in turn, has lead to disputes over coverage. It also limits the scope for product innovation. Separating the MTC and PIA would help to address these issues and would bring the legal profession into line with other regulated professions.

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: We strongly disagree that the proposed changes to the SRAs PII requirements will result in lower premiums for the following reasons: 1. The SRA has provided no evidence to support its assertion that the proposed changes will result in lower premiums At paragraph 72 on page 45: "Protecting the users of legal services: balancing cost and access to legal services" the SRA estimates that the impact of the proposed lower limit would be to reduce premiums by between 5% and 10%. However, the data used by the SRA to estimate reductions does not correlate and the SRA is unable to validate its conclusion. 2. Our own data does not support the SRAs assertion that the proposed changes will result in lower premiums We have analysed our own data in light of the SRAs proposals for change and, if the proposed changes had been implemented in 2013 when Chancery Pii incepted, the total claims incurred by Chancery Pii since 2013 would be at their current levels and would not have reduced. So, from our perspective, the proposed changes would not reduce our risk exposure and would not result in us lowering our premiums. 3. Lower limits will not necessarily result in lower premium Most solicitors PII policies (including our own) are structured on the basis of a straight limit of £2,000,000 or £3,000,000 so the premium collected pays for all claims and is not split between claims for £1,000,000 and claims above £1,000,000. Given that, from our perspective, the proposed changes would not reduce our risk exposure it follows that a lower limit would not result in us lowering our premiums. Furthermore, we disagree with the assumption at paragraph 68 on page 44 of "Protecting the users of legal services: balancing cost and access to legal services" that having a differentiated limit will result in more accurate underwriting because the risk will be less. The reality is that all insurers currently require a work type declaration and differentiate pricing on this basis, so the proposal will not make any difference. 4. Excess Layer cover in place of MTC cover has not been thought through No impact analysis has been made concerning firms that would be entitled to reduce their limits but chose to maintain cover at the current minimums. Our view is that the excess layer market will not want to reduce their attachment point or to extend coverage so that it matches the MTCs and that the result would reduced coverage and higher premiums overall. Chancery Pii would not want to become income involved with the excess layer market.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Again, there appears to be a lack of data to support the SRAs assumption at paragraph 85 on page 48 of "Protecting the users of legal services: balancing cost and access to legal services" that the proposed cap on run-off cover will reduce run-off premiums by between 9% and 17%. In theory, we agree that an aggregated limit applied over the six year run-off period should reduce the cost of run-off. However, if a cap had been introduced in 2013, the total of claims incurred by Chancery Pii

between 2013 and 2018 would be the same as it is now without a cap. Furthermore, the commercial reality of run-off is that it is not attractive to insurers because, inter alia, they cannot cancel run-off for non-payment of premium. For this reason, it is highly unlikely that insurers will reduce their run-off premiums to "win" run-off business and almost certain that they will use the benefit of reduced exposure to subsidise the additional credit risk that comes with covering firms that are in run-off. The main issue with run-off is the problem of non-payment of run-off premiums. Run-off default rates are currently at 50%.We would like to see the SRA take the issue of non-payment of run-off premiums seriously and prevent solicitors in default from practising at a successor practice or at another firm until the debt is settled. We would also like to see the SRA tackle the issue of "phoenix firms" where a practice goes into run-off and then re-establishes itself in a new guise.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Given that we strongly disagree that the proposed changes will result in premium savings, it follows that that they will have no impact on whether new firms enter the market. Furthermore, even if the stated savings were achieved, they would not determine whether a new firm is established or not: the saving would be one of a number of considerations and, in our experience, would not be the deciding factor. There is already significant competition in the legal services market and we do not believe that the existing insurance arrangements have any impact on whether a new firm is established or not. No evidence has been provided to support the assertion at paragraph 87 on page 47 of "Protecting the users of legal services: balancing cost and access to legal services" that if insurance costs reduce, savings would be passed on to consumers. The SRA suggest that the proposed changes "could result in reduced premiums for firms that do lower risk work" (see paragraph 90 on page 50 of "Protecting the users of legal services: balancing cost and access to legal services"). Our experience is that such firms already benefit from reduced premiums, have done for many years and that this is reflected in the current pricing model of insurers. No evidence has been provided to support the statement at paragraph 91 on page 50 of "Protecting the users of legal services: balancing cost and access to legal services" that "we can expect this to encourage new entrants into the market".

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The current MTCs do not allow insurers to cancel a policy for non-payment of premium or misrepresentation and / or non-disclosure and we are surprised by the SRA's decision to allow freelance solicitors to practice without minimum indemnity cover.

Looking at each in turn:

1. NON-PAYMENT OF PREMIUM

Insurers can control the risk of non-payment at the inception of a policy by insisting on payment up-front: no payment means no cover. However, they cannot control the risk of non-payment of run-off premiums: run-off cover must be implemented regardless of whether the run-off premium has been paid or not.

We believe that insurers should be entitled to cancel for non-payment of premium. Such an amendment will improve the position for both insurers and the profession in terms of their renewal and remove the burden of payment of the premium prior

to inception. With this simple change we would be able to offer normal payment terms to clients (enjoyed by all other professions). We believe it be appropriate for the profession, via the compensation fund, to provide coverage where the insurer has not been paid.

2. MISREPRESENTATION / NON-DISCLOSURE

Insurers should also be entitled to cancel for deliberate / fraudulent misrepresentation or non-disclosure.

Our view is that it is not in the public interest for such practices to continue to practice.

3. FREELANCE SOLICITORS

We think that the SRA should reconsider its decision to allow solicitors with as little as three years post qualification experience to practice on a freelance basis without minimum indemnity cover. From a risk perspective we do not think that this is wise and we fail to see how devaluing the status of solicitor in this way can possibly be in the best interest of either the public or the profession.

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: Our understanding is that the Compensation Fund was set up by an Act of Parliament to help people who have suffered financial loss due to a solicitors' dishonesty or failure to pay money received by that solicitor (SRA 2010). The SRA Compensation Fund Rules 2011 (3.1 and 3.2) are also very clear as to the purpose of the Fund. Against this background, the proposed changes don't clarify the purpose of the Compensation Fund. Instead, they completely change the purpose of the fund and transform it from a Compensation Fund into a Hardship Fund.

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No.

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: As explained in Q13 above, the Compensation Fund is not a hardship fund and for the reasons stated its purpose is to provide compensation to people who have suffered financial loss due to a solicitors' dishonesty or failure to pay money he has received. On this basis, you cannot exclude people because of their wealth or income – if they have lost money due to a solicitors' dishonesty then it is right they should be compensated. Given that the problem centres on a relatively small number of "dubious investment schemes" (see paragraph 101 on page 59 of "Protecting the users of legal services: balancing cost and access to legal services") perhaps a better approach would be to exclude such investment schemes altogether on the basis that they are dubious?

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

27. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

See Q15 above.

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

30. Please explain why.

The way in which the maximum payment is assessed does not seem equitable in any of the scenarios. In our opinion a fairer approach would be to limit payments per individual claimant and / or individual retainer.

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Schemes / transactions vary enormously and each would need to be judged on its own merits. That said, it seems reasonable to expect that an investor will make an informed decision before committing to any investment. Similarly, it seems reasonable to expect that an investor can place some form of reliance on a solicitor involved in a scheme for the simple reason that the solicitor is part of the legal profession and is regulated by the SRA.

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: As detailed in Q13 above, our understanding is that the Compensation Fund was set up by an Act of Parliament to help people who have suffered financial loss due to a solicitors' dishonesty or failure to pay money received by that solicitor (SRA 2010). The SRA Compensation Fund Rules 2011 (3.1 and 3.2) are also very clear as to the purpose of the Fund. Against this background, we disagree with the following proposed guiding principles: "The purpose of the Fund is to help people who need it the most when they have lost money as the result of a solicitors actions by replacing some or all of that money. The Fund may sometimes have to decide that it will or will not pay grants in particular circumstances, such as for certain types of case, particular losses or to defined groups of people who have lost money."

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Given that insurers, banks, brokers and law firms are having to deal with the fallout that comes as a result of cybercrime we think that the SRA should consult closely with each of these parties with a view to implementing a co-ordinated response to the issue.

Response on behalf of Manchester Law Society to SRA Consultation: Protecting the users of legal services: balancing cost and access to legal services.

This response is submitted on behalf of Manchester Law Society ('MLS') members. By way of background, MLS has a membership of in the region of 3,600 solicitors and firms. It is one of the joint five local law societies along with Birmingham, Bristol, Liverpool and Leeds. MLS has an active COLP and COFA forum which meets regularly and this consultation has been discussed within that forum.

The questions posed by the SRA in response to the consultation are set out below. We only propose to address certain questions. Where no response is given, we adopt the position in the Law Society's response.

Questions and proposed responses (where applicable)

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

We do not believe that the proposed changes provide an appropriate minimum level of cover, when the level of claims and aggregation is taken into account. Whilst we would be supportive of changes that could reduce the cost of PII without disproportionately undermining client protections, we do not consider that there is any evidence that the proposed reductions to the minimum level of cover required by solicitors would result in any notable reductions in insurance premiums. Indeed, if the additional cost of taking out top up cover, not only to cover the difference in the minimum cover, but also defence costs, which can be disproportionate to the value of a claim, and directors and officers liability insurance, which we believe will be required and taken out by prudent firms, is taken into account, the overall cost of insurance premiums will increase.

Not only does the consultation paper rely on data from 2004 – 2014, and so is not based on an accurate picture that includes increasing levels of fraud and cyber crime, but even the SRA's own findings suggest that around one in fifty successful claims is settled for an amount in excess of £580,000. Many prudent solicitors would therefore choose to take out top-up cover which would create varying levels of client protection.

The paper suggests 98% of claims settle for less than £500,000. A reduction of the minimum level of cover to £500,000 would not therefore reduce the insurers' exposure in the vast majority of cases so we consider that a reduction in premiums would be unlikely or minimal. PII is currently competitively priced for MTC policies whereas the excess layer market is shrinking. We therefore consider it likely that the proposals would result in no or minimal reductions to the cost of basic cover plus the additional cost of top-up cover. This would make securing adequate PII more complicated and costly.

In addition, it is unrealistic to expect individual consumers to understand and take informed decisions about a solicitor's PII cover. We consider that reducing the minimum compulsory level of solicitors' PII would create a gap in consumer protection which would threaten public trust and confidence in the profession.

In light of increased cyber crime, which could clear a client account of substantially more than £500,000, a reduced limit could prove to be woefully inadequate.

There would also be practical problems in implementing a new reduced limit, with many clients already being tied into terms and conditions confirming the current level of indemnity and requiring that level to continue.

Accordingly, we are of the view that the proposed changes are likely to increase complexity, result in more firms needing to purchase top-up cover, and leave clients without redress. Likely costs and risks are not justified by potentially marginal savings.

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

We do not agree with this proposal. Whilst we do understand that such clients will be more sophisticated, solicitors who act for such clients would be required to take out top up cover to cover their risk, which would incur an additional cost to the firm, which undoubtedly would have to be passed to clients. This may not have a major effect if the firm only acts for financial institutions and large business clients, but those many firms with 'mixed' clients would pass the additional costs over their client base. We further understand that the top-up cover would not be as comprehensive as the current MTCs, putting clients and firms at additional risk.

Question 3: Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No, for the reason set out above, and we also believe that the definition of what is a large institution/business has been set at too low a level. Turnover alone cannot indicate who is, or is not, a sophisticated client who regularly uses legal services, and a turnover of £2million can, in this economic market, include small businesses.

Question 4: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

This adds an additional complexity, fails to take account of firms that are involved in conveyancing services only very occasionally or as an adjunct to other legal services, and appears to be too low a figure when taking into account the rising level of property prices, which in many areas of the country far exceed £1 million (see BBC news report dated 25 May 2018 attached https://www.bbc.co.uk/news/business-44237967). There appears to be no indication within the consultation as to how the SRA will ensure that the additional cover is taken out, which further adds to the risk for clients, particularly as it would appear that many of these clients will have assets that take them outside the limit for being able to rely on the Compensation Fund, under the proposals in this consultation.

Further, we have serious concerns in relation to the proposals following the recent decision in Dreamvar, and the additional enquiries that would be required to be made to be satisfied that the other party carried appropriate and adequate cover in place, a cost that would be passed to the client.

Question 5: Do you think our proposed definition of conveyancing services is appropriate?

The use of a broad definition would effectively create an exclusion clause that insurers could use to decline cover to firms insured within the £500,000 minimum level of indemnity who stray into work

that has elements that fit into the definition of conveyancing services. Solicitors could be held personally liable for not having taken out sufficient cover and clients could go uncompensated for losses. The reputation of the profession could be damaged and we would not be surprised if all firms would be required to take out the increased level of cover.

Question 6: Do you think there are changes we should be making to our successor practice rules?

We support clarification to the existing rules, but are of the view that reducing minimum cover, and increasing aggregation risks, may lead to difficulties between retiring managers and the successor practice as they may not have confidence that there will be sufficient cover in place to meet future claims, and prudent retiring managers may take out their own insurance cover to protect themselves.

Question 7: Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

The consultation does not appear to take account of the fact that claims are made and notified to insurers for far higher sums than the figures at which they are settled, in some cases many years later, and defence costs can far exceed settlement figures and 'appear' disproportionate at the end of the claim.

Question 8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

We have seen no evidence to indicate that insurance costs would decrease as a result of the proposed changes, and the evidence available indicates that whilst firms would, as with all overheads, appreciate a reduction in costs, any reduction due to the decrease in minimum level of cover would be minimal, and would be offset by the need to take out top up cover and D & O cover..

Question 9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

We are concerned that the proposed cap is not based on robust data and the consequences do not appear to have been properly considered. The proposed cap would result in a significant reduction in aggregate cover. If an insurer was to deem a few mistakes as part of the same claim then it would likely exceed the aggregate limit and we would query how claims would be compensated in these cases?

Question 10: To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

There appears to be no evidence that current PII discourages new firms entering the legal services market, and from the increasing number of new firms we do not believe the premiums to be an issue. As stated above, we do not believe that the proposals will reduce the overall cost of insurance

Question 11: Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

It is not accepted that small firms are likely to benefit from the proposed changes, and such firms may be disproportionately affected by the requirement to purchase top up cover, which will sit outside the protection of MTCs. As BAME-owned practices form a larger number of small firms, than large firms, there will be a disproportionate effect, both on the firms themselves, and their clients, with negative diversity implications

Question 12: Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Question 13: To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

We question whether the SRA has the power to designate the Compensation Fund as a hardship fund and are concerned about the potentially unfair consequences that could result from the proposals. We do not consider that the SRA should be seeking to avoid payments to those who have been failed by solicitors. We are unable to comment further without evidence relating to the make-up of claims, and the basis of the claims made and paid out, and how many claimants would be adversely affected by the proposed changes. We also question the timing of proposed changes to the Compensation Fund, when it may be that a result of the proposed reduction to minimum levels of cover could lead to an increase in claims against the Fund to mitigate losses for which solicitors are inadequately insured. This would result in harming clients and public trust in the profession.

Question 14: Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

We understand that intervention costs have increased considerably and are paid out of the Fund, and this may be an area to be considered further, together with consideration being given to reserving the money raised for the Fund to be only used for compensation, as the majority of solicitors assume that it would be when making their contributions to the Fund.

Also, is the SRA satisfied that they are able to manage the fund without conflicts of interest arising? On the one hand the SRA is the prosecutor of solicitors and on the other it is the manager of the Fund which pays out in certain given circumstances arising from misconduct of the solicitors. Are there sufficient safeguards in place to ensure that the prosecutor does not have at the back of its mind the prospect of a significant pay out from the Compensation Fund it manages?

Question 15: To what extent do you agree that we should exclude applications from people living in wealthy households?

We do not accept that is the purpose of the Fund and do not accept that regulatory protection should discriminate based on apparent 'wealth' or other characteristics. Individuals having assets over a certain figure, whatever the level may be set at, are not necessarily sophisticated consumers taking risky investment decisions and removing them from the scope of the Fund will remove consumer protection and undermine confidence.

Question 16: Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

As stated in response to the question above, we do not consider the proposal appropriate.

Question 17: Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Question 18: Do you think we have set out the right approach for assessing when a maximum payment has been reached?

We are not in a position to respond without information regarding historic and present claims, and projections about the nature and size of future risks.

Question 19: Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

On the basis that cyber-crime can affect all firms, and there may be a number of claims for firms with inadequate insurance, consideration should be given to removing exclusions for contributions and that all solicitors contribute to the maintenance of the Fund.

Question 20: What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

The reason for making a claim against the Fund is not because a client failed to investigate, but is due to a failing of the solicitor, and we therefore do not understand the relevance of this question in this regard.

Question 21: Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

It would certainly assist to have clear guidance, to assist with how to claim and to manage expectations.

Question 22: Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Question 23: Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

The methods adopted by fraudsters are constantly changing and the sharing of information/knowledge by the SRA/ Law Society/ICO and insurers of new modus operandi is crucial to prevent firms falling victim of cybercrime. Information needs to be shared more widely (not just on the SRA website as many firms do not have the time to check scam alerts etc every day) and more quickly.

Protecting the users of legal services: balancing cost and access to legal

Response ID:143 Data

2. About you

1.
First name(s)

Gillian

2.
Last name

Mather

6.
I am responding..

on behalf of an organisation

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)

00260803

9.
Please enter your organisation's name

Mather & Co Solicitors

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: Cover of £1,000,000 is too low for any firm carrying out conveyancing and the perception is that to get top up cover to the current minimum of £2,000,000 will be likely to increase our total premiums and provide us with less/weaker cover for the top up element.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: If this includes mortgage lenders, then Solicitors carryoing conveyancing need to be covered to act for such clients.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

On the whole the definition by reference toturnover is acceptable. If Solicitors wish to take on as clients huge companies who may ultimately make huge claims against their Solicitors, then the Solicitors should have to insure this risk separately. However it should be clear that the definition doesn't include mortgage lenders in conveyancing transactions. Mortgage lenders are not like other clients. They can't be reasoned with or asked to accept risks. They wish to pass any risk onto to the Solicitors involved and we need to be covered against this.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: Insurers already take into accoun the percentage of conveyancing cases undertaken by firms and they set the premiums accordingly.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

No

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: The question is too wide.

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

: The question is too wide.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: A minimum of £3M seems quite reasonable.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: There are many factors that would affect a decision to start a new practice. I don't think insurance would ultimatley deter anyone.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

There should be a common acceptance that legal services are largely tailored to each client and accordingly are not suitable for a massive amount of standarisation. Legal services are never going to produce the huge financial rewards that some types of business can achieve through mass production. An approach which encourages a 'big business' mentality isn't appropriate. One now sees reports of some firms 'floating' on the stock exchange. At the same time, one also sees many reports of relatively new firms collapsing having borrowed hugely to set up and leaving huge debts behind them. I don't consider this rush to make 'quick money' to be appropriate for the law. Anything which can be done in the insurance arena to discourage such a mentlity would be helpful.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: Excluding a household with a net value of over £250K seems far too harsh and judgemental. I think that should absolutely be removed.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

As above, discouraging the 'big business' mentality would lead to fewer disasters which impose a burden on the Compensation Fund. The SRA don't necessarily help in this respect.

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly agree

Please explain your answer

: Because it's totally unfair. If some limit were to be imposed, I would put it far higher, say £20M.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

Any figure fgiven would be arbitrary but as above, my suggested limit would be £20M. Many returned people (including Solicitors) need at least £250,000 behind them to be able to retire comfortably.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

32. Please set out your suggestions and reasons for the change

It would seem unfair for large companies dealing with relatively small legal firms (as most legal firms are by nature and necessity relatively small) to be able to access the compensation fund to the detriment of the many small firms who contribute to it. The relative commercial positions of the Solicitors' practice as against those of the business should come in for consideration nad the claimant's conduct, but a limit of £2M income or assets seems harsh. I would suggest £10M to £20M.

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

35. Please explain you answer and any suggestions you have for alternative approaches

When assessing a firm's contribution, I would suggest some attention be given to the firm's record of complaints, their Accounts Rules records and any claims against the firm result in an insurance claim or otherwise.

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Employ an independent financial adviser. Employ a forensic accountant who should check the credentials and history of the individuals involved in the scheme/transaction.

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Fairly obviously clear guiding principals which the public could acccess would be essential.

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

39. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Larger firms with a lot of staff would seem to be more at risk. Larger firms might be obliged to limit junior or non-fee earning staff's access to emails or create some sort of 'barrier' or 'ring-fencing' of what such staff can do.

Middlesex Law Society

SRA Consultation Response to 'Protecting the users of legal services: balancing cost and access to legal services –March 2018'

This response is submitted as Council Member for Law Society and constituency of Central and South Middlesex. This is an area within the M25 including a number of London post codes. It reflects the views of the committee of the Middlesex Law Society which has around 400 members and also draws on experience from working in the property sector and representing property practitioners as a member of a number of practitioner groups as well as the Law Society Property Section and CQS Technical Panel.

We made submissions to similar proposals by SRA in 2014 and having considered the data and research now presented view these proposals as an inappropriate regulatory response because it contradicts many of the regulatory objectives and research that the SRA itself commissioned. It is grounded upon a highly questionable analysis of incomplete data used to support a number of theoretical benefits.

The impact assessment and risks highlighted in EPC's research remain largely answered or are met with undefined responses and assertions that lack evidential support.[i] In our view SRA reliance upon clients and stakeholders such as lender institutions is not appropriate, for a regulator of legal services under the Legal Services Act 2007.[ii]

Further the SRA does not appear to have considered risk in relation to its own reputation, the onward cost of dealing with the consequences of these changes and the impact of these measures in conjunction with other changes it proposes to modes and models of practice.[iii]

Our collective view is that consumers and business clients will be confused and confidence in solicitors will fall; that for our members the costs for insuring will increase; that uncertainty will reduce services and investment in existing services. Some firms will be tempted to reduce levels of cover and if claims are made will suffer financial failure, whilst clients will be shocked to find they have claims that have been left unprotected.

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Answer Strongly disagree.

These proposals reduce regulatory protection in a way that is contrary to the public interest. Legal work is complex and because its implications are not widely understood by consumers, protection is maintained through regulation by strong professional standards and the fall back of insurance guarantee where negligent mistakes occur. This is essential to maintain trust in the rule of law and in legal services.

EPC Limited explain in some detail the limitations upon relying upon the provision of information to inform consumers.

They say ‘provision of information is not the only remedy available to regulators and alternative regulation may be better placed to address some underlying problems. For example, electrical appliances bring with them the risk of faults that could lead to fires, but rather than inform customers about this, product testing and process standards are relied on instead and consumers are not necessarily warned about the fire risk despite the fact that some latent risk will remain and that the consequences could be detrimental both financially and in terms of a threat to life. Often risks are not revealed to consumers simply because the likelihood of them arising, while not zero, is considered insufficient to justify the requirement to inform’. They say that consumers may suffer from bounded rationality and the LSCP have also warned about this. We agree that Informational asymmetry tends to support a tendency to attribute overweight to low probability risks and underestimate high impact ones.

Risks in legal work are many and widely spread and unfamiliar to most consumers. It takes many years for a solicitor to train qualify and gain the experience to gauge the most likely or serious risks to their clients.

Mistakes can occur and have a high impact that is not always foreseeable; human error means that insurance is an appropriate fall back where negligence arises as judged by standards set by the courts. That standard is always evolving as the law develops and insurers share risk in matters which are uncertain.[iv] There is growing risk from cyber fraud and that is an example where the boundaries of responsibility are moving. As custodians of assets solicitors have an obligation of good faith and honesty and the public rely upon this because of the guarantees given by regulation and professional indemnity insurance and the compensation fund.

Under SRA proposals consumers some of whom are vulnerable and sections of the public will not for a variety of situations in future be protected from negligent work by solicitors. The data presented is not complete or reliable. It includes only 74% of the insurers in the market from 2004 to 2014 and ignores ongoing claims and those notified to firms that left the market such Quinn, Balva, Lemma etc. These would have affected about 3,500 mainly small firms and their claims. One can safely assume that these insurers suffered an attrition rate higher than insurers that remained in the market (and whose data SRA has obtained and analysed). [v]

The recent case of Dreamvar (2018 EWCA Civ 1082) shows how a total loss can easily exceed the limit in just one case and other recent cases (Willmetts and AIG v Woodman (2017 UKSC 18) show that aggregation of similar errors can cause significant problems where levels of insurance are exhausted. Indeed the headroom needed for aggregation is one of the reasons why the limit was raised in 2005. There is a balance between the minimum cover limit and the desire of insurers to aggregate claims. With new lower limits many more cases of aggregation will result. These cause delay, uncertainty, increased claims on the compensation Fund and in some cases uncompensated loss.

The 'claims made' nature of the policy means that neither solicitors nor insurers can know when a claim or series of claims from the past may arise. The bottom line is that for the majority of firms who will need to be buying the same level of cover as they currently have, the cost for obtaining that is uncertain and seems likely to rise, and not fall as suggested.

Experience suggests that claims are often made for a lot more than the final settlement that may take a very long time to come about. In the these circumstances it will not be prudent for established firms to take the risk of reducing their cover limit and in most cases if they did so they would breach the terms on which their retainer was made. Clients will expect the same level of cover as when they entered into retainers with their solicitors.

Firms will be left to negotiate for top up cover on the best terms they can after making the best assessment of risk they can. Smaller firms are at a disadvantage in any negotiations. Changes to treatment of excess layers and defence costs in the context of the changes to the primary layer of cover will create added uncertainty.

In some cases, retainer terms on closed cases and agreements with retired employees and partners or closed firms (where old claims are insured by a successor practice) will mean that a reduction of cover cannot properly be considered. The change has retrospective impact that is not being transparently presented.

Most existing firms will therefore need to purchase top-up cover, not just for the difference between the new minimum cover and current minimum, but also for other needs such as defence costs and higher levels of top-up. The lack of analysis of defence costs masks the full impact and cost to firms of the proposals. The consultation suggests savings to premium by reference to increases in the excess band but without taking account of the reserves that firms would need to cover such excess.

The new limitation to small business at 'low turnover' excludes many businesses that need protection. The definition adopted is too simplistic and disregards relevant factors such as governance assets, number of employees or loans, or business type. It will be highly disruptive to the existing and future business of most small firms in my constituency. Many of these employ BAME solicitors and part time returners. It is not possible to ascertain historically which clients would fall within this arbitrary limit which would apply to claims arising from past business. For future business it would threaten viability and exclude many of our members from a large and significant part of the commercial market and bank and financial advisers would feel unable to recommend new 'start-ups# to small firms at all. This is the very area that BEIS and SRA has recently encouraged small firms to develop. [vi]

The question does not address the SRA hypothesis that premiums will fall. That is not accepted as the advice being given by brokers is that the data shows that the insurers' highest risk of paying out on claims lies in the lower layer of cover. Taking SRA's suggestion as a 10% saving on a premium that currently costs 7% of turnover - the saving would be minimal and too small to affect pricing of services. Thus a sole practitioner will billings of £125,000 spread across 100 cases would save less than £10 per case. This takes no account of other new costs and risk.

Question 2 To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Answer Strongly disagree

This complicates the position and will increase costs and the burden of regulation. The rationale seems to be that financial institutions and large business clients are sophisticated buyers of legal services and therefore the case for regulatory protection is less than for individual consumers and

small businesses. This wrongly assumes that those above the chosen threshold are able to discern the relevant risk to which they may be exposed. There is no easy distinction to be made between sophisticated buyers of legal services and those who are less experienced, and the definition of small businesses lacks understanding of the market in which small firms now operate and need to compete in future.

The proposal undermines and destabilises the existing market of small firms providing high street services. Solicitors acting for those classes of clients that are excluded by the definition would need to take out additional insurance (top-up cover) to cover their risk. This top-up cover would be in addition to the premium for an MTC policy for the minimum layer of cover. Therefore, this is an additional cost which many firms would face as a result of these changes.

The top-up cover may not be as comprehensive as the MTC –the MTC cover for fraud is not generally offered. And this brings complexity and bureaucracy into the PII system. Theproblems can only be imagined in a hard market where cover is not available or is highly priced or ceases to be available at all from rated firms or only negotiable on terms narrower than the MTC. The measure would unarguably increase risk exposure but for no clear or certain benefit.

The current MTCs are settled and comprehensive. These proposals introduce complexity and confusion. In reality many businesses have turnover exceeding £2m and are not sophisticated buyers of legal services.

As public awareness of the new arrangements takes hold, both existing and new business clients will avoid instructing smaller firms that in the past they may have used. This will arise from a fear of the unknown or that firms might not have 'the best' cover and a desire to avoid the inherent risk that will be associated with using a smaller firm.

Lenders and bankers will act similarly and will advise their business clients to avoid the new risk. [vii]Market choice would reduce. This measure would be anti competitive. Firms would be forced to buy additional top-up cover to try and avoid becoming excluded from the market. Some will be compelled to buy additional cover they do not need – just to try and retain confidence – and this will be at additional cost.

Question 3 Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Answer No

We do not agree the proposed change. It is a definition that is too simplistic and disregards relevant factors such as governance assets, number of employees or loans, or business type.

The definition of a 'large business' has been set at a relatively low level of turnover and therefore excludes a significant section of the small business market which employs almost half the national work force and are a section that do require need protection.

Question 4. To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Answer Strongly disagree

We disagree with this proposal which adds an additional layer of complexity into the PII system. Conveyancing as defined forms a part of the work carried on by most firms in my constituency. We do not agree that a significant proportion of small firms do not undertake conveyancing as is suggested.

To the contrary the work affected within the definition would include family and divorce work and wills, trust and probate as well as residential and commercial property. For work with elderly and vulnerable clients property assets are often the subject to trust and other arrangements as a result of planning for retirement or caring arrangements.

The proposal would impact on any work where parties are reliant upon the work of other solicitors acting for other parties. Chains of property would be slowed and this will impact in commercial contract work for companies and joint ventures and in some litigation.

The proposals seem unlikely to be favoured by bankers and lenders. Property prices are likely to continue to rise, which supports the retention of a higher minimum level of cover. The impact on client protection is severe because if a firm was to fail to purchase conveyancing cover, then there may be no cover at all for a claim and the Compensation Fund would only pay out up to £500,000 on the latest proposals. This would leave the consumers at substantial risk of loss from using the services of a solicitor – compared with a licensed conveyancer. It is hard to understand how this can be in the public interest. It is not clear where claims would fall where the firm failed to take up the necessary added 'component' to the policy – would the main policy respond and what would be the extent of compensation fund redress? [viii]

The regulator appears to be acting to shape a market rather than respond to it and in our view is failing to properly maintain the regulatory objectives. There are well known failings in the standards of property work – as evidenced by high incidence of claims- and not least caused by competition pressure within a discreet and defined market which causes under-pricing of risk - and these should be addressed. Lenders as clients of law firms should not be deliberately exposed to cost or risk and their interest should be considered and not treated as irrelevant. SRA say - 'We do not have a role to interfere with the market outcome on conveyancing panels.' The regulator should not abdicate the duty to regulate in accordance with the regulatory objectives.[ix]

As EPC rightly state: 'Concern about conveyancing claims is not new and has been observed over the course of multiple housing market cycles and in previous reviews about PII. Persistent concern about this area suggests that there are underlying problems in the quality of conveyancing services and that there has been regulatory failure with respect to addressing these, rather than that there is a problem with the insurance market.' And 'It is therefore recommended that the SRA undertake a broader regulatory review of conveyancing. Better regulation and raising the standard of conveyancing would be expected to reduce the cost of PII. Given the scale of conveyancing claims, addressing the underlying problems in conveyancing is likely to have a more significant impact on the cost of insurance than many other issues the SRA is considering. It is also noteworthy that conveyancing transactions also commonly underlie the opportunities for dishonesty, misrepresentation and cyber-crime. Tackling the underlying problems in conveyancing would help to reduce concerns about those aspects of the MTC as well.'

SRA also intend 'to make sure we have a clear definition of conveyancing services and provide guidance to firms so they understand when they should to include this component of insurance.'

It appear that the extent of the definition is not appreciated–if it were then it would be clear that it is only a tiny minority of firms to whom a lower limit of cover than the MTC could have any relevance. Land registry statistics will show that around one half of all the firms in England & Wales make property related applications each month.[x]

Question 5 Do you think our proposed definition of conveyancing services is appropriate?

Answer No. The carve out is opposed

We do not agree the proposal and the definition of conveyancing activities. As explained the definition proposed for conveyancing would encroach into an overwhelming proportion of the work carried out by high street solicitors involved with consumer assets and debt. This measure would disrupt and undermine small firms. We are concerned especially for those in the Greater London area with mixed private client practices serving local communities of mixed diversity, ages and needs.

It is hard to think of any probate, divorce, or business expansion that does not involve dealing in property. This measure would therefore involve the vast majority of all firms in having to buy extra cover and incurring higher costs than at present. At the same time individual members will struggle to retain the confidence of buyers and lenders for either personal or business activities.

The MTC is a safeguard that protects consumers and retains confidence in a high risk market which is important to the economy and where stability is vital.

Question 6 Do you think there are changes we should be making to our successor practice rules?

Answer Yes

The successor practice rules enable a firm to provide succession and continuity for clients while avoiding the costs associated with the purchase of run-off cover. For the rules to remain relevant it is important that there are no gaps in protection for clients or employees or managers of firms – current or retried. With the proposed reduction in minimum cover, increased risk of aggregation, and as it will carry more risk the relief will become less relevant.

It would no longer provide the security the partners in a retiring firm need for themselves and their employees. They will not know what cover the successor will maintain and it could be less than the current MTC cover. The impact on smaller firms in particular is likely to be reduced reliance upon the rule.

Question 7 Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Answer Strongly disagree

Changes to treatment of excess layers and defence costs in the context of the changes to the primary layer of cover will create added uncertainty and increase the number of disputes.

In some cases, agreements with retired partners or closed firms (where old claims are insured by a successor practice) will mean that a reduction of cover is not available. Most existing firms will therefore need to purchase top-up cover, not just for the difference between the new minimum cover and current minimum, but also for other needs such as defence costs and higher levels of top-up. Costs for defending a claim are very important and claims are often made for amounts far in excess of the any final settlement. Managers of firms are impacted by this proposal as it presents another risk that will need insuring - and a new cost.

The limitation placed upon defence costs is likely to increase the cost to small firms. They may need to fund part of the costs of defending claim and this may be complex when top up layers are involved. The impact where the firms currently insure an excess is unpredictable as that market may work differently in future. The overall likelihood is that premium and defence costs for insuring those costs will rise.

There is likely impact on bank borrowing and partner reserves that do not appear to have been factored into consideration. [xi]

Question 8 To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Answer Strongly disagree

We can only foresee that costs for the current level of MTC cover will increase.

The changes proposed would introduce complexity and cost for the overwhelming majority of firms who will need to buy top-up cover. Other aspects of the changes to the insurance and legal services markets will threaten viability of current activities. There are risks for clients and firms as well as new administrative costs.

Firms will be forced to consider taking a higher excess (without funding), creating new structures to circumvent the regulations and create opportunities that seek out greater profit margins rather meet genuine legal needs at higher risk and cost.

Question 9 Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Answer Strongly disagree

The proposal reduces the protection for consumers and any reduction in premium that may result will be offset and outweighed by the additional costs that prudent firms will have to incur to retain the higher level of protection offered under the current MTC. No data is provided that would justify the reduction in protection that is proposed.

A high proportion of firms go into run-off without paying their premiums. This cost is picked up in the cost to other firms that do pay their insurance premiums, and this has the negative impact of distorting the market.

As regulator, the SRA should consider how the cross-subsidy for defaulters can be removed from the cost of run-off, without reducing the level of protection available and exposing clients to disproportionate risk. EPC point out that:

'it is possible that insurers may not even know that they are on risk for run-off cover, again breaching Principle 6 (unintended consequences). In the absence of a premium for run-off, insurers may assume that firms are continuing in business and have obtained insurance from an alternative provider when in fact the firm is in run-off. Insurers were split on how difficult it was to maintain records of firms in run-off but the issue could be mitigated by better firm closure processes and better coordination between the SRA and insurers regarding the firms that have closed.

The fact that such a substantial proportion of run-off premiums are not paid also reveals that the underlying intent of the requirement (that firms obtain, and pay for, run-off cover) is not being delivered, or enforced. Historically the SRA has considered failure to pay run-off premiums as simply a commercial dispute between insurers and firms.

This has resulted in limited information on non payment being provided by insurers to the SRA, and limited action by the SRA in response to any information they did receive. This may represent regulatory failure against Principle 7 (supporting regulatory supervision).'

Firms have another risk to factor in, which is the risk/ cost of protecting against claims more than 6 years after closure as the protection from SIF has ended. The SRA have not produced evidence to show the amount of risk exposure to the profession in reducing the cover from the current MTC.

Question 10 To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Answer Neither disagree or agree

We know of no evidence to show that these proposals are likely to result in additional firms entering the market? We know that SRA encourage new firms to innovate with the inducement of waivers.

It is foreseeable that these changes which create a carve-out of conveyancing from the MTCs may force firms to divide and specialise so as to avoid the need to purchase various types of additional cover.

We can see substantial risk that costs would increase and consumer choice would reduce for established firms who have to consider and protect against claims from past work; the costs for this are more likely than not to increase.

Overall, the reforms could lead to unintended reductions in competition between legal service providers, because firms will be forced to segment and create new business models, specialising in areas in of practice, and refusing work for whole classes of prospective clients, as an alternative to being forced out of business entirely. We can see no positive outcome and foresee a period of disruptive instability.

Question 11 Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Answer Yes

We believe that there are negative diversity implications and these have not been fully considered and taken into account. The SRA's impact assessment assumes that small firms are likely to benefit from these proposed changes. We do not agree with that assumption. Small firms are more likely to have higher numbers of young new entrants, part time solicitors, and solicitors from ethnic minority groups. In paragraph 50 of the impact assessment accompanying the consultation, it is noted that 'small firms find it more difficult to get competitive quotes for cover'. Yet under the proposed changes, small firms will be required to not only purchase MTC cover, but they should in many cases need to get quotes for top-up cover, which is likely to be on less favourable terms than the MTCs currently provide.

There is moral hazard where the regulator appears to be encouraging lower levels of cover but always on the basis that the risk is with the solicitor if it goes wrong should they turn out to be underinsured.

There is an inequality of bargaining power between a small firm of solicitors and an insurer. One of the benefits of the current MTCs is that it addresses this inequality and ensures that certain key terms cannot be excluded. If these proposals go ahead, a greater proportion of a firm's cover is likely to be top-up cover, which sits outside the protection of the MTCs, and is therefore subject to an unbalanced negotiation.

Coverage disputes and legal costs also become potential issues. Compliance costs will increase as a result of these changes and any increase in compliance costs is likely to be more sharply felt by smaller firms. We have described the problems posed for small firms by these proposals.

Question 12 Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Answer

The SRA has data on firms and can obtain data from insurers. SRA has the power to look into cases where premiums are high or where it believes they ought to be lower. The insured community does not have the insight that the SRA has or can obtain.

The greatest weakness since the end of SIF has been the lack of public data on the sector. The data used by SRA is already 4 years old and for closed cases for about 75% of the market - but this ignores claims still in progress. This weakens the position of solicitors as buyers of insurance.

Although firms have freedom to switch insurer the claims made basis necessitates a system for notification of circumstances that may lead to a claim and the over reporting means that in practice the market may not always operate efficiently.

Question 13 To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Answer Strongly disagree

The Compensation Fund is a discretionary fund. Its primary purpose is prescribed by statute and it operates 'to replace money which a defaulting practitioner or a defaulting practitioner's employee or manager has misappropriated or otherwise failed to account for'. This relates in the main to cases where fraud and failures to account for money are not covered by the mandatory professional indemnity insurance policy.

The Fund covers what would otherwise be a gap in client protection where in the case of a sole practitioner the MTC insurance will not extend cover to the fraud of the insured party. It therefore serves a vital role to protect clients and the reputation of all solicitors where insurance cover cannot be provided. Firms cannot obtain cover against their own fraud. The reputation of all solicitors is essential to the delivery of legal services as litigation, transactional work and work with the major national institutions and government require reliance upon the counterparties and undertakings. The weakening of confidence in the profession weakens the entire section of the economy and it is the duty of the regulator to maintain and strengthen trust not to damage it.

There is currently insufficient data given or analysis provided to evaluate the proposals. Without robust data underlying the proposals for the Compensation Fund, it is not possible to comment on each individual proposal. It would be wrong for the SRA to change the basis on which the fund has operated.

It has been proposed that the maximum payment from the fund should be lowered from the current £2m limit to just £500,000, and we oppose this change on the same grounds that we oppose the lowering of the minimum level of cover for PII. In addition, a claim for total loss in a conveyancing matter of an innocent seller or buyer could be unprotected to a large degree.

Question 14 Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Answer The proposal that applicants to the Compensation Fund should be required to have a duty of full and frank disclosure seems uncontroversial.

Question 15 To what extent do you agree that we should exclude applications from people living in wealthy household?

Answer Why would regulatory protections discriminate based on characteristics of claimants? It would be perceived as unfair and undermine the public interest in proper standards. The proposal that individuals from households with assets over £250,000 should not be able to claim is not appropriate. These individuals are not by definition sophisticated or rich consumers. Many will be cash poor. Elderly may be saving for others or for their own retirement or for care home fees. By removing them from the scope of the Compensation Fund, it will undermine the confidence that consumers can have when using a solicitor. The idea of barring claimants whose household assets

exceed £250,000 could have unfair consequences. Victims with claims have vastly different circumstances.

Regulation should not be means-tested so as to discriminate between different types of claimant.

Question 16 Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

Answer **No.** Victims with claims have vastly differing circumstances.

Regulation should not be means-tested so as to discriminate between different types of claimant.

The measure chosen is arbitrary as claimants have a range of personal circumstances and should not be penalised because of selective financial criteria. If they choose and rely upon a solicitor then the guarantee should hold where a member of the profession has failed.

Question 17 Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Answer **No**

Question 18 Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Answer **Yes**

Question 19 Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Answer In part only.

SRA charges its intervention costs to the fund and notwithstanding the complexity of statutory trusts and intervention costs there is lack of clarity around these charges to the fund. The calculation and timing of payments may distort the amount required from the profession each year for the funding of the discretionary payments made.

Question 20 What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Answer

The SRA has made a number of proposals to restrict the availability of the Compensation Fund in order to address a risk from fraudulent investment schemes, notwithstanding their discretion and the limits on claims. The fundamental changes to the Compensation Fund are not necessary in order to manage the risk associated with speculative and risky investment schemes, where the fund is operated on a discretionary basis and rules can be made to enable inappropriate claims to be

excluded. Any claim against the Compensation Fund is a direct consequence of a failing on the part of the claimant's solicitor.

If the direct reason for a claimant's loss is the failing of a solicitor, then the Compensation Fund should compensate them, subject to limitations that could be further developed and refined.

Question 21 Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Answer Yes

Clarity for claimant's expectations is to be expected.

Question 22 Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Answer Yes.

Any erosion of protection undermines the profession and especially new entrants and practitioners from minorities. Solicitors believe it is important that the Compensation Fund remains sufficient to protect innocent clients against losses. Doing so will help to ensure the public can be confident in seeking legal support from a solicitor.

Members of the public including those from minorities who are already socially and economically disadvantaged are likely to be further disadvantaged by the SRA's proposed reforms.

If, for instance, the increased cost of securing PII cover for conveyancing services forces some smaller firms to exit the market entirely, then this is likely to have a disproportionate effect on BAME-owned practices and would have knock on effects for BAME prospective clients, who may be forced into using larger non-BAME firms.

Question 23 Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Answer The SRA could provide greater reassurance to help firms to understand the issues by reporting on known problems and helping firms to avoid risks known to the SRA from the information and intelligence it receives from other regulators. There is a mismatch between the standards required from bankers by the FCA, PRA and UK Finance.

Solicitors often find themselves as low priority victims of poor practice by banks when cases arise involving money laundering or fraud cases concerning handling misappropriated money.

Michael Garson

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13 June 2018

[i] EPC Limited Potential Options for SRA PII requirements 'An aggregation cap in run-off would have little impact on firm behaviour hence the main impact would be to reduce run-off premiums but shift risks onto clients' and 'Consumer risk in legal services' - 'Regulators therefore need to be realistic about the extent to which consumers will understand and respond to information given this complexity and the potential for information overload.' –

[ii] 'Our monitoring to spot firms that are under-insured would include analysis to match the data we hold about the scope of firms insurance with data about which firms are registering title with the Land Registry. We will collect information from insurers on the firms that do and do not have conveyancing cover. This could be made available to the public as well as lenders.'

'Although we acknowledge the possible reduction in the size of lender panels we would also expect that so long as dual representation continues then the checking undertaken by lenders will act to control this risk. Solicitors acting for sellers might also be looking out for this possibility.'

[iii] 14 June 2018 SRA announced new arrangements for freelance solicitors requiring new category of 'appropriate' insurance - 'Allowing solicitors to provide reserved legal services on a freelance basis. Freelancers would not be able to hold client money or employ staff and must have appropriate indemnity insurance. They must also explain to clients what regulatory protections apply.'

[iv] Recent examples of evolving law or change in public policy see Ilott v Blue Cross 2017 UKSC 17 and Pimloco Plumbers v Smith 2018 UKSC 29.

[v] EPC Limited –'Non-responding insurers may have a different claims experience to those insurers that did respond to the survey. In particular, some insurers who did not respond were particularly focused on small.'

[vi] Improving Access –tackling Unmet Need http://www.sra.org.uk/risk/resources/legal-needs.page

[vii] EPC –'This may cause lenders to restrict their conveyancing panels to firms where there are lower risks such as by not using small firms or using only firms with assets above a certain level which would reduce the number of firms acting for lenders. It could also lead to greater use of separate representation' and 'There is a risk that some lenders would reduce the size of their conveyancing panels preventing access to those firms that bring more risk around the non-standard MTC components'.

[viii] 'Firms that need cover for conveyancing services would be required to include this component which would be on the same terms and conditions as the rest of the policy apart from the single claims limit would be £1m of cover. Firms that do not add in this component, would not be covered by the policy for conveyancing claims.'

[ix] S1 Legal Services Act 2007

[x] Incorrect inference 'Nearly 60 percent of small firms generate no turnover from residential property work. This increases to nearly 65 percent for commercial property work' but see

https://data.gov.uk/dataset/7d866093-2af5-4076-896a-2d19ca2708bb/hm-land-registry-monthly-property-transaction-data/datafile/2a7f61b6-389a-479b-a087-7da5436d906a/preview

[xi] The case of BPE and Hughes Holland [2017] UKSC 21 On appeal from: [2013] EWCA Civ 1513 is a good example of the complexity of issues. A successful claim against solicitors was appealed and ultimately failed in the Supreme Court. Whilst this case was over work by an employed solicitor on a

loan for £200,000 the costs in issue would have been very high. On other facts the claim for damages might have been a lot higher.

Protecting the users of legal services: balancing cost and access to legal

Response ID:169 Data

2. About you

1.
First name(s)

MARK

2.
Last name

CARVER

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

PII broker

8.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

9.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: We agree with the proposal to remove the current differential limits based on the legal structure of the firm since we do not see what practical purpose this serves. However, we strongly disagree with the proposal to reduce the minimum level of cover to £500,000 other than for conveyancing work where the minimum limit would be £1,000,000: a. We have no confidence in the analysis of the claims data and the conclusions reached on the basis that there are inconsistences between the analysis and the data: 1. P10 of "Reflecting on Solicitors Professional Indemnity Insurance (PII): market trends and analysis of historic claims data" states that there were around 142,000 negligence claims notified in the period 2004 to 2014 and P15 of the same document states that that 98% of all claims where an indemnity payment was made were settled for less than £580,000. These figures suggest that there were 2,840 claims where the limit would be inadequate. In contrast, PARA 16 of "Protecting the users of legal services: balancing cost and access to legal services" suggests that there were 442 claims where the limit would be inadequate. 2. P15 of "Reflecting on Solicitors Professional Indemnity Insurance (PII): market trends and analysis of historic claims data" states that 98% of all claims where an indemnity payment was made were settled for less than £580,000. In contrast, p10 of "Protecting the users of legal services: balancing cost and access to legal services", reducing the claims limit - states that that 98% of all claims where an indemnity payment was made were settled for less than £500,000. Given the

significant contradictions between the figures presented in the consultation papers themselves we do not believe that the figures can be relied upon and / or conclusions made. b. Regardless of whether 98% of all claims where an indemnity payment was made were settled for either £580,000 or £500,000, we are concerned that the figure is understated. Our understanding is the claims data was collected in 2015. This means that the incurred position for years 2009 to 2015 would not have developed fully – but no adjustment has been made to reflect this. Whilst we do not have the raw data to undertake a meaningful analysis ourselves, we estimate that if an adjustment were made to the figures to take into account the development of claims, the incurred position for years 2009 to 2015 would be 35% higher than the stated figures. On this basis we feel that a more representative figure would be £783,000 or £675,000. c. Furthermore, the whole basis of the statistical argument has been centred on the average claim value. However, P11 of "Reflecting on Solicitors Professional Indemnity Insurance (PII): market trends and analysis of historic claims data" lists 17 types of claim (excluding block-claims), and the maximum payment value for each. Not one claim type has a maximum payment value below £1m and, of the 17 types of claim listed, 70% having a maximum payment value in excess of £2m. On this basis the proposed limits look inadequate. d. Whilst the minimum limit has been chosen to reflect damages payments, it does not appear that any thought has been given to defence costs, save that they will continue to be in addition to the limit. Policies include a proportionality clause which means that whilst defence costs are paid in addition to the limit they are proportional to the limit purchased in the event of the limit being exceeded. Given that proportionality has been overlooked, our view is that the proposed reduction to the minimum levels of cover would expose firms to a higher defence cost spend and result in them being under-insured. e. The data only covers 75% of the market and excludes data from insurers who had withdrawn from the market by 2015. f. It is difficult to comprehend how a reduction in the minimum limit below the level offered by SIF nearly two decades ago can be justified and viewed as anything other than a backward step. f. Benchmarked against our own portfolio of clients as a whole, we do not offer limits below £1,000,000 to any non-solicitor firm.

10. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree

Please explain your answer

: On the basis that, from the SRA perspective, the primary driver for compulsory PII is public protection we broadly agree with this statement because financial institutions and large corporations are clearly not members of the public. However, we are not clear on the intent of this proposal. Is it to enable elements of the minimum terms not to apply; to allow insurers to exclude certain types of work or to allow insurers to exclude all work undertaken on behalf of financial institutions or commercial customers with an income below £2m? Our concern is that this proposal will lead to under-insurance, increased failure of firms due to insufficient insurance (and subsequent disorderly closure) and a two-tier high street with smaller firms being precluded from commercial panels due to their inability to satisfy panel insurance requirements. Furthermore, we do not agree with PARA 53 "Protecting the users of legal services: balancing cost and access to legal services" which is to base the exclusion on the turnover at the time when the act giving rise to the claim occurred. In our opinion, this proposal does not work for professional indemnity claims because these operate on a claims made basis i.e. for professional indemnity claims it is the policy in force at the time a claim is made that will respond to a claim. We are also concerned that basing the exclusion on the turnover at the time of the wrongful act (rather than the turnover at the time when the claim is made) would make it very difficult for firms to manage risk and for insurers to ascertain the level of turnover at the time of the wrongful act and, by extension, whether the exclusion should apply or not. Whilst on the face of it, the application of the exclusion will reduce the risk exposure to insurers, unless the proposer can confirm that both the current turnover of commercial clients and the historic turnover of these clients over the previous six years is less than £2m, it is difficult to see how insurers can assess the risk exposure correctly. Furthermore, this proposal will lead to a two tier market: larger firms being able to secure cover on the existing basis (due to premium spend) but smaller firms will not be able to secure cover on this basis. A more suitable alternative would be to require insurers to provide coverage for all commercial firms but to give them the ability to exclude cover for claims notified by commercial firms if they have not paid their premium, excess etc.

11.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

12. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: We do not believe that restricting professional services definitions within the PII wording is not in the best interests of either clients or the profession and goes against market practice where broad definitions are used. Our assumption is that aim of this proposal is to provide underwriters with greater flexibility and to reduce premiums as a result. In practice we do not believe either aim will be satisfied. Underwriters already apply differential rating based on individual risk exposures and already have internal limits on their portfolio exposure to conveyancing risk. Therefore, the impact of this proposal will be neutral. Of greater concern is that the proposal does not deal with the practicalities of a restricted definition in terms of legacy exposure, whether the insured undertakes a conveyance during the policy year or what if the insured does not declare such exposure, and simply says "we will provide guidance on this", which is of serious concern. We strongly suggest that further detail in respect of the application of this proposal is provided in order to consider further.

13. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

14. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

15. Please explain what these are and provide any evidence to support you view

We believe that the root of the problem with the current rules is twofold: first, the rules attempt to cater for / define every scenario and ensure there are no gaps; second, the current rules pass the regulatory responsibility of the SRA on to the insurance industry.

Our view is that successor practice is simple:

1. If a firm is to be merged with or absorbed into another firm the acquiring firm can decide whether it wishes to take on the past liability or not. Either way, the decision whether to assume past liability or not is a material disclosure to insurers.
2. If the acquiring firm is not taking on the past liability of the other firm, the other firm will need to trigger run-off (NB: this is already catered for in the Minimum Terms and Conditions).
3. Any merger or absorption would need to be approved by the SRA, and the SRA would need to be satisfied that the past liabilities of the merged or absorbed firm are covered by the acquiring firm under their own policy or that a run-off policy was triggered.
4. In the event of a run-off policy being triggered, we would like to see the SRA seriously tackle the issue of non-payment and prevent solicitors from practising until the debt is settled, whether they be employed at a successor practice or at another firm. We would also like to see the SRA tackle the issue of "phoenix firms", whereby a practice goes into run-off and then in effect re-establishes itself.

16. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: The current arrangements have added multiple layers of complexity into policy drafting. The MTC and PIA are two separate (albeit interlinked) issues and should be treated as such. The result is that the end product provided is often unclear and in the vast majority of cases poorly drafted. This has a knock on effect in terms of disputes, understanding (client, insurer and broker) and innovation. Separating the MTC and PIA would also would also bring the legal profession into line with other regulated

professions. We do not see any downside to this proposal for any party and would welcome its implementation.

17. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: PARA 72 : "Protecting the users of legal services: balancing cost and access to legal services" the SRA estimates that the impact of our proposed lower limit would be to reduce premiums by between 5% and 10%. However, the data used by the SRA to estimate reductions does not correlate and the SRA is unable to validate its conclusion. We have analysed the data, and our view is that the data does not support the SRAs estimate of a reduction in premiums of between 5% and 10%. Furthermore, the feedback we have received from insurers from across the market does not support the 5% to 10% estimate and we question why the SRA thinks premiums will reduce by between 5% and 10% when insurers and brokers alike are consistently saying they will not. We do not agree with the assumption PARA 68 "Protecting the users of legal services: balancing cost and access to legal services" that having a differentiated limit will result in more accurate underwriting because the risk will be less. The reality is that all insurers currently require a work type declaration and differentiate pricing on this basis, so the proposal will not make any difference. The feedback we have received from insurers from across the market does not support the 5% to 10% estimate. Furthermore, the no impact analysis has been made with regard to the cost of maintaining coverage for firms which wish to do so. Our view is that the excess layer market will not want to reduce their attachment point or broaden coverage to do, which will result in less cover and additional premium.

18. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Again, there appears to be a lack of data to support the SRAs assumption at PARA 85 of "Protecting the users of legal services: balancing cost and access to legal services" that the proposed cap on run-off cover will reduce run-off premiums by between 9% and 17%. In theory, we agree that if an aggregated limit applied during the six year run-off period run-off costs should reduce. However, the reality is that run-off is not attractive to insurers because, inter alia, they cannot cancel run-off for non-payment of premium. For this reason, it is highly unlikely that insurers will reduce their run-off premiums to "win" run-off business and almost certain that they will use the benefit of reduced exposure to subsidise the credit risk that they are required to take on run-off cases. Given the comments above, we fail to see how the proposed cap on run-off cover will solve the problem of non-payment of run-off premiums and expect the run-off default rates to continue at their current level of 50% and disagree with the assertion that "we can expect this result in a reduction in the non-payment of run-off premiums which could reduce premiums even further". No evidence was provided to respond to on the issue of adequacy.

5. Questions continued

19. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Given that we strongly disagree that the proposed changes will result in premium savings, it follows that that they will have no impact on whether new firms enter the market. Furthermore, even if the stated savings were achieved, they would not determine whether a new firm is established or not: the saving would be one of a number of considerations and, in our experience would not be the deciding factor. There is already significant competition in the legal services market and we do not believe that the existing insurance arrangements have any impact on whether a new firm is established or not. No evidence has been provided to support the assertion at PARA 87 "Protecting the users of legal services: balancing cost and access to legal services" that if insurance costs reduce, this would be passed on to consumers. The SRA suggest that the

proposed changes "could result in reduced premiums for firms that do lower risk work" (see PARA 90 "Protecting the users of legal services: balancing cost and access to legal services"). Our experience is that such firms already benefit from reduced premiums, have done for many years and that this is reflected in the pricing model of firms. No evidence was provided to support the statement at PARA 91 "Protecting the users of legal services: balancing cost and access to legal services" that "we can expect this to encourage new entrants into the market".

20. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

21. Please explain what you think these impacts are

EDI impacts have not been identified (save the assumption that premiums will reduce, resulting in such reductions being passed to the consumer which will in turn lead to increased consumer choice and access to justice). No data has been provided to support any EDI impacts.

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

From the detail provided in the consultation, our view is the impact assessment and mitigation is inadequate. We do not agree with the following mitigation outlined in the impact assessment in respect of the following:

Challenge: An aggregation cap could result in different outcomes for consumers depending on when they make a claim
Mitigating this Challenge: There is opportunity to develop an open market run-off cover. This could lead to a competitive alternative to automatic cover provided by the current insurer.
There is no competitive run-off market for any other profession (including accountants, surveyors, engineers, architects, insurance brokers), so it is highly unlikely that one will develop for solicitors.
Also, refer to response to Q5.

Challenge: Increased complexity in the process for firms to buy the cover they need
Mitigating this Challenge: We still expect insurers to offer firms the options to 'top up' their insurance policy to include a level of cover for financial institutions on the same terms as our compulsory insurance.
The evidence since 2000 is that this will not be the case, as insurers have always differentiated the coverage provided above the minimum levels and we would expect insurers to do the same should this proposal be adopted.

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree
Please explain your answer
: The changes don't clarify the purpose of the Compensation Fund, they completely change the purpose from a Compensation Fund to a Hardship Fund. Our understanding is that the Compensation Fund was set up by an Act of Parliament to help people who have suffered financial loss due to a solicitors' dishonesty or failure to pay money he has received (SRA 2010). The SRA Compensation Fund Rules 2011 (3.1 and 3.2), are also very clear and define the purpose of the Fund. The Compensation Fund's purpose seems very clear. The proposal changes the purpose rather than clarifies. With regard to reference to the judgement made by the Court of Appeal in the Mortgage Express Case, it appears a little strange to use this as justification for change 20 years after the judgement was made.

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: The Compensation Fund is not a hardship fund. For the reasons stated above, the Compensation Fund clearly is a fund to provide compensation to people who have suffered financial loss due to a solicitors' dishonesty or failure to pay money he has received. On this basis, you cannot exclude people because of their wealth or income – if they have lost money due to a solicitors' dishonesty then it is right they should be compensated. The rationale is based on dubious investment schemes which effect very few people (see PARA 101 "Protecting the users of legal services: balancing cost and access to legal services"). Would it not be fairer to simply exclude such investment schemes rather than to base eligibility on a wealth threshold for all legal services? We disagree with the need to define what is and what is not the 'usual business of a solicitor' (see PARA 120 "Protecting the users of legal services: balancing cost and access to legal services"), we believe that it would be more practical and more clear to exclude specific areas of concern. Changing the Compensation Fund to a Hardship Fund will result in less public protection.

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

27. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

Footnote 24 "Protecting the users of legal services: balancing cost and access to legal services" states that the top 5 percent of wealthiest households in Great Britain have net total wealth of £1.5m
In order to comment on whether the figure of £250k is appropriate, it would be necessary what % of households in Great Britain have net total wealth above and below this figure.

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

30. Please explain why.

The application does not seem fair or equitable in any of the scenarios. In our opinion a fairer approach would be to limit payments per individual claimant and / or individual retainer.
Adopting this approach to scenarios A and C would result in outcomes as follows:
Scenario A £500k is paid to both Mr and Mrs A - £1m in total
Scenario C £500k in paid to K and L (£1m in total)
We agree with the application in respect of scenario B and D.

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

We do think it is reasonable to expect that investors will make an informed decision before committing any investment. If a

solicitor is involved in a scheme that solicitor will be regulated by the SRA and for most people this would be sufficient to give legitimacy to any scheme. That said, each case should be judged on its merits.

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Please refer to response to Q13. We disagree with the following proposed guiding principles: -The purpose of the Fund is to help people who need it the most when they have lost money as the result of a solicitors actions by replacing some or all of that money. -The Fund may sometimes have to decide that it will or will not pay grants in particular circumstances, such as for certain types of case, particular losses or to defined groups of people who have lost money As per our response to Q13, our understanding is that the Compensation Fund was set up by an Act of Parliament to help people who have suffered financial loss due to a solicitors' dishonesty or failure to pay money he has received (SRA 2010).

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

We would suggest a consultative forum with insurers, banks and brokers on this issue.

Protecting the users of legal services: balancing cost and access to legal

Response ID:262 Data

2. About you

1.
First name(s)

Charlotte

2.
Last name

O'Shea

6.
I am responding..

on behalf of an organisation

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)

383018

9.
Please enter your organisation's name

Minster Law Limited

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Neither disagree or agree

Please explain your answer

: The proposed changes appear to cover most scenarios wherein PII may be required whilst offering firms a degree of flexibility to tailor their level of cover to the services they offer. Where there are potential gaps in cover, some expansion of products offered by insurers may be required to enable firms to source any anticipated risks which are not covered by the MTC.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Neither disagree or agree

Please explain your answer

: We agree the proposal will offer greater flexibility to firms to empower them to purchase the most appropriate cover for the areas they elect to practice in. However, we would envisage the need for some robust monitoring and support to be in place to assist and ensure firms are purchasing the correct level of cover for their needs.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Neither disagree or agree

Please explain your answer

: We agree that enabling firms to purchase PII insurance based on the areas they practice in has the potential to improve its affordability. If implemented, we suggest that firms would benefit from detailed guidance and support to enable them to establish the correct level of cover required to reduce the risk of being under insured.

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

We agree that any changes made to the successor practice rules should focus on reducing uncertainty across users of legal services, firms and their insurers.

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: We agree with your focus on flexibility for firms to arrange cover which reflects their practice area and clarity. The proposed changes are more reflective of the diverse ways in which modern firms operate.

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Somewhat agree

Please explain your answer

: We agree that the proposed changes offer more flexibility to firms to lower the overheads paid out in relation to PII. The requirement to only purchase cover required will be of particular benefit smaller firms.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: We agree that the proposed cap for run off cover appears to be appropriate when considering the need to render premiums more affordable. However, if the upper limit is reached, there is a risk of clients receiving different outcomes depending on the timing of their claim. This could be mitigated by the introduction of top up cover should this eventuality occur.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat agree

Please explain your answer

: If the proposed changes lead to reductions in premiums, this could encourage new firms to enter the legal services market; particularly in the lower risk specialisms as the initial overheads will be lower. However, this could reduce the number of firms entering the market to offer conveyancing services. The need to purchase more costly cover to provide conveyancing services may dissuade smaller firms from practicing in this area.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

25. Please explain what you think these impacts are

If fewer firms enter the conveyancing sector or elect to practice within it, consumers' choice of legal service providers may be limited to larger firms who are better equipped to shoulder the cost of PII to include the conveyancing component.

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

No.

We agree that the potential associated risks to consumers are too great to proceed with the changes that you are not proposing to consider further.

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

: We agree the proposal to introduce more stringent eligibility requirements would offer some clarity as to the purpose of the Fund.

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat agree

Please explain your answer

: We agree that the exclusion of applications from those living in wealthy households is consistent with the Fund's purpose as a targeted hardship fund. However, we are mindful that this may leave some potential applicants without a remedy if a firm's PII cover or capital are not sufficient to provide redress. Particularly as it is likely that any transactions commissioned by the wealthiest households could relate to higher value conveyancing / commercial work.

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

33. Please explain why.

Whilst we agree that there is a need to set clear rules to establish when a maximum payment has been reached, we are conscious that there is the potential for clients on a joint retainer to be detrimentally affected should the proposed definition of a single claim be introduced.

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

35. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

We agree that it is reasonable to expect people to conduct a reasonable degree of research prior to committing money to an investment scheme or similar. The concept of reasonable research would need to be considered against the individual circumstances.

Additionally, any potentially vulnerable individuals may not make choices that are in their best interests in relation to such schemes, therefore, you may wish to consider a degree of flexibility in circumstances where strict application of any requirement for reasonable research may result in a vulnerable individual being unreasonably denied access to a remedy.

36. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: We agree that the inclusion of clear Guiding Principles in the rules or as guidance will provide clarity regarding the purpose of the Fund and the decision-making process when considering an application. By providing this information, there will be increased transparency over the operation of the Fund.

37. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

We note that there are international standards which describe best practices for Information Security Management Systems (namely ISO 27001 and 27002).

We suggest that firms consider working towards following the suggested best practices or obtaining certification should it be deemed appropriate.

Protecting the users of legal services: balancing cost and access to legal

Response ID:146 Data

2. About you

1.
First name(s)

Paul

2.
Last name

Scholey

6.
I am responding..

on behalf of an organisation

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)

499273

9.
Please enter your organisation's name

Morrish Solicitors LLP

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer
: We agree with the Law Society's view. There won't be the promised savings. Protection for clients will be reduced. The profession's reputation may be damaged.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree
Please explain your answer
: We're more concerned with consumer protection than B2B issues.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree
Please explain your answer
: Needless complexity. Possible confusion.

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

18. Please explain what you think should be an alternative definition.

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

No

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree
Please explain your answer
: We agree with the Law Society's views.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree
Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: We agree with the Law Society's views.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: We agree with the Law Society's views.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

25. Please explain what you think these impacts are

We agree with the Law Society's views.

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

:

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer :

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:93 Data

2. About you

1.
First name(s)

Mark

2.
Last name

Robinson

6.
I am responding..

on behalf of an organisation

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)

440939

9.
Please enter your organisation's name

MRTIPS

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: There is no clear reason why reducing the minimum cover would benefit law firms or their clients. It is a fantasy to think that reducing the level of cover would result in a significant reduction of premium costs and, even if it did, that this would result in lower costs for clients and would maintain the same level of protection for clients.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: There is no logic to this articfiial and arbitrary distinction between different types of clients. There will be many clients who fall into the grey area between the two categories.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

There is no satisfactory definition that could be easily applied.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: Although conveyancing mighty generate the most claims, they are not the only field of law to generate significant claims. The need to create a separate component for conveyancing emphasises why the priposed reductions make no sense.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

No comment.

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

No

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: The proposed changes will make little or no difference to insurance premiums. The SRA seems to have no understanding of how the insurance market works. Most claims fall within the proposed limits, so the insurers will not reduce premiums to insure to those limits. If the SRA is wants to reduce premiums then it would need to reduce the limits to be significantly below the levels of most claims and allow firms to limit liability to those significantly reduced limits.

23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Reducing cover will not reduce premiums but will leave clients with less cover.

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Premiums are a significant expense. But the cost is not the barrier to entry. The proposals are unlikely to reduce the premium costs. Indeed, they are more likely to increase them where firms need to obtain the same level of cover as now.

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

26. Please explain what you think these impacts are

Yes, increase in costs, increase in uncertainty as to levels of appropriate cover, and increase in complexity in insurance arrangements.

27. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

No comment.

28. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

29. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No comment.

30. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer
: The compensation fund is addressing poor regulation of the profession. It should not be determined by the wealth of the client.

6. Questions continued

31. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

32. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

No.

33. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

34. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

35. Please explain why.

No comment.

36. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

No comment.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes
Please explain your answer
: No comment.

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

40. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

No.

SRA Consultation : Protecting the users of legal services : balancing costs and access to legal services – Deadline for submission of responses is 15 June 2018

Responses following consideration by the Professional Purposes Committee of the Newcastle upon Tyne Law Society. These responses were informed by a workshop of local COLPs and other interested solicitors at the offices of Ward Hadaway, Solicitors, Sandgate House, 102 Quayside, Newcastle upon Tyne, NE1 3DX discussing the SRA proposals. The Newcastle upon Tyne Law Society is an independent local law society and learned body with a membership in excess of 800 solicitors and trainee solicitors in the area from Berwick upon Tweed to Durham, including Newcastle and Gateshead and North and South Tyneside. Our address is Newcastle upon Tyne Law Society, College House, Northumberland Road, Newcastle upon Tyne NE1 8SF.

Question 1

To what extent do you think the proposed changes to our PII requirements provide an appropriate level of cover for a regulated law firm?

- Strongly disagree

Please explain your answer

We do not support the reduction of the minimum level of compulsory cover from the current £2-3m to £1m for firms providing "conveyancing services" and £500k for everyone else.

In many matters the potential liability may not approach the current minimum figures but we believe it is better than the alternative that clients may be left without adequate cover in certain cases (and some firms may take an over optimistic view of the potential liability and accept work they should not) with the resulting negative impact on public confidence in the provision of legal services.

Question 2

To what extent do you agree that our minimum P1 requirements do not need to include cover for financial institutions and other large business clients?

- Disagree

Please explain your answer

The impact of this proposal may even be to draw a clear line between lawyers who carry out commercial work and those that do not. Financial and business clients of significant size will want evidence of adequate insurance cover. We are not aware of any proposal from Licensed Conveyancers to charge minimum terms in this way and we may find residential house conveyancing work drifting away from solicitors' firms regulated by the SRA as financial institutions lending in that domestic consumer market will require cover be in place. Such institutions in any event are likely to reduce panels to reduce administrative costs of these charges. We believe this proposal will reduce access to legal services

Further there will be business clients who do not check and it will be damaging to the reputation of SRA regulated law firms where this causes loss (and see immediately below under Q3).

The proposal is likely to disrupt the legal market place and we do not believe the benefits claimed justify this disruption.

Question 3

Do you think our definition of excluding large financial institutions corporations and business clients is appropriate?

- No

Please explain your answer

Using turnover as a differentiator means that other relevant factors are ignored e.g. number of staff.

When the impact is added to the impact of a low threshold of £2m it includes a lot of businesses e.g. relatively small property developers.

It may lead therefore to some businesses being without (adequate) cover. We do not believe w should simply leave such clients to fend for themselves.

Question 4

To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

- Strongly disagree

Please explain your answer

One side effect of differentiating conveyancing practices is likely to be to increase their premiums. This may lead to wider problems of access to justice and legal services through reducing firms carrying out this work and eliminate to some small firms operating in these areas particularly in rural communities such as parts of Durham and particularly Northumberland.

Even if firms do not currently carry out conveyancing they will still need to buy cover if they have ever done so as the policy is a claims made policy.

Question 5

Do you think our proposed definition of conveyancing services is appropriate?

- No

Please explain your answer

It is too wide and leaves uncertainty e.g. is a company sale including real property covered by the definition?

If insurers can decline claims from firms insured with minimum £500k cover then more clients will not obtain compensation and the reputation of solicitors and the provision of legal services will be damaged.

Question 6

Do you think there are changes we should be making to our successor practice rules?

- No

Please explain your answer

We believe encouraging the seeking of a successor practice is in the public interest.

We do, however, sympathise with the difficulties of people from small practices in retiring and further attention is needed in this area to make run off cover more affordable. The current system is clearly not working well in relation to firms which are unattractive to being assimilated into other firms. After all firms will only look to an acquisition which makes business sense.

Question 7

Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

- Disagree

Please explain your answer

In general terms we welcome any steps to eliminate overlap or duplication and to reduce the cost of resolving coverage disputes.

The problems lie in the detail e.g. if defence costs would no longer be covered for claims exceeding minimum cover firms will incur additional expense increasing costs of legal services.

Question 8

To what extent do you agree that the changes to our PI requirements provide law firms with more flexible options to potentially lower insurance costs?

- Strongly disagree

Please explain your answer

While it may give some firms options to reduce premiums it seems likely that the overall input will be the opposite that is to increase premiums:

1. In reality only a few firms are likely to benefit from a limit of £500k due to its low nature set against liability.

2. Premiums overall will increase if primary insurers only offer minimum limits due to the extra cost of buying additional cover to cover excess layers from a lower point.

3. The policy relates to claims made and many firms will require cover if they have any potential liability in the past for higher claims or in relation to conveyancing work.

Question 9

Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

- Neither disagree or agree

Please explain your answer

There is an urgent need to reduce the cost of run-off cover but further analysis of the impact of this proposal is needed so that we get this right.

Question 10

To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

- Strongly disagree

Please explain your answer

Top up cover is likely to be needed and costs of this cover are likely to increase.

Question 11

Are there any positive or negative EDI impacts from the proposed changes to ur PII requirements that you think we have so identified?

- Yes

Please explain your answer

We believe that there will be negative impacts on small particularly rural firms in our North East region and elsewhere which have not been considered, e.g. if small rural firms have to drop conveyancing work and their practices become unviable this will impact negatively on access to justice.

Question 12

Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further?

- No

Question 13

To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it most?

- Somewhat disagree

Please explain your answer

The Compensation Fund has to remain sustainable and for that reason we do not want to rule out change.

We have grave reservations though about eliminating claimants on grounds of their wealth.

The Compensation Fund has served consumers well and should continue to play a key part of preserving confidence in the provision of legal services. We believe te proposal would threaten that.

Question 14

Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

- Yes

Please explain your answer

We should consider limiting claims relating to investment schemes.

Question 15

To what extent do you agree that we should exclude applications from people living in wealthy households?

- Disagree

Please explain your answer

See Q.13

Protecting the users of legal services: balancing cost and access to legal

Response ID:313 Data

2. About you

1.
First name(s)

Linda

2.
Last name

Lee

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Northamptonshire

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: On behalf of the Council of Northamptonshire Law Society. . . The Council of Northamptonshire Law Society is opposed to the planned changes to the Minimum Terms and Conditions (MTC) for Professional Indemnity Insurance and changes to the Compensation Fund. It believes that very few of its members will see any financial benefit and the majority will actually find professional indemnity insurance (PII) more expensive as they will be forced to seek top up cover which relatively few do at the present time. This is based on the size of firms in Northamptonshire and that approximately 12% currently seek top up cover. There is inequality of bargaining power between small firms and insurers. The MTC address that inequality and ensure that certain key terms cannot not be excluded by insurers. We note that paragraph 50 of the impact assessment accompanying the consultation paper acknowledges that 'small firms find it difficult to get competitive quotes for cover'. Top up

cover is not necessarily available on the terms of the MTC. The planned changes may well prevent existing firms remaining in certain markets and working for certain clients – new and existing. They may also present a barrier to entry for certain types of work and clients for existing firms and for new entrants. It is inconceivable that institutions and large business clients will do business without the benefit of PII. The proposals to exclude cover for financial institutions and other large business clients from MTC will impact disproportionately on small firms and BAME firms of which there are a significant number in Northamptonshire. It will force them to seek top up cover with all the disadvantages already expressed, it may not be available. This will have a similar impact on opportunity for start-up firms. Since the closure of the Solicitors Indemnity Fund, the open market has at times worked well. There has for the past 4 years been a soft market and the market is currently stable. Change of this type will disrupt the market and the outcome will be uncertain – more particularly when the market conditions change. Although we do not know the precise figures, the vast majority of firms in Northamptonshire carry out some conveyancing work either as a service in its own right or as a subsidiary service for probate and family work. It was reported that asking prices for homes in Northamptonshire increased by 9.1% over 2017, the biggest increase in England and Wales, as London's unaffordable property market caused people to buy further away and commute. It seems unlikely that lenders in the region would be content with cover of only £1 million per transaction. This will force many firms to seek top up cover and it may not be available to them at a reasonable price or at all. Given that this is a 'claims made' market, firms who no longer do conveyancing work will still require the higher level of MTC to ensure they can meet any historic claims and may also require top-up to retain the £2 million cover they offered to the client at the time of the transaction. Such firms and their clients may be exposed if top-up cover is not available. Firms who do not do conveyancing work and have never done so already benefit from reduced premiums which reflect this. Although the consultation estimates that 98% of claims will be covered this figure must be regarded as unreliable. The data does not include the figures for insurers which became insolvent in recent years, such as Quinn and Balva. It seems reasonable to suggest that such insurers attracted a higher percentage of poorly performing firms who could not find cover elsewhere and many small firms did obtain cover from them. The data does not analyse the incidence of defence costs and this does affect the percentage of the total cost of claims which will not attract full coverage. Claims rarely settle at the level at which they were brought and there has been no analysis of the level at which claims were brought and the percentage of claims which fell within these levels. Even if claims settle within the suggested limits for MTC many firms will require top up to avoid being underinsured for claims that would eventually settle within the proposed MTC. There are many disadvantages for clients in the new proposals. For example, there is currently a requirement that the existence of MTC must be disclosed to would be claimants. The converse is usually true of top up cover in that there is a requirement not to disclose its existence. Clients would be uncertain of the level of cover available to meet any claims. In conveyancing with chains, however, the need for disclosure would create a new requirement and potential for cost and delay. At present there is a requirement that firms cannot limit their liability to less than the level of MTC, this requirement does not seem to survive the new Code, or if it were to do so, the limit would not provide sufficient cover for many. The greatest concern is that clients may well be caught out and confused by the changes and may find themselves in a position where they unexpectedly find themselves exposed to significant loss. The planned change to a cap for run-off cover could leave many clients without cover or uncertainty and a perceived race to settle, or perhaps under settling to avoid there being nothing left in the pot. If the cover has already been exhausted, clients will find little comfort from the Compensation Fund where their claims will be limited to £500,000. Even more disturbing is the suggestion that consumers with assets means tested at over £250,000 could not claim on the compensation fund. This will be of particular concern to the elderly who have savings for the costs of retirement and nursing care. This combined with the decision to remove the safety net for post 6-year run-off claims after 2020 could cause genuine hardship and undermine the reputation of the profession and the regulator. . . Note: Northamptonshire Law Society was established on 8th June 1879. It has 2 corporate members (one of which is the largest firm in Northamptonshire) and has 259 full members and 58 associate members (which includes trainees). It has close links with the University of Northamptonshire which is one of its patrons and engages with those seeking to enter the profession. The majority of its members are in private practice and it is striving to increase its engagement with in-house solicitors in the county-a former President and current Council Member of the Society was head of the largest in-house legal team in Northampton. As at January 2018, there were 352 solicitors in Northamptonshire. 75% of solicitors were white/european, 14% BAME and 11% were of unknown ethnicity. Women made up 54% of solicitors in the county. Of the 55 firms in Northamptonshire, only one firm had 26-80 partners, 2 firms had 11-25 partners, 7 firms had 5 -10 partners, 19 firms 2-4 partners and the remaining 26 firms were sole practitioners. . . Question 1 In response to question 1, as indicated above we believe that the SRA's own consultation paper indicates that the proposed changes do not provide an appropriate minimum level of cover for a regulated law firm. The data relied on is incomplete. The consultation contains data from only 74% of insurers in the market from 2004 to 2014. It does not have any data from the insurers who left the market in that period and as indicated, in all probability, had a greater percentage of firms who encountered difficulties and faced claims. It does not

contain data relating to claims which have yet to settle - such claims are likely to be the more complex and expensive claims. It has not included defence costs which will take a greater % of cases outside the proposed new levels. It ignores the need for firms to have cover in place to meet the value of the claim at the level at which it is made, not just the level at which it settles. When the level of MTC was raised from £1 million to £2 million or £3 million in 2005, one of the drivers was to address the potential shortfall in cover where claims relating to similar errors were aggregated. There has been no analysis of the risk of an increase in aggregated claims as a result of the proposed changes. It is difficult to understand why if the profession felt that client protection demanded the minimum level of cover to be set at £2-3 million 13 years ago, the current regulator is prepared to expose clients by reducing the level of cover to £500,000 and to £1 million now. Particularly when this set against a back drop of rising house prices over that period. This risk is justified by a projected saving of 10% on a premium that currently costs an average 5.5% of turnover. Even if this saving is justified it ignores the likely increase in cost to firms of the cost of top up premiums, increased administration costs in sourcing such premiums and the impact on small firms and their clients and start-ups who may be excluded from work types by the lack of reasonably priced insurance.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: It is inconceivable that institutions and large business clients will do business without the benefit of PII. Businesses with a turnover exceeding £2 million regularly instruct smaller firms to do some if not all of their legal work. Removing such cover from MTC will impact disproportionately on small firms and BAME firms of which there are a significant number in Northamptonshire. If they wish to do commercial work they will be forced to seek top up cover. Currently only 12% of firms obtain top up cover. This figure will increase. As stated above, such cover may not be available to small firms or available at reasonable price. Smaller firms have less bargaining power in such negotiations as is recognised in the consultation paper. It will be an additional burden to new entrants in the market who will also be compelled to obtain top up cover. This could prevent new entrants in some work types and stifle innovation Uncertainty will be increased for clients as there is no requirement to disclose the availability of top up cover indeed many insurers make it a term of top up cover that its availability is not disclosed to clients.

12.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

13. Please provide an alternative way of drafting the exclusion definition.

The definition of a 'large business' is set at a relatively low level and is unlikely at the lower end to include businesses that have in-house legal teams or are sophisticated purchasers of legal services.
Any definition creates an artificial and what is likely to be an inappropriate barrier on occasions. The situation could arise where during the course of a transaction or course of dealings in a single year where a business could move to a turnover which takes them outside the MTC.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: For reasons above, this reduction in the level of cover for conveyancing work will disadvantage small firms and BAME firms. Although MTC cover for firms carrying out conveyancing will be at a higher level than for other work types, it will still be a reduction of £1 million of cover from the present MTC level and will require most conveyancers to go the open market for top up. Lenders are likely to insist on a minimum of £2 million cover for transactions in any event. Given the increasing level of house prices, there is an argument for increasing the level of cover not lowering it. Firms who do not do conveyancing work may have to purchase cover to avoid transgressing in any cross over work. Firms who no longer do conveyancing work but did in the past will have to purchase this cover given this is a 'claims made' market. The definition would also include firms who do family and divorce work, wills, trust and probate as well as residential and commercial property. It is difficult to see

who will benefit from these proposals. Premiums reflect the lower level of risk for those who do not do conveyancing work therefore the price advantage to non-conveyancing firms will be modest if at all. If firms do carry out conveyancing work without appropriate cover, it will be small consolation to consumers who are affected that the firms will be disciplined. Particularly given the plans to reduce the cover available to them from the Compensation Fund to £500,000, even if they are in any event eligible.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

16. Please explain what you think should be an alternative definition.

This definition would impact on a large proportion of work carried out by high street solicitors. The definition seeks to create an artificial barrier which will impact on most firms offering a range of services for individuals and commercial entities.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

18. Please explain what these are and provide any evidence to support you view

Successor practice rules should maintain cover without gaps for the benefit of clients, former partners, managers and employees. If these reforms are introduced, there will be uncertainty as to the level of cover to be maintained by the successor practice and what types of claims will be covered. This could leave individuals exposed to claims many years after they have ceased having any involvement with a business - an exposure they have no prospect of covering with top-up insurance. Clients reliant on the level of cover they were promised at the time they signed the letter of engagement may find such cover non-existent if they bring a claim.
Post 6 year run off cover should be reinstated.

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: These proposals will create uncertainty in the market and increase the level of risk and potentially cost for the client and the firm for no real benefit. If brought up to date, consideration should be given to the impact of increased property prices and increased risk from cybercrime.

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree
Please explain your answer
: These proposals will increase the cost of obtaining insurance as many will be forced to seek top up cover, with less advantageous terms than MTC, at higher cost and greater administrative burden. The few niche firms that may obtain an advantage are unlikely to see a significant benefit as their premiums already reflect the less risky work they currently undertake.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree
Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative

level for the cap.

: This exposes clients to risk in addition to the post 6 year run off risk from 2020 when claims made more than 6 years after a firm closes will not be protected by insurance cover. Whilst a capped figure may be appropriate for some, clients of poorly performing firms or where one mistake has been repeated on work carried out for several clients will be severely disadvantaged. Clients may embark on costly litigation without having any idea as to whether or not the cover will be available to meet their claim. It could lead to a race to issue proceedings or settle for very low figures rather than risk someone ahead of them snatching what is left in the pot. The cost of run-off would be much reduced if the regulator took swift action against defaulters of run-off premiums. The regulator could look at structuring payments so that the payment for run off cover is effectively paid upfront long before closure is considered.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: For the reasons given above the proposals will disadvantage some new entrants. There is no evidence to suggest that new entrants will be encouraged by these proposals. Start-up firms may be forced to go to open market far earlier than they would normally expect. They may lack the expertise to negotiate a good deal to enable them to carry out some work types for example conveyancing or acting for larger commercial entities. MTC premium cost tend to be very low in the first year or two years for new firms as it is less likely claims will be made at this stage.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

24. Please explain what you think these impacts are

We believe small firms will be disadvantaged by these proposals for the reasons we have set out.
Small firms are more likely to have young new entrants, women returners and BAME solicitors.

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: Its purpose was to ensure that no client of a solicitor should suffer financial loss where a defaulting practitioner or a defaulting practitioners employee or manager has misappropriated or otherwise failed to account for client monies. It is a discretionary fund and in the past that discretion has been exercised to pay beyond the £2 million limit. Lowering the level of compensation to £500,000 will impact on the reputation of the profession and the regulator alike. It is abhorrent that in such circumstances the client is not properly compensated at the level many of them believed they would be covered at the time the transaction took place. The limits proposed are too arbitrary to ensure that only the vulnerable are compensated, all clients in such situation are deserving.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

There should be greater transparency to the profession and the public as to the amount of monies applied to compensate clients and the monies used for other regulatory purposes, such as interventions.

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Limiting the ability to claim on the compensation fund to those with assets of £250,000 is inappropriate. It will impact disproportionately on the elderly who will have monies to finance their retirement and care home fees. It will undoubtedly lead to injustice and tarnish the reputation of the profession and the regulator.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

No, arbitrary limits such as these will always lead to unfair outcomes in individual cases.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

33. Please explain why.

Neither yes nor no.
Difficult to assess on the information provided.

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

35. Please explain you answer and any suggestions you have for alternative approaches

As indicated the use of the fund to finance interventions distort the annual payments required to maintain the fund.

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

It is not possible to answer this question without further information being provided as to the current processes employed.

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do

not think we have identified?

Yes

39. Please explain what you think these impacts are

Yes, if these proposals are implemented, they will impact on professional reputation and this will be most heavily felt by small high street firms, whose clients may perceive they will be adversely affected and in truth they may well be the group most affected by the proposals.
The proposals place the elderly at most risk and they may fear using solicitors as a consequence.

40. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

The SRA could take action to persuade Action Fraud, the local police and the banks to investigate low level fraud and 'near misses' as these may prevent more successful frauds occurring. There is no deterrent where fraudsters know that action by the banks and by enforcement agencies is limited.

2018

SRA Consultation Response on behalf of the Nottinghamshire Law Society

Overview

The Nottinghamshire Law Society has approximately 1,200 members and represents a wide range of firms in the city and county of Nottingham, ranging from those in the top 50 by size to sole practitioners. In addition to representing member firms, we represent the interests of individual solicitors employed both within firms and commerce.

Rarely does a consultation paper from the SRA result in widespread engagement as this one has. However, that response has been borne not out of excitement or anticipation of a welcome regulatory change, but out of deep concern that our regulator should seek to destroy the guarantee and bedrock of client financial protections that have existed for the best part of 20 years, with no analysis of their impact nor rationale for their introduction beyond a claim of "modernisation".

Two adverse impacts are obvious. These proposed changes will significantly and adversely impact upon small firms (1-4 partners), who will be abandoned by commercial clients and lenders, who will not trouble to enquire as to the insurance position of a small firm.

Second they will each year leave a significant number of individuals (as well as businesses) with unsatisfied claims, resulting in some cases to severe client detriment, reputational damage to and loss of confidence in solicitors, and no doubt the attempted prosecution by such frustrated claimants of claims against individual solicitors.

We strongly urge the SRA to think again. These proposed changes will result in harm to our clients and the livelihood of many of our members. They will deliver no discernible benefit whatsoever and have no commercial validity.

We are content that our response be made public.

L Pinkney

Laura Pinkney
President Nottinghamshire Law Society
14 June 2018

Response to Consultation Questions

Question 1

To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

We strongly disagree.

Our recollection is that the minimum level of cover was set in 2005, in order to reflect the upper value range of house prices and the potential value for a serious personal injury claim (for example, one resulting in a head injury).

The level also includes Claimant costs, and reflects the fact that in 2005 the Law Society permitted insurers to reword the Minimum Terms and Conditions more favourably towards the insurers, i.e. to allow greater ability for insurers to establish aggregation in cases of similar fact claims.

The data on which the SRA brought to base the rationale for this change are flawed. By its own admission, it only reflects something of the region of 70% of the participating insurers, and ignores its own finding in the data that 98% of claims fall below £580,000, not £500,000.

The recent *Dreamvar* case illustrates the folly of this change. The misappropriated funds exceeded the proposed SRA limit. By the time costs are factored into the equation, the proposed limit would be greatly exceeded.

Even one vulnerable client left without a significant remedy is a price that is too much to pay for this reform.

£1 million cover for all conveyancing transactions would expose about half of home-owners in Greater London and the South East (and many elsewhere) to uninsured losses. Many of these people are not 'rich', but heavily indebted. There will no longer be the existing compulsion, in advance, for solicitors to carry appropriate cover. Disciplinary action later is too late for the clients whose house purchase has been affected by negligence.

The SRA concedes that the majority of small firms only purchase minimum cover and we believe many will fall into the trap of buying only the minimum level of cover advocated by their regulator and that brokers will expressly disavow any duty or obligation to review the level and types of cover needed by each firm.

Anecdotally, we hear solicitors who will alter their terms of business so as to exclude all claims that are beyond the level of cover mandated by the SRA or by businesses and cite the SRA's proposed MTC as evidence of the reasonableness of doing so. That cannot be in the interests of the users of legal services.

Question 2

To what extent do you agree that minimum PII requirements do not need to include cover for financial institutions and other large business clients?

We strongly disagree.

By far and away the majority of small firms are mixed practices. It is important to our members that that remains the case and that neither they nor clients have concerns about whether or not a professional indemnity policy may respond to a particular type of work or particular size of client.

This reform would mean that lenders would only ever instruct large firms or panels. They would not trouble to check the individual insurance arrangements for a particular firm.

This will have a severely adverse impact on access to justice because individual clients in conveyancing transactions will choose, for reasons of convenience, to instruct the same solicitor to deal with their purchase and mortgage.

Commercial clients will gravitate towards larger firms where they can be certain that, if they bring a claim, the insurer will respond. The profitable commercial work that small firms can generate from small local businesses will evaporate.

The reforms will result in a duty of care evolving on solicitors to check their clients' turnover. This will be an unwelcome administrative burden. Further, claimants left without remedy will seek to sue individual solicitors.

None of these outcomes are desirable and we can see no possible benefit from this proposed reform whatsoever.

Many family businesses would be caught by a £2 million turnover. Many will be unsure of the level of turnover in a particular year. Turnover is not a guide to profitability. It may be that solicitors can insure at a more appropriate figure, but there is no compulsion proposed upon them to do so. Add to this the potential new loss of defence costs protection.

Historically solicitors have been able to buy in top up levels of cover, but only on minimum terms. These changes risk creating an insurance market where exclusions of types of client become a 'minimum term' in itself.

Question 3

Do you think our definition for excluding large financial institutions, corporations and business clients is appropriate?

No. See our above answer.

Question 4

To what extent do you agree that we should introduce a separate component in our PII arrangements, meaning only firms that need to have cover for conveyancing services are required to buy this cover?

We strongly disagree with this proposal. The SRA should not make this change.

As a starting point, we fail to see how the SRA can police such a requirement. It will further add a layer of bureaucracy to conveyancing transactions in which, because the conveyancing system relies upon enforceable undertakings, each solicitor will have to ask the other to produce their insurance documentation. Even this scheme is flawed, because the proposal does not recognise the claims made basis of professional indemnity insurance, so even if I check the insurance cover of a buyer's solicitor today, if a claim comes in in three years' time it may not be there.

The renewal process would become more cumbersome and expensive. It goes without saying that if, as any firm of solicitors complying with its regulatory duty to buy adequate PI cover would do, a firm is to maintain current MTC level of cover in respect of future claims for work done to date, then buying four component policies (the MTC cover, top-up cover to £2/3 million), conveyancing and lender claim cover and business client cover) will be more expensive.

Question 5

Do you think our proposed definition of conveyancing services is appropriate?

No. Property work is intrinsic to legal work. Some examples might assist.

A litigation solicitor will frequently be involved in boundary disputes, possession disputes or family succession disputes where the grant of a lease, alteration of boundaries or transfer of property is the end result. They would not be able to undertake this work.

The making of a simple will may involve the severance of a joint tenancy or the simple transfer of a property solely owned by say a husband into the joint names of husband and wife. The will drafter would be unable to undertake this task without insurance for conveyancing services.

The administration of an estate will most usually involve the sale or devolution of a property. The probate solicitor would be unable to undertake this work.

An immigration solicitor will advise on the terms of a proposed Housing Association offer of accommodation.

There will undoubtedly be increased regulatory cost, inconvenience to clients who will no longer be able to rely on one solicitor to see a transaction through, and coverage disputes.

Leaving clients who have dealt with a solicitor believing he or she has conveyancing cover when they do not have such, without a remedy is manifestly unfair on the client and will lead to personal action probably against unwitting individual members of such firms.

Question 6

Do you think there are changes we should be making to our successor practice rules?

In order to answer this question, we would need to understand an answer to the question, what are the current problems?

As we see matters, since the changes in 2011 when one or two merging firms were permitted to trigger run-off, we are far from convinced that any changes to the successor practice rules are necessary.

The successor practice rules were brought in to ensure so far as practicable that clients were compensated after the cessation of the firm they originally instructed. Reducing cover going forwards down to £1 million/£500,000 further reduces the prospect of that client having a real remedy three of four years later. The reductions and proposed specialist conveyancing cover (which may not have been taken) further restricts clients' future remedies. These are major changes that are being proposed, with the risks of these unintended consequences.

Question 7

Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

We somewhat disagree. We have not seen any proposals for updating the participating insurers' agreement. We would like to see a requirement that the participating insurers produce claims data and break up the cartel of fixing the cost of runoff insurance.

The MTCs have worked well since the demise of the Solicitors' Indemnity Fund Limited. They give certainty to solicitors and insurers and avoid the potential for disputes. They ensure that claimants always have a remedy, and we have seen no convincing argument from the SRA as to why these benefits should be changed, beyond a superficial desire on the part of the SRA to be seen to be bringing things "up to date" and encourage competition and new entrants to the market.

It is questionable as to whether that is a regulatory function of the SRA and highly speculative that permitting law firms to practice with fewer client financial protections will free up some impediment to opening a law firm. In our members' experiences there are many more expensive and commercially pressing matters when starting a firm that contacting a broker to arrange PI cover. We believe there is already plenty of competition and the growing numbers of solicitors on the Roll and firms in practice support that view.

Surely the protection of clients is a much more important function?

Question 8

To what extent do you agree that changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

We strongly disagree and this is uncharted territory. As to the canard that these changes will lead to "potentially" lower insurance costs, we have not found one insurance broker who thinks that they will. And nor do we.

Question 9

Do you agree that the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing a need for premiums to be more affordable?

We somewhat disagree.

In giving a considered response to this question it would be useful to know some data. Feedback from our members who have spoken to their brokers suggest that this will do nothing at all to alter the level of premiums which underwriters are seeking for run-off insurance.

Similarly, the proposals carry an inherent unfairness. Take two closing firms one of which is taken over by another firm which is a successor practice. Another firm does similarly but elects to trigger run-off. Why should claimants against one closed firm be limited in its remedies whereas claimants against the other closed firm are not so limited?

If the SRA are concerned about the costs of closure then it should address directly the insurers cartel of universally charging three times the premium sought in the last year of business. It should encourage and stimulate an open market in run-off provision.

It might alter the existing PIA, say to provide that the first two years of run-off cover be provided free of charge and the last four paid for at a capped rate. It might do something to address the mischief which we are told by insurers is the true cost of high run-off premiums namely the fact that only half of closing practices pay them and those who do are the good risks. Unless and until that problem is addressed then the good risks will end up paying and the SRA's proposal here will make no difference. The sad and bad will still not pay their share.

We believe that the participating insurers could be stimulated or mandated to do more. Balva for example provided that after buying insurance with the same insurer for a number of years, run-off insurance was provided free of charge or that if a solicitors firm buys a three-year policy then if it closes within that time run-off be provided free of charge.

If the CLC can do it why cannot we?

We think that all parties have shown a distinct lack of flexibility and innovation when it comes to addressing run-off and the problems around run-off.

We think there can and should be a distinction between solicitors who have been in practice for a long time and retired from the profession, paid their premiums and closed their firms in an orderly fashion and pop-up firms that crash and burn and solicitors who go on practising after walking away from financial wreckage. The successor practice rules and/or ability of the SRA to mandate additional levies on a practising certificate for these solicitors may also address this potential problem.

Question 10

To what extent do you agree that the changes to our PI requirements can encourage new firms to enter the legal services market and provide greater choice for users of legal services?

We strongly disagree. At best we don't think that these proposed changes to PII will make any difference whatsoever and more than likely constricted insurance cover limited to particular clients or limits will stifle innovation.

We believe that some insurers are making submissions that these changes are not in the public interest, and those insurers have specialist knowledge. Insurance risks are spread across the whole profession and areas of work and the SRA has no firm evidence that premiums will fall, or fall significantly. Over the years premiums have followed demand and supply (hard and soft markets) and claim rather than calculation of risk, hence the high profile collapses of some insurers.

Within the existing structure there is a clear and certain ability to innovate and be flexible in the provision of services to our clients. If it is within the ambit of my practice as a solicitor, it comes within my PI cover. If an opportunity comes up – say resulting out of a major scandal or sudden uncovering of injustices or a novel way of delivering a new service in a niche, novel or esoteric area – solicitors' firms can respond immediately without worrying about whether they have insurance cover for the particular sort of work. Underwriters will be slow to insure innovative and ground breaking practices and services. Worse, because "top up" cover will not be subject to MTC conditions we foresee insurers rejecting claims in new innovative growth areas because of non-disclosure.

There are plenty of solicitors with practising certificates and plenty of solicitors' firms. Tinkering with PII will not cause them to decide to start a new firm where otherwise they would not have done so.

We reiterate what we have said above about reduced levels of cover not resulting in reduced premiums for PII. Members who are starting firms report PII and its availability as a very minor concern compared to securing staff, websites, IT infrastructure and the like. In the first year of operation for most firms the PII quote is in low four-figures and often less than the Compensation Fund levies, so the idea that suddenly new firms will find the costs of start-up drastically reduced and be able to undercut existing practitioners is just a fantasy. Even if a small saving ensues it will not impact upon cost to the client.

If the SRA is concerned about unmet legal need then it should address the failings of the Legal Aid Agency and funding of Law Centres but the MoJ is uninterested in such matters and in addressing the fact that the state supports free or subsidised access to education, healthcare and housing but not to justice.

Question 11

Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes, we believe that these changes will have adverse economic effects for small firms, who will find themselves marginalised in the conveyancing sector and unable to act for commercial and lending institution clients. We anticipate, therefore, that there will be a contraction in this end of the market where a greater number of BME solicitors derive their living.

Question 12

Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further?

We think that the SRA should follow the example of the Council for Licensed Conveyancers and change the PIA and MTC so as to provide free or substantially reduced cover run-off. We do not consider that the SRA have done anything to address this barrier to closure and the continued practice of a number of solicitors in new firms who have been involved in closed firms that have not paid run-off premiums. Underwriters tell our members that high premiums are because only a few retiring solicitors pay, so this should be easily achieved.

You have not identified nor addressed the problems for clients and retired solicitors who will find that when claims are made the insurance cover that they believed was in place to protect them, is not.

Questions 13 to 23 - The Compensation Fund

We have seen no data or rationale for the SRA's proposed changes to the Compensation Fund. For example, how many claimants are there in a year? How many would be denied any remedy under the present proposals? What savings would result to solicitors?

Might fidelity insurance or a practice bond be explored as an option?

Before considering a fundamental change in principle, we think the SRA should lay out the mischief that it is trying to correct. If this is because the SRA are seeing claims from individuals who have sent money to solicitors involved in fronting investment scams that particular mischief can easily be addressed without throwing the baby out with the bathwater.

Equally, if it is because the SRA have lost control of intervention costs, that can be address separately and probably easily, for example by amending the PIA to make insurers responsible for the cost of archiving etc. After all, is not the point of intervention to procure an orderly wind up and avoid claims and loss of files?

The consultation paper, as presented, seems to amount to little more than placing further restrictions on eligibility criteria to present a claim to the Compensation Fund with no justification beyond penalising claimants to save cost. It would be helpful to see some data from the Compensation Fund, i.e. as to the amount of claims made, those that are rejected and why, those that are granted, and the costs of running the Fund and how these things would change.

Perhaps, when these are presented in this way, we can assess the potential impact on clients and possible savings to our members through lower practising certificate contributions and properly evaluate these proposals.

On the face of it they are unmerited. Clients with assets of £250,000 are not especially wealthy. For a 60 year old this is the size of a pension pot that Financial Advisors advocate. Where any client has its money or property misappropriated by a solicitor in circumstances where dishonesty precludes insurance recovery, those clients should be compensated.

If the SRA feels that the contribution to the Compensation Fund through individual PC and firm contributions is an unwarranted drain on the honest majority, it should devise and propose a scheme of appropriate redress, perhaps, as we say above, by way of requiring a practice bond or fidelity insurance.

Protecting the users of legal services: balancing cost and access to legal

Response ID:176 Data

2. About you

1.
First name(s)

Jonathan

2.
Last name

West

6.
I am responding..

on behalf of an organisation

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)

205896

9.
Please enter your organisation's name

Pearce West Employment Solicitors

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: £500,000 is wholly inadequate. The PII insurance is there as a 3-fold protection - firstly the firm, secondly the client and thirdly the overall reputation of the profession. If a firm decides to play 'fast and loose' with their insurance indemnity level then that's a commercial decision for them to make. For a client however to have a valid claim against an under-insured firm would be catastrophic and would also damage the Solicitor 'brand'.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: It would lead to a 'pick and mix' PII insurance season, with Insurers having to offer vastly different products> One huge advantage of the current system is its simplicity.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: See (1) and (2)

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: It will lead to HIGHER costs. Many Insurers are likely offer the 'new' minimum cover of £500,000 at (or very near) the 'old' rate of £2M cover and then charge extra top-up to get back to the old £2M cover point.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Claims can be made far longer than the SRA seem to suggest.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Costs will increase creating a barrier to entry to any new firm.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: New limits are absurdly too low - the requirement for an individual to 'prove' how poor/wealthy they are is ridiculous. All clients are entitled to know that funds in Client account are sacrosanct.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: It will lead to 'postcode' justice - excluding huge swathes of clients living in London and Southern England.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

No threshold.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

32. Please set out your suggestions and reasons for the change

Exclude all 'investment' type claims. Solicitors should not legitimately be dealing with client money in this way and client

should take the risk.

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

35. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

All investment type claims should be excluded.

36. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer :

37. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:259 Data

2. About you

1.
First name(s)

Stephen

2.
Last name

Woodhouse

6.
I am responding..

on behalf of an organisation

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)

534342

9.
Please enter your organisation's name

Pett Franklin & Co LLP

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Somewhat agree

Please explain your answer

: The existing limits are our of line with other commercial organisations so being able to agree a lower limit makes sense, providing that this does not prevent access to PI cover at the higher level if we are prepared to pay for it and the cost is no higher than currently.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree

Please explain your answer

: Same comments as 1.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree

Please explain your answer

: We do not wish to pay for cover which is not relevant for us.

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

No

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Yes, they should be brought up to date provided that changes are positive and well considered.

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Somewhat agree

Please explain your answer

: We are concerned with the proposals to reduce minimum run off cover. We believe that continuing run off cover is important and we would not wish to see the costs of this increase as a result of it not being standard.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: I would like to have feedback from insurance providers to ensure that the changes do not make it either more difficult or more expensive to maintain existing levels of cover.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: There may be a marginal effect but I doubt that any differences in premiums would be sufficient to make a difference in the decision whether to enter the new market or not.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Not that I am aware of.

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

:

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Not that we have identified.

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: I do not think that means testing is appropriate.

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Normal levels of due diligence proportionate to the value and complexity of the investment.

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

None that are obvious to me.

The Professional
Negligence Lawyers' Association
PO Box 1685, Congresbury
Bristol BS491685
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Fax: 0117 905 5001
Website: www.pnla.org.uk

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CONSULTATION RESPONSE TO THE SOLICITORS REGULATION AUTHORITY: PROTECTING THE USERS OF LEGAL SERVICES: BALANCING COSTS AND ACCESS TO LEGAL SERVICES
REVISED VERSION

8 June 2018

The typical PNLA member is a solicitor whose sense of justice demands protection for those whose trust and confidence have been betrayed. This consultation is at the heart of this issue. The SRA are asking for responses regarding the proper scope for solicitors professional indemnity insurance and the solicitors compensation fund.

Solicitors place their trust and confidence in the SRA and the Law Society to protect the profession as a whole. The responsibility assumed by the SRA is to negotiate the best possible arrangements for the minimum terms of cover with the participating professional indemnity insurers and the compensation fund to maximise public confidence in solicitors.

The consultation comes at a time when there have been changes affecting the relationship between solicitors and their clients. These changes have come about from different sources:

- Legislation – the Government has reformed civil litigation funding so that it is much harder for clients to afford to bring claims against solicitors (The Legal Aid Sentencing and Punishment of Offenders Act 2012 – Part 2 – LASPO). The Ministry of Justice are conducting a review of the operation of LASPO Part 2 concurrently with this consultation.

- Case law – there has been a surge of recent case law redefining the scope of the duty of solicitors to their clients. Key recent cases include the Supreme Court in *BPE Solicitors & Anor v Hughes-Holland (in substitution for Gabriel) (Rev 1) [2017] UKSC 21 (22 March 2017),* and the Court of Appeal in *P&P Property Ltd v Owen White & Catlin LLP [2018] EWCA Civ 1082 (15 May 2018).* The upshot of this surge is to muddy the waters because all of them create confusion as to where the boundary of the duty of care for solicitors lies in negligence, warranty of authority, breach of trust and fiduciary duty.

- Regulatory changes – the Solicitors Code and the wider regulatory framework – eg the GDPR – create more risks of liability for solicitors.

Reports of solicitor's practices becoming insolvent are commonplace in the Law Society Gazette with more looming particularly in the personal injury sector.

Five SRA approved participating professional indemnity insurers have become insolvent - Quinn, Lemma, Balva, ERIC and Enterpise the latest being Alpha Insurance A/S announced within the last few weeks.

The SRA consultation seeks to find a solution by reducing the amount of the minimum terms of insurance for solicitors from £2million (£3million for limited companies) (MTC clause 2.1) to £500,000 and to reduce the scope and amount of the payments from the compensation fund. If the SRA implement the proposals then the key risks are:

1. **Increasing the claims on insurers and the compensation fund due to insolvency of solicitors**

To be clear, the £500,000 proposed minimum cover includes damages and the claimant client's legal costs, defence costs (insurers appoint a solicitors panel to defend claims) are in addition and unlimited (MTC clause 2.2) save for an option for a proportion to be paid by the insured if they are underinsured (MTC clause 2.3).

As to costs - if a dispute is defended then it is not unusual for the costs of the litigation itself to exceed £500,000. As an example the case of *BPE Solicitors & Anor v Hughes-Holland (in substitution for Gabriel) (Rev 1) [2017] UKSC 21 (22 March 2017)* which arose from a routine private loan of £200,000. The case was subject to two appeals and two Supreme Court decisions. If BPE solicitors had insurance cover for this claim limited to £500,000 then the claim including the claimant's costs (which will have exceeded the £300,000 balance) would not have been covered by their insurance.

As to damages – quantification of financial loss is very difficult. The basic rule is that the client is entitled to be put back in the hypothetical position as if correct advice had been given in negligence claims, or to restore the trust if there is a breach. The amount of the damages bears no relationship to the fees charged for the matter. As an example *P&P Property Ltd v Owen White & Catlin LLP [2018] EWCA Civ 1082 (15 May 2018)* relates to two cases both routine conveyancing transactions. The vendor in both cases was an imposter. This decision means that the vendor's solicitor is obliged to repay the entire cost of the property to the purchaser.

Solicitors who have a claim which exceeds their insurance cover will be forced to settle as cheaply and quickly as possible. If they are unable to do that, then many will face claims which they cannot afford to pay. If the solicitor and/or their practice become insolvent and have to cease then this will cost indemnity insurers far more due to the 6 year run-off cover and create more risk to the compensation fund.

2. **Premiums for professional indemnity insurance will not reduce enough to address the risk to solicitors of inadequate insurance**

Solicitors rely upon the SRA and the Law Society to provide advice and information about the minimum terms of cover. The SRA have assumed responsibility for negotiating with the participating insurers and the compensation fund.

The SRA cannot guarantee that premiums would be cheaper if these proposals are implemented because the premiums and compensation fund payments are affected by many factors year on year. It is therefore impossible for the SRA to give any assurance at all that premiums would be reduced if the proposals go ahead.

The SRA is potentially trying to help solicitors who say that they cannot afford to practice profitably because of the premium/compensation fund contribution for the existing minimum terms.

If that is the case, it must be those same solicitors who are most vulnerable to an unexpectedly high value professional negligence claim exceeding their minimum amount of cover. Cautious advice from the SRA would therefore be to advise them to increase their insurance cover, not to reduce it.

Conclusion

The SRA cannot reduce claims arising. By their nature professional negligence and liability claims arise from unexpected and unpredictable situations. The SRA should regard the premium cost (which is affected year on year by many factors) as secondary. To comply with their responsibility to the profession the SRA should negotiate the best possible minimum terms of cover with participating professional indemnity insurers to enhance long term trust and confidence for clients. Adequate insurance cover will inevitably reduce exposure to the compensation fund.

The risk that a claim is not covered by the FSCS, the insolvent Insurer and the Compensation Fund is real. Why should the Compensation Fund cover a dishonest solicitor but not an honest solicitor whose insurer goes bust and who does not qualify under the FSCS turnover rules

Furthermore proper exercise of the SRA's duty may involve increasing the minimum terms and amount of cover and premium costs. This may be a small price to pay to ensure the adequate continuity of the reputation of the profession by reputable and solvent insurers. This at a time when trust and confidence has been shattered for many solicitors and their clients who have been let down by the six insolvent SRA approved participating insurers.

Katy Manley
President – Professional Negligence Lawyers Association www.pnla.org.uk

QBE RESPONSE TO THE SRA MINIMUM TERMS CONSULTATION PAPER – JUNE 2018

QBE has given careful consideration to the proposals put forward by the SRA, and the issues that arise from such proposals.

Prior to addressing the specific questions raised by the SRA in its consultation, we would make the following overall observations.

- QBE recognises its role, as a Participating Insurer, in ensuring that consumers of legal services are compensated for insured losses caused by solicitors. However, in QBE's view this review focuses disproportionately on the reduction of premiums to facilitate access to legal services, in many cases using what QBE considers to be questionable logic. We would have liked to see greater focus on claims prevention and risk mitigation through regulation from the SRA. Reduced frequency and severity of claims would do far more to achieve the desired outcome of reduced premiums. Enhanced regulatory intervention and robust responses to breaches would encourage better behaviours generally, which ought to be reflected in the performance of firms and their claims experience. Then a commensurate premium reduction could be warranted.

- Equally removing banking responsibilities from the legal profession would help eliminate one growing area of concern regarding client account fraud. QBE welcomes the SRA's support in acknowledging that using a TPMA is acceptable, but would like to see greater strides in encouraging escrow arrangements, or removing this cover from the MTC, and creating a separate cyber-crime policy that deals with this risk more appropriately, rather than including it under professional indemnity cover. We note the comment (paragraph 148) that there is no market for this at present, but the SRA have acknowledged that this is because it is already covered within PII. There are policies that exist outside of the solicitors' profession, where the PII arrangements do not provide such wide coverage, and we believe such a market would establish itself if the need were created.

- In addition to questioning the compatibility of the SRA's desired outcome of reduced premiums, we question the logic (paragraph 49) that a premium reduction will ever be passed on to the end consumer. The motive for the changes appears to be access to legal services, but we can see situations where access may be reduced as firms are unable to continue to buy the coverage they previously held, leading to issues over coverage versus exposure on legacy work.

- We can see some logic to the argument that aggregating the limit for run off will reduce premiums, but this will be dependent on how much is currently charged, and does not address access to legal services in any way. This is a cost paid at the point of exiting the market, so does not appear to fall in line with the titled objective of the paper, although is one of the changes we would welcome, and we can see that this might help with the issue of disorderly closure. Although if the cap does not include defence costs, Insurers would be unable to truly ring-fence their liabilities and provide meaningful premium reductions.

- While the aim of this consultation is to facilitate access to legal services, in our view the overriding aim must remain that when accessed, said legal services are of the professional standard expected. Some of the behaviours enabled by this very wide policy do little to promote the standards the legal profession should be known for. Indeed, looking beyond the upholding of the standards within the legal profession, asking insurers to reduce already very tight margins could impact on the ultimate provision of insurance to the sector. Recent years have seen a number of insurers come and go from the sector, demonstrating the

difficulty in making an adequate return from this profession. As one of the only insurers to have been and remained in this market from the outset, we feel obliged to point out that the trajectory of premium must be up, not down, if it is to sustain the ever growing costs of claims. If this is not recognised, and dealt with in a gradual, manageable way, this will adversely impact the availability and consistency of insurance service provision to the detriment of the profession and, ultimately, the consumer.

- In addition, we would observe that requiring insurance to respond to deliberately dishonest actions by the insured, even where the premium and/or excess is not paid, rather than addressing this through regulatory intervention, goes beyond the scope of ordinary PII coverage and has the potential to enable, if not encourage, adverse behaviours by elements of the profession. In QBE's view, removing these aspects of the MTCs would have a material impact on premium levels and would go further to achieve the stated aim of facilitating access to the profession.

- As it is there are very few occasions on which an insurer is able to use the defence of dishonesty, as proving this of all parties is very difficult. We do not agree that, on those rare occasions where it is clear that there has been dishonesty, there would be any role for the SRA to be involved (as suggested in paragraphs 139 to 143). It is difficult to see what role the SRA would play in these types of investigation and we would be concerned that this would potentially put the SRA in a position of conflict.

- Equally we believe that where there has been genuine negligence, the third party is entitled to recourse, whether that third party is an individual with minimal means, or a financial institution. Therefore, we feel the issue that should be addressed is not the size of the financial institution, but instead the ability to repudiate cover, if that large and sophisticated user of legal services has contributed to the end loss, those losses should not be payable, or not entirely payable. There are many situations where banks have breached their own internal procedures, notably in breaching their own lending criteria, but have then relied on the knowledge that the solicitors PII will ultimately respond. We would support a formal trigger in the wording supporting the defence of contributory negligence. Our preference is to shape an exclusion around the behaviours of lenders, rather than exclude entirely based on the size of the lender. We suggest an ability to avoid cover altogether where a breach of the financial institution's own internal procedures can be evidenced.

- It is our assumption that banking clients will continue to expect that solicitors obtain robust terms under their primary policy, or terms that give them the widest scope of cover possible. This may be available for larger firms, but is less likely to be agreed for smaller practices, and where obtainable the costs could be unmanageable for smaller firms. This would again lead to reliance on larger practices rather than the smaller end of the market, which we believe is likely to have the reverse effect on widening access to the market.

- While QBE will not be commenting on the questions regarding the compensation fund, as we believe that this is beyond the scope of our remit, we do note an element of contradiction between the two sets of suggestions. The arguments for the compensation fund clearly highlight the growing problem of values of compensation, yet the proposals in respect of PII do not seem to recognise this growing severity issue, for instance when suggesting reducing the limit of indemnity.

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree.

QBE does not consider that the proposed changes to the PII requirements would provide an appropriate minimum level of cover.

QBE questions the reliability of using data that is missing (a) the most recent years' information, and (b) information from insurers that have had to exit the market due to poor performance. The fact that these insurers have exited suggests they were not charging sufficient premiums, and experienced large losses that made it uneconomic to remain in this arena. The inclusion of these elements would show a far worse position, where we anticipate claims payments would outweigh the premium pool. The absence of data after 2014 poses a significant problem, as it excludes the recent phenomenon of "Friday Afternoon Fraud", many of which have been larger losses than the £500k and £1m suggested limits and the recent increase in 'social engineering' cases which are having an impact across the wider PI market.

Using only paid claims, leaves a significant gap in the data, potentially rendering the information meaningless and certainly less accurate in the later years where there will be a greater proportion of open reserved claims. However, if reserves had been used, the question of consistency could be raised, as different insurers have different reserving philosophies. In addition, incurred but not reported losses (IBNR) ought to be taken into account.

The use of RPI to account for inflation is welcomed, but in addition to general inflation, there has been an increase in the cost of defending claims, which will not have been covered. We also believe the SRA needs to recognise the inflation of property prices. While not rising at the rate they did over the past decade, prices are much higher now than when the minimum levels of cover were previously increased. To reduce them now seems counterintuitive in circumstances where the value of claims is so often linked to property values.

As such we believe the proposed limits would be insufficient to cover far more than 2% of claims. In any event, if 2% of claims were to be under-insured it would be 2% too many. Uninsured losses could cause smaller practices to close, therefore both reducing consumer choice and potentially increasing calls on the compensation fund.

In addition, while we speak as an insurer, we believe that brokers will struggle to advise their clients to buy less cover than they currently buy. As these policies are written on a claims made basis, firms need to consider the work they have done historically, with the protection of higher limits. In addition, the risk of that 2% is too great an exposure for the brokers own E&O.

The arguments that have been proposed for the compensation fund seem at odds with the position proposed for PII. It is acknowledged that claimed amounts are ever increasing. It therefore seems contradictory to reduce limits for PII.

Paragraph 81 of the consultation indicates that, even with the current £2 million /£3 million minimum cover, some 22% of 2-4 partner firms currently buy top-up indemnity cover, rising to 68% of 5-10 partner firms and 90% of 11 to 25 partner firms. Indeed our own experience, across the whole spectrum, is that law firms generally are looking to buy higher limits. Given the number of firms that already consider the £2/£3 million minimum cover to be insufficient, we believe the number of firms for which the proposed reduced limits are adequate would be far outweighed by

those who consider it inadequate. Those that choose (and are advised) to continue to buy more will now face the possibility of having to pay extra to get the same cover, as it is no longer mandatory for Insurers to provide those levels. Some small firms unable to demonstrate the requisite risk management processes and procedures, may not be able to obtain this at all. If they are able to buy the cover to the limits they previously held, the top-up element may not be on the MTCs coverage, leaving a gap in conditions. We therefore believe that, far from being adequate cover, and reducing the cost of insurance, the proposed reduction of the minimum level of cover could do the opposite.

For the few firms where it could be deemed appropriate to buy a lower limit, any lack of risk above £500k or £1m will already be accounted for in insurers' actuarial models, and underwriting logic. As a result, the overwhelming majority of the premium will be attributable to the risk of claims at up to the £500k / £1m level. As such a lower limit would not lead to any tangible premium reduction for the few firms where a lower limit may be appropriate.

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree

QBE is of the view that the minimum PII requirements should include cover for financial institutions and other large business clients.

In theory the proposal could be seen to be a benefit to insurers, as we would be able to provide more tailored cover to suit a firm's work. However, in practice financial institutions will continue to hold the contractual power, and will insist that firms they appoint are covered for claims by the financial institution. Allowing a carve-out would mean that those firms may struggle to afford the additional insurance cover (most firms could not self- insure this exposure) and would potentially lose that work stream.

Equally, we believe that where there has been genuine negligence, the third party is entitled to recourse, whether that third party is an individual with minimal means, or a financial institution. This is the fundamental principle of professional indemnity insurance. Therefore, we consider that the area that should be addressed is not the size of the financial institution, but instead facilitating the ability to repudiate or limit cover under the PII policy, based on the Financial Institution's own breach of their internal rules and procedures. There should be an express exclusion/condition under the Minimum Terms to support no provision of an indemnity in those circumstances. Financial institutions have relied on the knowledge that the solicitors PII will ultimately cover the shortfall under a PII policy. Our preference is to shape an exclusion around the behaviours of lenders, rather than the size of the lender. We suggest an ability to avoid cover altogether where bad practice can be evidenced. In addition establishing a fast track system could limit the time and cost of handling conveyancing matters.

Question 3: Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Neither agree nor disagree

QBE has no detailed comment on this given our previous answer. However we feel general definitions can be ambiguous perhaps the measure should go beyond mere financials and include a measure of sophistication, based on the profession or trade of the business. Please refer to our answer above for our alternative approach.

Question 4: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree.

QBE supports this in principle, but subject to our comments above on the minimum level of cover. However the practicalities on a claims made policy (where cover is provided for historic acts and omissions, which may have been at a time when the insured firm was undertaking conveyancing services), and with the current definition of conveyancing activities, make it hard to see how this would work in practice. Furthermore, given the complexity and ambiguity surrounding successor practice rules this would further amplify the risk posed to firms who have not purchased cover.

Question 5: Do you think our proposed definition of conveyancing services is appropriate?

Strongly disagree

The proposed definition of conveyancing services is very broad:

"*Dealing with* transfers, conveyances, leases, contracts, deeds, grants, mortgages, charges, licences *and other documents* in connection with, and other *services ancillary to*, the disposition, acquisition or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in land."

(We have highlighted the areas which create the most uncertainty/greatest breadth)

This would (a) mean that the vast majority of firms would need to be covered for conveyancing services; and (b) lead to an increased likelihood of claims being dealt with under the conveyancing services limb of a policy (with a potentially higher limit of indemnity under the SRA proposals). It seems to us that separating out conveyancing services could be very difficult from a practical perspective. It is hard to see how we would be expected to draw this information out effectively via proposal forms, and may therefore be better avoided altogether. Alternatively, it might be preferable for the focus just to be on residential buying/selling/mortgaging/leasing work, since that is where the volume of claims tend to arise from.

Question 6: Do you think there are changes we should be making to our successor practice rules?

Yes

Whilst we support the aim of reducing the risk of firms exiting the market in a disorderly way, we do have concerns about the comments made in paragraph 57 to the effect that the succession mechanism can be seen as a way for the SRA to avoid dealing with problem firms. We believe that this is unhelpful, both for the firms that (sometimes unwittingly) become successors and their insurers. The burden of dealing with these firms ought to rest primarily with the regulators rather than the acquiring firms and their insurers. We therefore do welcome some of the points raised in paragraphs 134 – 138 of the consultation.

Furthermore the rules are often unclear to firms, brokers, insurers, and even the SRA. We have experienced situations where we cannot obtain clarity from the client nor the SRA regarding succession. We need the SRA to take a more affirmative stance on this point for all parties involved.

Aggregated run off proposition could help with the succession issues, as many find it unaffordable and are forced into making poor merger decisions to avoid paying run off. Equally firms who believe they are making good business decisions, but fail to investigate the risk management side of businesses, find themselves taking on a firm's run off, who if more affordable may be able to ring fence this more appropriately.

Question 7: Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree nor agree.

We haven't seen the proposed PIA, so cannot comment, however we can provide general comments on the reporting requirements therein, as we still believe many of these are better placed with the firms themselves.

In general, in our view, the SRA should not be looking to insurers to regulate the profession through the reporting of insureds. Insurers are commercial bodies and will fundamentally have regard to their business interests and contractual obligations.

The insurance industry does, of course, recognise the benefit of having a purposeful and able regulator, equipped with the necessary powers to intervene and take action against delinquent firms that operate to the detriment of the profession and consumers.

Even aside from the principle that insurers should be left to provide a market for insurance rather than to regulate the profession (the latter being the task facing the regulator), it needs to be recognised that insurers are not always readily able to identify issues that form the subject of reports to the SRA. By way of example, an insured's premiums are often paid with the assistance of third party premium funding. In such common circumstances, insurers have no insight into the relationship between the insured and the provider of funding. If, following the payment of premium, the insured were to default in making repayments to the third party in question, insurers would be unlikely to discover this immediately, if at all. Reporting from insurers in this regard, is therefore not fool proof

In the context of other professions, insurers are not required to act as routine suppliers of information to the regulators of the profession.

Improved behaviours would be encouraged if the onus were on firms to provide evidence of cover to the SRA. This would not be an undue burden, as they are used to doing so for lender panels, Lexcel and similar. Following this a check with insurers to verify the truth of these reports could be made.

Equally if the SRA wishes to gain better insight into the claims records of the firms we suggest the best place to obtain this is directly from the firms, who again are used to providing such information annually via brokers for insurance submissions, and periodically to bodies such as Lexcel if seeking accreditation.

As for the MTCs, we have commented elsewhere in our responses, but would add:

QC Determination: this generally already happens in practice and we would welcome this being formalised in the Minimum Terms. This is both a time and cost saving way in which to deal with issues.

Cap on defence costs: we would welcome this step, as well as a cap on the aggregate level of indemnity, ultimately this would provide more certainty for Insurers, allowing for an easier mechanism for premium calculation.

Question 8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please refer to various other answers for details. The overriding answer is that we do not believe there would be any material saving for firms. Brokers will not recommend reducing coverage, and most firms will not want to anyway. Those that want to will find there are many issues with the fact that they buy a claims made policy, as such they are leaving themselves potentially exposed for historical work in areas they no longer undertake, to which a newly restricted policy would not respond. Add to this the response to the answer to question 1, where we explain that the few firms that may find it appropriate to buy reduced coverage will have already been perceived as lower risk by insurers and charged a commensurately lower premium. So no tangible premium reductions will be likely.

Question 9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat agree.

We can see some logic to the argument that aggregating the limit for run off would reduce run off premiums. However, this would be dependent on how much is currently charged (this is not consistent across the market).

To be clear, this would only reduce the level of run off premium, if the insurer does not already charge a relatively low amount, and would not have a significant impact on annual premium of an ongoing concern. As such it does not address access to legal services in the way the SRA intend (although we dispute this relationship in any case). This is a cost paid at the point of exiting the market, so does not appear to fall in line with the titled objective of the paper. Having said this, it is a change we would welcome, and we can see that this might help with the issue of disorderly closure.

We would also welcome the removal of the burden on insurers to maintain run-off cover even in the event a firm has not paid the premium. Without this condition, insurers could take a more positive view on the insurance premium (as they would have the ability to lapse cover in the event of non-payment).

Question 10: To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Our understanding from the comments of some brokers at round table discussions is that there is little problem with obtaining low premium quotes for new concerns, and that the premiums charged are already so low that there would be little room to charge less given the various overheads of issuing a policy.

New firms have the benefit of a lack of historic issues. This means that PII is cheaper. We therefore would not expect the proposed changes to have any material impact on the levels of new entrants to the legal market.

In encouraging new entrants to the market QBE would want to see more robust measures from the SRA to ensure phoenix firms aren't facilitated.

Question 11: Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes – negative.

Smaller firms (which we understand have greater proportions of solicitors from minority communities) may find themselves unable to access the limits and conditions they previously could for the same premium, if at all.

Question 12: Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view.

Yes.

Cancellation of policies for non-payment of premiums

In QBE's view, the cancellation of policies for non-payment of premiums should be permitted. QBE believes that this proposal should form part of the 2018 consultation.

The existing arrangements protect poor practice on the part of firms, and promote lax risk management arrangements. This is to the detriment of the consumer. If a firm does not pay its insurance premium, then it is important, with a view to consumer protection, that the insurance cover should be cancelled and should potentially warrant the closure of the firm. This would, of course, be dependent upon the SRA being able effectively to tackle delinquent firms.

The introduction of the right to cancel policies for non-payment of premiums would bring the profession more into line with good insurance and risk management practices which would be a benefit to consumers, the profession and the insurance market. It would also transfer the risk of non-payment back to the prospective insured, creating a more commercial solicitors' PI insurance market that is in line with other professions

Permit the cancellation of policies for deliberate or reckless breaches of the duty of fair presentation

QBE considers that, if a proper level of consumer protection is to be achieved: (1) an exclusion for fraud or misrepresentation in arranging insurance should be built into the MTC; and (2) insurers should be given the ability to avoid a policy *ab initio* in the event of deliberate or reckless breaches of the duty fairly to present the risk.

The present situation simply encourages poor practice on the part of firms, and offers no disincentive against the commission of fraud or misrepresentation by firms in their proposal forms. In QBE's experience, it is not enough simply for reliance to be placed upon the principle of good faith in the relationship between insurers and firms, if that is a toothless expectation. Fraud or misrepresentation by a firm should carry serious consequences, as it would under any other insurance contract. The continued existence of firms who engage in such wrongdoing is to the clear detriment of the consumer. If such firms were to be pushed to cease to trade through the removal of their insurance cover, this would be a positive result.

It is no doubt for such reasons that the exclusion of cover in the event of a deliberate or reckless breach of the duty of fair presentation is permitted in other professions, for example in valuers and IFA insurance. If introduced into the MTC, it is inevitable that coverage disputes would arise, but the costs involved should be far outweighed by the advantages of being able to avoid policies and claims that would not have been covered had it not been for the breach of the duty of fair presentation; and those anticipated costs would be a disincentive to any insurer contemplating a spurious defence. This would have the combined benefits of improving behaviours and reducing premiums.

Cost inclusive excess and aggregate policy limits, including defence costs inclusive

QBE would welcome greater flexibility in the arrangements that can be made between firms and insurers for defence costs. This would allow for better regard to be had to the firm's risk profile in relation to work carried on and its claims record when organising insurance cover. It would be a way, in appropriate circumstances, to incentivise good practice both generally and in the course of the handling of claims. It would allow for better reasonable control in the handling of claims where the firm has a stake in the level of defence costs expended. By adding certainty for insurers as to the level of defence costs there could be reductions in premium for particular firms.

Question 23: Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Take the responsibility away from law firms, and let it be with financial institutions in the form of escrow arrangements

Protecting the users of legal services: balancing cost and access to legal

Response ID:201 Data

2. About you

1.
First name(s)

James

2.
Last name

Moss

6.
I am responding..

on behalf of an organisation

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)

626634

9.
Please enter your organisation's name

Slate Legal Limited

10.
Please tick if you are regulated by the SRA

Yes

12.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree

Please explain your answer

:

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Neither disagree or agree

Please explain your answer

:

15.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree

Please explain your answer

: The risks associated with such firms are exponentially higher than those associated with micro firms which do not handle client money.

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

No

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

: You could go further and allow low risk micro firms (sole practitioners who do not handle client money) to benefit from even lower insurance costs.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

:

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Yes, you could go further and allow low risk micro firms (sole practitioners who do not handle client money) to benefit from even lower insurance costs.

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Please explain your answer

:

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No.

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly agree

Please explain your answer

:

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Yes, negotiate special reduced cyber insurance rates for SRA regulated firms; facilitate firms to encrypt their' data by recommending an encryption provider and negotiating reduced rates with them for all SRA regulaated firms.

Response of sole practitioners group to the SRA consultation entitled protecting the users of legal services: balancing cost and access to legal services.

Background

Sole practitioners generally agree with the SRA that professional indemnity insurance is one of the most expensive costs of the provision of legal services, and the amount of the premium has to be reflected in the costs charged to clients. Accordingly any expectation that charges to clients could be reduced by savings in the costs of professional indemnity insurance should be explored.

This has already been explored in 2014 and it is difficult to see why it is being revisited again when the principles in issue are clear even though some more research might have been done since that time.

The solicitors brand depends on clients expecting to secure from solicitors indemnity and compensation when they make mistakes or are in default. It is suggested that this confidence is more important than a marginal reduction in fees to a client.

In any event the difficulty is that in spite of the optimism of the SRA, all information from the insurers, over whom the SRA and practitioners have no control except through market forces, is to the effect that if these complicated proposals are adopted they will create greater costs to the profession, which will then need to be passed on to the clients.

At the same time the administration of obtaining insurance will be increased, to the detriment particularly of sole practitioners, whose ability to service the needs of clients would be reduced by the time spent in ensuring that they have the appropriate cover.

What is the potential saving? At most it is 15% on the most optimistic assessment of a sole practitioner who chooses not to top up to the original limits.

The cost of insurance as a proportion of a firms overall turnover is in the region of 10%. A 10% or 15% reduction in the cost of insurance is going to reduce that proportion to say 9% or 8.5%. On the insurance industries estimate of a possible reduction of 5% that will reduce the proportion to something in the region of 9.5%. That is a half percent reduction in a firms costs. Even if achieved this is going to be a minimal gain to pass on to clients.

What is more concerning is that for those who will wish to continue at the existing minimum levels of cover, bearing in mind that the whole point of insurance is to cover an unexpected risk and in particular a very damaging risk if cover is not available, they will have to take top up insurance. This is indicated at present at £1000 per £1m cover but that is fr top up beyond the current minimum terms of £2 m and £3 m where the risk is less. The premium will not be at that level if it is to cover anything within the original minimum terms.

If one has to take out two policies, for the new reduced minimum terms and the top up cover, there is bound to be an overall additional payment for the fact of two separate levels of administration. The insurance industry also make it clear that they do not like the minimum terms, and therefore will not be likely to provide the minimum terms level of cover in respect of voluntary top up, and that will reduce the security to the client.

The best way for firms to reduce the levels of premiums is to produce a good track record of claims and a good risk management system to the insurers and to ensure that the brokers argue for the best insurance premium. The answer is not to make ill thought out changes to the current arrangements which will only cause uncertainty.

One of the greatest concerns is that clients will not be able to feel that each solicitor has the same insurance protection, and that will be an additional question which needs to be made clear and reason for clients to shop around between solicitors to see which provides them with the least risk in the event of something going wrong. This is a wholly inappropriate exercise for clients to have to undertake if one is trying to

promote the solicitors brand as a uniformly high level of protection to clients.

Run off Premiums

There are issues which were flagged up by the Competition and Markets Authority which deterred, particularly sole practitioners, from retiring at an appropriate time in their careers. This is the question of premiums for run-off cover.

These are high and can be in the region of 3 ½ times the current annual premium. The main factor for this is that the insurer is obliged to provide the run-off cover in the event of the firm ceasing trading during the period of indemnity whether or not the firm pays the run-off premium or not. The current position is that 50% of the premiums are unpaid, and this no doubt is largely due to the fact that many firms now have limited liability and the directors/shareholders are not personally liable.

The Sole Practitioners Group would submit that this additional level of cost, on the basis that the insurers lose 50% of the premiums, must mean that those who do pay, pay twice as much as they would otherwise pay if all premiums were collected.

A situation whereby the insurers could be sure of guaranteeing their premiums would result in the run-off premiums reducing to a reasonable cost of say 1.5 times the last annual premium enabling a firm to be able to afford to close in an orderly fashion.

The consultation papers comments as to the cost to the SRA and the profession of intervening in firms which are not able to close in an orderly fashion is noted. It is therefore submitted that in order to keep the run-off premiums down to a reasonable level, shortfalls in recovery premiums should be made good by the profession through the compensation fund or a similar fund, which potentially would be a lesser cost to the profession than the cost of interventions.

The insurers being assured of recovering the premiums would be able keep those premiums down to a reasonable level of 1.5% of final premiums so the claims against any mutual fund would not be in the region of 3.5% of premiums but only 1.5% of premiums. On the basis that the compensation fund or any other mutual fund covers the misdemeanours of, or lack of insurance, of all solicitors then this would seem to be a fair and reasonable solution.

In addition the submission of the SPG is to argue against any changes to the minimum terms or variations of terms such as distinguishing conveyancing, which is going to be a hopeless proposition to police and will lead to many disputes and consequent loss of client confidence in the profession.

The issue is to encourage the SRA to find an answer to the heavy run-off premiums, which not only prevent retiring solicitors from leaving the market in an orderly fashion, but also prevent new entrants from entering the market knowing the potential liability for run-off.

To answer the questions

Question 1. To what extent do you think the proposed changes to the PII requirements provide an appropriate minimum level of cover for a regulated law firm.

Strongly disagree. See above

Question 2. To what extent do you agree that minimum PII requirements do not need to include cover for financial institutions and other large business clients.

Neither disagree or agree.

The position of sole practitioners is that apart from some niche practices, they do not cover financial institutions and other large business clients. However to make a distinction leads to complications and diminishes the value of the uniform security of the solicitors brand.

Question 3. Do you think our definition for excluding large financial institutions corporations and business clients is appropriate?

No views from the point of view of sole practitioners on the above basis.

Question 4. To what extent do you agree that we should introduce a separate component in our PII arrangements meaning any firms that need to have cover for conveyancing services are required to buy this cover.

Somewhat disagree

The prospect of this arrangement decreasing premiums overall is modest. What it will do is give rise to arguments and disputes as to the existence of cover and accordingly damage the solicitors brand.

Question 5. Do you think our proposed definition of conveyancing services is appropriate?

Not applicable in view of the above answer

Question 6. Do you think there are changes we should be making to our successor practice rules?

This issue is of considerable concern to sole practitioners who will need to pass their practices on retirement or close them in accordance with the run-off provisions. The attraction of transferring a practice to a new practice is that the successor practice covers the run-off. There have been cases were the initial successor practice will do that but will then transfer to a further successor practice which will ensure that the arrangements are structured so that they are not a successor practice, leaving claims potentially uninsured.

The protection of the public must be the prime consideration and cover by successor practices monitored clearly on any transfer. Perhaps on any transfer the SRA needs to have formal confirmation of the successor

practice insurance position and power not to permit the transfer, without run-off cover being in place, if the successor practice insurance is at risk.

Question 7. Do you agree with the approach we have taken to bring the minimum terms and conditions up-to-date?

The SPG **neither agree or disagree** to the minimum terms and conditions being brought up to date. If the experience of the SRA indicates deficiencies in those minimum terms and conditions they should be brought up to date.

Question 8. To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

This is the crucial question which is dealt with in the background position above. It is accepted in paragraph 70 of the Consultation document that the impact on premiums reducing the limit of £500,000 might be in the range of 5 to 15% with a median of 10% although the insurance industries view is more like 5%.

There is also an unfortunate lacuna in the last sentence of that paragraph where the percentage by which the premiums increase for the increase of the level of cover from £1 m to £2 m/£3 m is omitted, because it would be quite clear that top up policy premiums to give cover for the original minimum terms limits would be disproportionate.

Accordingly, it is disputed that the options suggested will "potentially lower insurance costs".

It is suggested that the options will in fact increase insurance costs and make solicitors more vulnerable to the dictates of the insurers whilst they are currently protected against arguments over terms and conditions by the imposition of the minimum terms and conditions for all their potential insurance requirements, under the supervision of the SRA.

Question 9. Do you agree with the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat Disagree

It is not quite clear what is being suggested. Presumably the cap on cover is the reduction the minimum terms to £500,000 as no other figure is suggested. Firstly, it is not thought that this reduction would produce anything significant in the premium reduction, and that the answer to a premium reduction in respect of run-off cover is to provide a mutual fund for the payment of premiums and to find a way of enforcing payment of premiums possibly by security or guarantees being provided by directors/shareholders of individual incorporated entities to ensure the premiums can be recovered, and prevent them having to be subsidised by those who do pay them.

Looking at paragraph 86 if half the amount of the 20% of interventions caused by firm not closing properly was saved by a structured closure based on a reasonable run-off premium, then the intervention costs could be reduced by 10% to possibly a saving of £1 million to subsidise any non-payment of premiums.

Accordingly, the responses to somewhat disagree that the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to more affordable.

Question 10. To what extent do you agree that the changes in our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Because the changes will only benefit only a few practices and for the majority of practitioners wishing to provide general legal services without

carrying any unnecessary risks they will need to have the top up cover to the existing limits which in total will be more expensive than the present premiums.

Question 11. Are there any positive or negative equality and diversity impacts from the proposed changes to our PII requirements that you think we have not identified?

A large proportion of sole practitioners are subject to equality and diversity issues, but we would hope that they would not feel that they were impacted significantly differently from others.

Question 12. Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and providing evidence that supports your view.

The need to deal with the problem of the completely unfair expense of run-off cover on those who pay it having to subsidise those who do not pay it when the subsidy should be from the profession as a whole through a mutual fund or the compensation fund.

Question 13. To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purposes as a targeted hardship fund protecting the vulnerable that need and deserve it those in most? *sic*.

The Compensation Fund should not be treated as indemnifying those individuals who invest in a business proposition, incidentally using a solicitor to do so. It is the failure of legal advice and the loss of clients' money by a solicitors default which should be compensated by the fund and not a business risk.

On the maximum payments from the Fund, they should not exceed the otherwise insured limits of the firm of which the client was made aware. The applicant should not be in any better position to receive a greater sum from the Fund then they would have obtained if appropriate insurance have been in place.

Subject to those comments we **somewhat agree** that the proposed changes to the compensation fund would clarify its purposes as a targeted hardship fund protecting the vulnerable that need and deserve it most.

Question 15. To what extent do you agree that we should exclude applications from people living in wealthy households?

Strongly disagree.

This is an in invidious test even though it might reduce the compensation fund claim marginally. In any event is there any assessment of what this exclusion would have saved in the past.

Question 16. Do you think our proposed measure of wealth threshold for excluding these applications is appropriate?

No. The very complications that you raise show how inappropriate this test is.

Question 17. Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment.

No

Question 18. Do you think we have set up the right approach for assessing when a maximum payment has been reached?

No comment

Question 19. Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Question 20. What steps do you think might be reasonable for someone to take to investigate schemes/transaction before committing money to it and that it is genuine?

This is not the usual business of the solicitor and any individual client would be aware of this. If the rules already limit payments to the losses that arise out of the "usual business of the solicitor" and if "dubious investment schemes" can be excluded then they should be excluded.

Question 21. Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clear to users of legal services and their advisers.

Yes.

Any clarity in the operation of a discretionary fund of this nature is helpful

Question 22. Are there any positive or negative equality and diversity impacts on the proposed changes to the Compensation Fund you do not think we have identified?

No

At this point the consultation raises wider changes as to how the SRA regulate.

Firstly acting on insurer information.

An insured should be encouraged to disclose all matters frankly to the insurer without thinking that such disclosure is going to be passed on to the SRA for supervisory or disciplinary purposes. There are confidentiality and data section issues here which need to be observed as a matter of principle.

Secondly refusal to pay a claim under an insurance policy which impact adversely on the compensation fund.

In this case bearing in mind an unmet claim could impact on the Fund contributed to by all members of the profession the SRA should have an opportunity to intervene to ensure that the insurer meets the firms commitments and not leave this issue to the insured, who at that stage may not be in a position to argue the matter.

Question 23. Can you suggest any other approaches or strategies that the SRA might adopt prevent firms from being victims of cybercrime attacks?

Clients should not be indemnified for cybercrime attack where they have contributed to it by bad practice such as unauthorised release of confidential payment information, or unsatisfactory security on the part of such information

Improving firm closure process.

The comments on this matter in the Consultation are commended in ensuring that run-off premiums are paid and the status of the successor practice and the client money and files have been properly dealt with

Clive Sutton

Sole Practitioners Group Honorary Secretary on behalf the Group

Protecting the users of legal services: balancing cost and access to legal

Response ID:296 Data

2. About you

1.
First name(s)

Mark

2.
Last name

Ramsbottom

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

PII broker

8.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

9.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The minimum level will not be sufficient in terms of potential claims costs and potentially leaves the owners of any law firm having to personally meet the shortfall or arrange funding to do the same which would increase the financial pressure on these law firms. This in turn could lead to the user of legal services also being exposed and unable to recoup all of their losses.

10. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: If cover is not provided to financial institutions and other large business clients, then all work introduced by these clients will only be carried out by the larger law firms who can afford to purchase additional cover to provide protection.

11.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

12. Please provide an alternative way of drafting the exclusion definition.

They should not be excluded

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: Just as excluding financial institutions and large business clients, it will force clients seek out larger solicitors often out of area to carry out their conveyancing transaction. It will reduce client choice. Equally as the conveyancing definition is not clearly defined, you will potentially have law firms uninsured as many areas of law overlap, such as family where as part of the work a property is be disposed of. So is this family work or conveyancing? Some insurers will deem as family, some will deem as conveyancing.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

15. Please explain what you think should be an alternative definition.

For the same reasons given in 13.4

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

No

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat disagree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: With the current MTC's you have an insurance product that works. All persons who engage the services of a solicitor are covered in the event of something going wrong. The more changes you make to the MTC the greater the likelihood that cover is not going to be provided in the event of something going wrong.

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree
Please explain your answer
: By making changes to your PII requirements, premiums will not reduce. In effect insurers will have a reduced exposure but need to charge the same premiums as your claims statistics show that they need to collect the current rates to cover the claims costs. Law firms who have to source additional covers to carry out certain areas of work over and above any revised minimum terms will therefore pay more.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: On the basis the rules to the Compensation Fund are changing (and presumably no law firm will be able to purchase supplementary run-off cover as they are currently able to), what happens to the solicitor who has a claim whilst in run-off that breaches the aggregate limit. The current limit of six years just about covers all possible eventualities from a negligence perspective. Due to the cost of run-off and its implications, the majority of solicitors budget for it / ensure their practice is succeeded.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: New firms PII costs will increase and as stated previously the choice for users of legal services will in fact decrease

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The types of law firm that would potentially purchase the lower indemnity limit are also those who are registered with the FCA for insurance mediation work. The minimum cover required by the FCA is higher than the proposed SRA limit of indemnity

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: Ultimately introducing these changes would make any solicitor personally liable for their actions. On this basis, you could see a lot of law firms close / amalgamate thus reducing choice for users of legal services

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

One would have to say, it currently works as it should

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: If a user of legal services has suffered a loss, then they should be compensated correctly, irrespective of personal wealth.

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

27. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

As stated in question 25

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

30. Please explain why.

As stated in question 25

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

It is up to the investor to make the appropriate enquiries via accountants, surveyors with knowledge of the proposed scheme / transactions. The SRA could impose rules as to how a solicitor deals with these types of transactions

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

: It could divert the users of legal services to pursue solicitors personally as they would know instantly whether they could recoup their full losses from the Compensation Fund

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

You may want to make it a requirement that all SRA registered firms have a cyber penetration test annually / bi-annually. The same will potentially allow cyber insurers to provide competitive premiums to these firms.

Change the rules around the monies held in client accounts, i.e they should be used for transactional business only with balances on longer term monies kept in an SRA provided account, thus protecting client's money. This could also potentially mitigate instances of solicitor fraud as regards individual and estate funds.

Protecting the users of legal services: balancing cost and access to legal

Response ID:303 Data

2. About you

1.
First name(s)

Victoria

2.
Last name

Clarke

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Surrey Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The minimum level of cover for conveyancing firms does not take into account increasing house prices which therefore means that historic data used to justify the reduced minimum is irrelevant as it is based on cases that were generally of a lower value. Additionally, the data itself is outdated, and only covers 74% of the market. To therefore use this to justify reducing minimum cover to £500,000 for other firms is misplaced.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: There has been a significant increase in cyber fraud, particularly targeted at account fraud.

12.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

13. Please provide an alternative way of drafting the exclusion definition.

N/A - it is not agreed that they should be excluded.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: The definition of conveyancing services as provided in the consultation is too broad and presents a risk that insurers will disagree that a service has been provided in the context of a conveyance and will therefore apply the minimum cover of £500,000 instead to save on payouts. There should not be a difference between types of legal services.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

16. Please explain what you think should be an alternative definition.

Any and all activities in connection with, and other services ancillary to, the disposition, transfer, acquisition, registration, or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in land.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

No

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: The purported saving in premium cost does not outweigh the increased risk for practitioners. This will not enable practitioners to make themselves more competitive, but it will increase the risk of exposure to an event that falls outside of their cover. The types of cover should not be split between conveyancers and other practitioners, and there should not be a different minimum cover.

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Evidence from the Law Society shows that firms spend approximately 4.8% of their turnover on PII. With a 17% reduction in premium costs, this gives firms a saving of 0.8%. That is not a significant discount to enable flexibility such as the SRA is envisaging.

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The consultation provides no evidence for the effect a cap on run-off cover would have on firms looking to close down, and there is no correlation between data showing firms improperly closing down and the lack of run-off cover, so it is not possible to comment. firms and individuals (ie "sole practitioners") who cease practice without a successor practice need indefinite cover for the public's and their own protection. Yet the SRA has already decided to close the SIF to further claims after 2020 without putting anything else in its place. The SRA's own research revealed that many firms and sole practitioners would be likely to face at least one claim after their six-years market runoff cover expired and some claims were found to arise as long as 20 years or more after cessation of practice.

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat agree

Please explain your answer

: It is likely that new firms will find it easier to set up because the PII premiums may be lower, however we do not know that this will be the case as insurance providers may still increase premiums for new firms as there is a greater risk with a firm that is not established. It could also increase the possibility of firms setting up that are not appropriate and would damage the legal reputation.

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The financial hardship test should be objective and taken in context with the value of the compensation claim being made. This was a fund set up by Parliament as a compensatory fund, not a hardship fund, and it is not appropriate for the SRA to change the purpose of the fund.

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

The hardship test should look at the value of the claim compared to the value of the claimant's assets, if the assets exceed £250,000, to decide if they are eligible. If the assets are below £250,000 then the claimant should be automatically eligible. "Prudently" will need to be defined as that could be considered subjective.

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer

: A client should not be prevented from seeking compensation due to suffering loss or hardship, just because they come from a wealthy household. The amount they are able to claim should be considered in light of their existing wealth, but not excluded altogether.

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

28. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

It is too restricted and risks eliminating individuals purely because their home is worth £251,000. In today's housing market, many individuals may be in a property that is worth more than £250,000 but not be considered "wealthy".

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

30. Please set out your suggestions and reasons for the change

There should be consideration where a claimant has a significant amount of wealth, such as a percentage reduction, but everyone should be eligible to make a claim.

31. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

32. Please explain why.

No approach has been set out - the consultation says that "we will develop our guidance". How can we say whether the right approach has been made where no guidance of the assessment has been provided?

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Independently investigate the scheme if possible, and ask for advice from the firm relating to the transaction and the purpose of the same. It is reasonable to expect a client to trust their lawyer if that lawyer advises that an investment into a scheme is made. The client should however investigate the law firm prior to instructing them. The SRA should ensure information about law firms is readily available, to enable clients to do this.

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

: These principles are open to misinterpretation, and it is appropriate for the SRA to determine the purpose and the scope of the fund without parliamentary input?

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

37. Please explain what you think these impacts are

It will discriminate those who may not be educated but are encouraged to enter a scheme which is fraudulent. It will discriminate those who may have worked hard to have a property worth £300,000 and cannot afford a significant loss in the same way a very wealthy person might. The SRA's concept of wealth is outdated in today's market.

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Firms should be taught the signs of a fraudulent email, or telephone call. Firms need to respect their IT infrastructure and ensure it is kept up to date and staff are trained well. Technology is the backbone of every firm and it should be seen as a priority rather than an after thought.

UK Finance consultation response: Protecting the users of legal services: Balancing cost and access to legal services

June 2018

UK Finance

UK Finance is a new trade association which was formed on 1 July 2017 to represent the finance and banking industry operating in the UK. It represents around 300 firms in the UK providing credit, banking, markets and payment-related services. The new organisation brings together most of the activities previously carried out by the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

Consultation response approach

This response will not answer every question posed, instead it will focus on those areas affecting UK Finance members.

The proposals in this consultation are similar to put forward by the SRA on a number of occasions in recent years. We are disappointed that, once again, proposals to reduce the amount of client protection are being presented for discussions with the focus being on reducing costs of protection by reducing the level of protection, rather than focussing on reducing the need for it by more effective regulation.

UK Finance (in its former incarnation as the CML) has responded on previous occasions. Our overall view is that:

- The level of PII should remain at £2m (or £3m, in the case of incorporated firms) as it offers good protection for all clients and is well understood by the professions and insurers.
- Corporate clients of law firms deserve the same cover as other clients and should not be excluded from the scope of PII.
- If minimum standards change then it would place an additional burden on conveyancing solicitors and lenders. Additional insurance may be required and its purchase verified which adds complexity and cost. It could possibly mean lenders reducing their panels, encourage separate representation, or lead to a move away from using solicitors as conveyancers.
- Reducing the claims frequency/costs through better regulation and enforcement of solicitors would have a bigger effect on insurance costs and should be the focus of SRA activity.
- The evidence base for the proposal is weak and there is no compelling evidence or demand for change.

Q1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm

Strongly disagree

UK Finance favours the retention of existing levels of cover (£2m or £3m for incorporated firms) as a minimum. The level of £1m for conveyancing and £500k for other claims is inadequate. Often claims involving conveyancing can involve large amounts and rising property prices mean the volume of claims that would fall in scope is likely to rise over time.

The existing arrangements offer strong protection for all clients and are readily understood by all stakeholders (including solicitors, clients, insurers). There is neither evidence for or a general call for change that can justify the proposals.

Any changes to PII requirements should result in improved protections for clients of regulated law firms. This must be the primary aim of any amendments to the current system and is not the case with these proposed changes.

It is not clear reducing the level of claims cover would have an appreciable effect on premium prices, in comparison to, for example, a reduction in claims costs and frequency. The SRA should focus on better regulatory enforcement rather than a reduction in cover.

Q2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

UK Finance does not agree with the proposal to remove compulsory PII cover for claims from financial institutions. Lenders, and other financial and corporate clients, deserve protection from poor or fraudulent behaviour by their legal representatives as much as any other client. It is not the case that sophisticated clients are able to prevent negligence or fraud of the part of their legal representatives, particularly if a sophisticated fraudster is involved.

Removing financial institutions and other large business clients from the scope of minimum PII requirements would have a number of negative effects on the conveyancing profession:

- Lenders would still expect legal firms to have appropriate cover in place. Lenders would be likely to require proof of this from legal firms, pushing up costs for both parties and the end consumer.
- If lenders do not insist on additional cover being in place they may buy cover for themselves, with the costs inevitably being passed on to consumers.
- Lenders could exercise a grater level of discretion over admission to their conveyancing panels if the level of PII cover is more complex to verify, in order to reduce the administrative burdens. This, in turn, would have an effect on both the income of conveyancing firms, and the choice available to the public.
- Sole practitioners and smaller firms are likely to find themselves at a particular disadvantage as lenders are more likely to focus on larger firms capable of carrying out conveyancing in volume for their panels. This would reduce the conveyancing market and reduce consumer access.
- It could lead to increased separate representation, which would increase costs for the public and reduce access, especially if lenders reduce their panels even further as a result.
- Solicitors could find themselves being dispensed with entirely as lenders could be inclined to use alternative legal specialists, such as licensed conveyancers, who are required to have adequate insurance in place.

Q3: Do you think our definition for excluding large financial institutions, corporations and business client is appropriate

No

Our previous answer makes clear that UK Finance does not believe that large financial institutions, corporations and business clients should be excluded, however they are defined. Setting an exclusion level of £2m turnover per financial year excludes essentially all UK Finance members.

Q4: To what extent do you agree that we should introduce a separate component in our PI arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

The current system is long-standing and understood by all stakeholders. Introducing a separate component within PI arrangements for conveyancing services would place an additional level of complexity to the system and place a burden on lenders to ensure that adequate insurance is in place. Ultimately that would lead to higher costs overall for consumers.

It is likely that insurers already take the level of conveyancing activity carried out by a legal firm in their pricing of PII cover and it seems unlikely that this measure would have a dramatic effect on the price paid by firms who do not carry out conveyancing activity. However, the creation of a new type of PI cover specifically for those solicitors carrying out conveyancing work could see some PI insurers choosing not to focus on this market. More research is

needed on the effect this would have on those legal firms who require the cover, as they may face higher costs in a less competitive market, with the end effect being higher costs for consumers.

Q5: Do you think our proposed definition of conveyancing services is appropriate?

No. Conveyancing is included in many legal cases. It cannot, and should not, be separated from a solicitor's work. Doing so may meant some solicitors either inadvertently undertake work they should not be doing, or are overly cautious and do not carry out work they could.

Q6: Do you think there are changes we should be making to our successor practice rules?

No.

UK Finance believes that the successor practice rules work reasonably well. Any changes must ensure a higher level of cover for clients than is currently in place.

Q7: Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

UK Finance disagrees with the approach being taken to change the existing MTCs and believe that it will have a negative impact on the conveyancing market and, ultimately, the housing market because of unintended consequences of the changes.

We believe that the focus should be on reducing the need for insurance by better and stronger regulation, not by reducing insurance cover.

Q8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

There is no robust evidence to support the suggestion that lower PII levels would lead to reduce costs and support small legal firms. The impact assessment that accompanied this consultation suggests that reducing cover from £2m to £1m could see some firms carrying out conveyancing reducing their PII costs by 5-10%. Assuming that is correct, it is difficult to see how such a reduction in costs would lead to significant price reductions for consumers or a realistic incentive for new entrants.

The overall cost of insurance for legal firms will at least remain the same, as claims costs and frequency is not being addressed. Some firms may be able to reduce costs, but others would see costs rise, with the overall impact for consumers being at best neutral. On balance, the added complexity of these changes is likely to mean an overall rise in insurance costs across the sector as a whole. A focus on effective regulation that reduces claims would be a more effective way of reducing insurance costs in the long term.

Q9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

We are concerned that the proposed level for the cap on cover in run-off exposes clients to additional risk and will have an impact on conveyancing clients in particular as they often have claims that are high value. The aim of changes to cover should be to offer additional protections to clients, not take protections away.

The case for change is based on the assumption that a cap on cover will make law firms more attractive to insurers and reduce premiums. It is not clear that the reality will be a reduction in insurance premiums and it is very possible that legal firms, especially in the conveyancing market, will need to purchase expensive top ups (which may not be widely available) or self-insure.

Q10: To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services

Strongly disagree

The stated aim of the changes to PII requirements is to reduce the insurance costs for some legal firms. The evidence base for this is thin. It is not at all clear that reducing PII requirements would result in an overall reduction

in insurance costs, and could see costs rise in some areas where additional requirements will now be required by lenders or where the risk pool has reduced.

For legal firms that do not carry out conveyancing, and focus on low risk activity, it may be that insurance costs are reduced, but it is not certain that this will encourage new firms to enter the legal services market or encourage new users to access legal services. It seems unlikely that a reduction in mortgage costs would have a significant impact on the overall cost of legal services to the extent that it encourages new entrants or new markets.

UK Finance believes that the best way for the SRA to improve the legal services market for legal firms and users would be to ensure effective regulation.

Q11: Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes. Our answers above clearly explain that UK Finance believes that the proposed changes to the PII requirements will have a negative effect on equality, diversity and inclusion for both practitioners and users of conveyancing services. These have not been adequately addressed in the consultation.

Q12: Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view.

No

Q13: To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it the most?

UK Finance members do not have access to the Compensation Fund, so we do not intend to answer questions relating to it in any great detail. We would, however, say that the focus is again on reducing costs by reducing the level of cover, rather than tackling the root cause of the need for compensation. It seems unfair that households deemed to be 'wealthy' will be excluded from support caused by ineffective regulation of legal firms.

Q14: Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

We are not proposing to answer this question

Q15: To what extent do you agree that we should exclude applications from people living in wealthy households

We are not proposing to answer this question

Q16: Do you think our proposed measure of wealth and threshold for excluding these applications is appropriate? If not, do you have any suggestions for an alternative measure of wealth and/or at what level the threshold should be set?

We are not proposing to answer this question

Q17: Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

We are not proposing to answer this question

Q18: Do you think we have set out the right approach for assessing when a maximum payment has been reached?

We are not proposing to answer this question

Q19: Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

We are not proposing to answer this question

Q20: What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

We are not proposing to answer this question

Q21: Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

We are not proposing to answer this question

Q22: Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

We are not proposing to answer this question

Q23: Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Greater organisational collaboration across businesses involved with conveyancing, working alongside law enforcement and Government agencies, is key to tackling the growing threat of cybercrime. UK Finance would welcome the opportunity to support a sector-wide approach which could ensure a coordinated response from all parties. It is a subject that goes beyond the scope of this consultation and merits separate consideration.

For further information please contact:

Matthew Jupp

Principal, Mortgage Policy

UK Finance

5th Floor, 1 Angel Court London, EC2R 7HJ

Telephone: 020 3934 0159

Email: matthew.jupp@ukfinance.org.uk

Response of Zurich Insurance plc to the SRA Consultation:

Protecting the users of legal services: balancing cost and access to legal services

Introduction

Zurich Insurance plc has been a participating insurer for Solicitors' Professional Indemnity Insurance ("PII") since the inception of the open market in 2000 and is one of just three insurers which has, without interruption, participated in the market since that date. For a number of years Zurich was the lead insurer in the market and has at some point insured a figure in excess of a third of all law firms existing during this period.

We are not convinced that the proposed changes will result in the SRA's anticipated reductions in premium. Indeed, the consultation document (paragraph 43) appears to rely on comments from "one insurance broker" and "some other [unnamed] insurers saying that premiums would fall", rather than any concrete evidence.

To illustrate our view, when the compulsory minimum limit of indemnity doubled (from £1M / £1.5M to £2M / £3M) in 2005, there was essentially no change in overall market premium from the previous year. This is principally because the likely quantum of claims is already factored into insurers' pricing models, the vast majority falling in the first £500K of cover as the SRA's own data confirms, as well as increased competition in that indemnity year.

Further, we consider that the SRA has not proposed a number of changes which ought to be considered in order to ensure a sustainable and competitive environment for law firms and insurers in the years to come. Whilst the common perception is that insurance premiums are too high, in fact overall premium income (currently estimated at £230 million) is lower than the last year of the Solicitors Indemnity Fund in 1999 when this figure was £250 million.

This is in spite of inflation, increase in claimants' costs and a significant increase in property values over the past 19 years (and the consequent effect on the quantum of conveyancing claims). Further, at least 40 insurers have entered and subsequently left the market during this period owing to adverse claims experiences, and some (Quinn, Balva, Lemma, Enterprise etc.) with catastrophic effects.

We also do not accept the findings as to average premium levels set out at paragraph 13 of the consultation document, taken from the Law Society commissioned PII Research Report 2016-17. A law firm's insurance premium is principally determined by turnover, areas of practice and claims history and these three factors mean that typical premiums can vary very significantly for what at face value could be very similar firms.

The report only really addresses premium as a percentage of turnover (i.e. ignoring areas of practice and claims history) and is also based on the responses of 601 law firms as against a

total number of law firms (according to the report) of 9,250 – i.e. just 6.5% of the total number of firms in England and Wales, which we do not consider to be a representative example.

We applaud the SRA's efforts to increase access to legal services. However, to the extent that this is an issue, we would suggest that this is more owing to the decimation of legal aid in recent years rather than the excessive cost of legal services. There is evidently plenty of competition for most areas routinely used by consumers, such as personal injury, conveyancing and family, and even for other areas of litigation there are damages-based agreements available to avoid consumers having to pay up front where their case has a reasonable prospect of success. Further, many home insurance policies offer legal expenses insurance for no, or very little, extra premium.

We set out below our responses to the questions in the consultation document, although we do not intend to comment on the proposed changes to the Compensation Fund, as we consider this properly to be an issue for the solicitors' profession rather than the insurance market.

Question 1: *To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?*

Zurich's response: Somewhat disagree

We accept that there are some firms for which a £500K limit of indemnity ("LOI") may be appropriate, such as those specialising in criminal or immigration work. However, we have seen claims relating to these areas of practice well in excess of £500K in the eighteen years that we have been writing Solicitors' PII.

Further, we do not understand the rationale behind the proposed LOI of £1 million for firms undertaking conveyancing. By way of example, for firms undertaking conveyancing in the North of England where property values are typically much lower than in the South East, a LOI of £500K any one claim may well be perfectly adequate. Conversely, for firms undertaking conveyancing in London or the South East, a LOI of £1 million may be inadequate given the much higher property values.

However, our fundamental issue is that the data on which the SRA has based its proposals is flawed in a number of ways:

- It is claimed that 98% of claims would fall within the proposed LOI of £500K. According to the consolidated historic claims data published by the SRA - "Reflecting on Solicitors Professional indemnity Insurance (PII): market trends and analysis of historic claims data" - this figure was in fact £580K, 16% higher than the minimum LOI figure now being proposed.

- The data was only obtained from those insurers which were still participating insurers as at 1 October 2015. The report by EPC Ltd entitled "Potential Options for SRA PII Requirements" which accompanies the consultation confirms that the data obtained represents a total average market share of 74%. It does not include what is in our view the "worst" 26% of the market, i.e. those insurers who withdrew from the market or indeed went insolvent as a result of their adverse claims experiences. By way of example, when Quinn Insurance fell into insolvency in 2010 it insured 2911 law firms (almost a third of all law firms at the time).

- The claims data covers claims payments of £1.95 billion (including claimants' costs) and defence costs of a further £0.55 billion between 2004 and 2014. However:
    - The data was uprated by RPI to represent claims values as at June 2016. Two years have passed since this date but there has not been any further uprating, and indeed by the time the proposed changes are intended to be implemented (October 2019) more than three years will have passed;
    - The data only included actual payments and did not include any reserve figures on open claims;
    - The data did not include any amounts for "IBNR" (incurred but not yet reserved). IBNR is routinely used by insurers (particularly in long-tail business) to account for likely payments for underdeveloped claims on which it has not yet been possible to set accurate reserves.

- Given the period for which the data was obtained, it will not include the vast majority of the so-called "Friday afternoon scams" perpetrated against law firms in recent years, which it is widely reported to have cost the profession and insurers well in excess of £100 million in the last three or so years.

Whilst even on the SRA's own figures it would appear that to cover 98% of claims the minimum LOI should be £580K and not £500K, the combined effect of the above in our view suggests that the correct minimum LOI to cover 98% of claims should in fact be much higher than proposed.

***Question 2**: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?*

Zurich's response: somewhat agree

We acknowledge that the fundamental premise behind having a minimum standard wording for regulated professionals is consumer protection and financial institutions and other large business clients should be sufficiently sophisticated to manage their own affairs and commercial relationships with their advisors.

We would however question how this is going to be implemented in practice if this proposal goes ahead. For example, whilst new large clients can be engaged on the basis that any claims brought by them may not be covered by insurance, former clients will have contracted with firms on the basis that there was no such exclusion. As such, it could be that firms will still have to maintain cover for claims made by financial institutions and large business clients for up to 15 years (on the basis of the longstop date under Section 14A Limitation Act 1980) before being able to stop buying this additional level of cover.

Further, given that financial institutions and large business clients currently enjoy such cover, it is likely that they will insist that any firms they instruct continue to maintain cover for claims brought by them. These claims are already factored into insurers' pricing models so we do not see this change having any real effect on insurance premiums any time soon, if at all. Indeed, if such cover were to be an "add on" element of cover, this could indeed increase premiums as insurers attempt to apportion an appropriate level of premium for such claims.

Question 3: *Do you think our definition for excluding large financial institutions corporations and business client is appropriate?*

Zurich's response: Slightly disagree

The proposed approach is to base the exclusion on the turnover of the client in the financial year at the time the act giving rise to a claim occurred. We see sense in there being parity and consistency with the turnover threshold for clients which can make claims to the Compensation Fund.

However, given that claims can be made up to 15 years after the date of the negligent act, we suspect there may be issues in some cases with former clients which have turnovers in excess of £2 million per annum at the time of making a claim being able to prove that this was not the case several years ago. Also, with the proposed definition relying on the turnover at the date of the negligent act (rather than the date on which a claim is made) it could be argued that this would appear more in line with a loss-occurring, rather than claims-made, insurance policy.

Question 4*: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?*

Zurich's response: Slightly agree

We welcome the certainty that such a proposal would bring, in that insurers would not have to cover conveyancing claims if such work was not disclosed by law firms. However, in our experience we can only recall a handful of occasions in the past eighteen years where

conveyancing work was not declared by a firm and a conveyancing claim subsequently made against it and we question whether this is in fact a major problem for insurers which needs to be addressed.

There is also the issue that any firm which has undertaken any conveyancing in the past will have to maintain cover for conveyancing until 15 years has passed before being able to stop purchasing separate cover for conveyancing, given the claims-made nature of Solicitors' PII or, at least, we anticipate that any prudent and responsible insurance broker would advise their insured law firm client to do so in any event.

Question 5: *Do you think our proposed definition of conveyancing services is appropriate?*

Zurich's response: Slightly disagree

We consider that, as currently drafted, the definition could arguably cover activities not currently considered to be typical "conveyancing", for example:

- Family practitioners severing joint tenancies or registering restrictions against properties;
- Registering charging orders or applying for an order for sale as part of debt collection activities;
- Certain activities undertaken as part of probate work when administering a deceased's estate.

However, we expect that the SRA (and their advisors) and the insurance market would be willing to work together to agree upon an appropriate definition should this proposal be implemented.

Question 6: *Do you think there are changes we should be making to our successor practice rules?*

Zurich's response: Yes

The current successor practice rules are complicated, in our view not fit for purpose and in need for reform. They frequently lead to lengthy and expensive disputes between insurers and we find ourselves regularly frustrated by the SRA's consistent refusal to assist insurers where there is a successor practice issue or dispute. The SRA's usual response is simply "this is a matter for insurers to resolve between themselves, as the SRA does not make successor practice determinations."

Given that a firm has a regulatory obligation to engage closely with the SRA when it ceases in order to ensure an orderly closure, it is our view that it should be the SRA which makes the determination, at the point a firm ceases, as to whether or not there is a successor practice

and, if so, which it is. The SRA ought to know exactly when the firm ceased, as well as what happened to the former partners / principals and the clients' files. As such, the SRA is in our view clearly best placed to make such a determination, rather than this being subject to a protracted dispute between insurers, sometimes several years after the event, where there is little or no information available to assist, when claims start to be made against the former practice.

We also agree that the possibility of there being more than one successor practice causes confusion and should be removed.

Question 7: *Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?*

Zurich's response: Neither agree nor disagree

Annex 3 only contains two glossaries and does not appear to include the draft MTCs as stated at paragraph 64 of the consultation document, so we are unable to comment in this regard at present.

We would also point out that the definition of "private practice" is missing from the first glossary – it is mentioned as a defined term in the definitions of "practice" and "private legal practice".

Finally, as set out in our response to Question 6 above, we consider that the SRA should make a determination regarding successor practice at the time a firm ceases rather than it being subject to determination by a QC at some later date.

[Postscript – we subsequently obtained a copy of the draft MTCs as it appears that the document originally uploaded onto the SRA's website was not the correct one, but we have not had sufficient time to review the MTCs in order to be in a position to provide a meaningful response]

Question 8: *To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?*

Zurich's response: Strongly disagree

We accept that there are some firms for which a LOI of £500K may be appropriate, such as some small firms undertaking criminal or immigration work. However, such a firm might feasibly currently be paying £2,000 for £2 million cover and, given that the SRA's most optimistic estimate is a reduction of 10% in premium at paragraph 72 of the consultation document, this would represent a saving to such a firm of just £200 for a 75% reduction in

cover. Firstly, this does not amount to much to pass on to consumers by way of reduced legal fees and secondly, we cannot envisage any responsible insurance broker recommending that their insured client reduce their current limit of indemnity by so much for so small a saving.

We also consider it would take a number of years of insurers writing law firms with lower LOIs before there would be sufficient data to be able to be scrutinised to allow insurers to revisit and potentially change their current pricing models, given that they already factor in that the vast majority of claims experience against law firms falls within the first £500K LOI.

With regard to the proposals for defence costs, whilst on occasion we encounter insured firms which resist settling claims for whatever reason, given that most insurers (including Zurich) have a claims control clause in their policies which entitle them to take over control of the defence or settlement of a claim, the issue of unnecessarily defended claims is not really one which is of any major concern to us.

However, we do have a concern that having an excess which is applicable to defence costs may result in some firms failing to notify circumstances and claims at the earliest opportunity, as they try to resolve the matter themselves and save money which they might otherwise have had to pay out for defence costs by way of their excess. This could lead to an increase in the overall cost of a claim, particularly if the firm has failed to handle the defence of a claim adequately before it is finally notified to insurers.

Question 9: *Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?*

Zurich's response: Slightly disagree

Whilst we welcome the certainty that introducing an overall cap on cover in run-off, we consider that it will have negligible, if any effect on run-off premiums. We agree that run-off cover is expensive. However, it is necessarily so; firms typically get 6 years' cover for 3 years' premium so in fact it is not actually a profitable area of business for insurers. If it were one would expect that there would be a market for insurers providing standalone run-off cover, whereas we are not aware of any insurer offering such a product.

We accept that, according to the SRA's data, the cost of run-off cover does appear to be a barrier to closure and we note the comments at paragraph 86 of the consultation document that 20% of interventions are caused by firms not closing properly and if this were not the case, then the anticipated reduction in intervention costs could lead to reduction in law firms' contributions to the SRA of £50.

However, a contract of professional indemnity insurance between a law firm and an insurance company is one of a commercial nature and insurers are entitled to expect to be paid for

providing run-off cover if it insured the firm at the time it ceased practice (which has been a compulsory requirement for insurers since the Assigned Risks Pool ("ARP") closed in 2013).

Whilst acknowledging consumer protection factors, it is in our view not acceptable for an insurance company to be obliged to provide run-off cover to a firm which, for whatever reason, does not pay for it. When the ARP was in existence, firms in the ARP which ceased could apply to the SRA for a waiver if they genuinely could not afford to pay the run-off cover premium.

We consider that a fair balance of all parties' interests would be for the SRA to consider creating a hardship fund to which practitioners could apply for a grant to pay the required run-off premium to enable them to cease practice, whilst ensuring that insurers are paid for the cover which they are providing. It would appear that such a fund could be created from the anticipated savings to the SRA's annual intervention costs set out in the consultation paper. By way of example, The Chartered Institute of Legal Executives ("CILEx") has recently changed its minimum wording to provide that CILEx can pay an outstanding run-off premium on behalf of one of its regulated entities if the insured fails to do so.

An alternative to the above proposal could be for the Compensation Fund effectively to be the provider of run-off cover for firms which cannot afford to pay, with claims made against such firms dealt with by the Compensation Fund. Given that the Solicitors Indemnity Fund ("SIF") already provides cover for claims made against firms after their run-off cover has expired (known as "run-off of run-off cover") this would in our view support a case for such an arrangement.

Question 10: *To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?*

Zurich's response: Slightly disagree

Given that it is our view as set out above that the legal services market is already saturated in the areas of practice most frequently used by consumers, we simply do not consider there is sufficient demand for a significant increase in choice in these areas at present, so we do consider that any changes in PII requirements would result in a surge in new firms entering the legal services market, save for possibly in a few niche or specialist areas.

Question 11: *Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?*

Zurich's response: No comment.

Question 12: *Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view.*

Zurich response: Yes

Run-off cover

As set out in our response to Question 9 above, we consider that the current requirement for insurers to be obliged to provide run-off cover even if not paid for should be removed and other options considered to ensure fairness between the parties in what is a commercial contractual relationship and a sustainable market for the profession for the future.

Separate representation for conveyancing

We applaud the SRA's efforts to expose the true cost of conveyancing and to achieve a reduction in the cost of PII for firms which undertake conveyancing. However, we do not consider that the proposals will achieve this desired effect.

The high cost of PII for firms undertaking insurance is down to the demonstrably terrible historic claims experience for this area of practice. This is owing to claims made against law firms by banks and other financial institutions, which represents the vast majority of historic claims experience, both in volume and quantum.

We note the proposal to remove cover for financial institutions from the MTCs. However, in reality, we anticipate that lenders will simply refuse to allow law firms onto their conveyancing panels unless they purchase additional insurance to compensate for this. In our view, the fundamental issue with conveyancing is the inherent conflict in a firm acting for both borrower and lender in a transaction. As such, whilst it is the borrower who pays the legal fees (be it by a fee added to the mortgage advance or otherwise), the lender enjoys the benefit of free legal representation and is inevitably the lender which makes the claim against a firm when things go wrong, having imposed incredibly onerous terms on the firm by way of the CML Handbook.

The issue of separate representation has been raised on a number of occasions in recent years, but both the SRA and Law Society appear to have consistently refused to consider this issue seriously and have a proper debate on the topic. Reasons given include that it will increase the cost of legal services to the consumer, but we do not agree with this. Conveyancing is generally very cheap because of the huge level of competition around for this work. Also, the vast majority of costs paid by clients during a conveyancing transaction relate to disbursements and stamp duty. Further, it should be noted that the same clients are

routinely prepared to pay anything up to 3% of the value of the property to an estate agent for their services.

If there were separate representation, we are confident that the cost of insurance would drop significantly for those firms which do not act for lenders – because there would then be no chance of a lender claim being made against that firm. Indeed, we already discount our conveyancing rates for firms which undertake conveyancing where little or no lender work is undertaken, such as firms which specialise in elderly clients / probate and their conveyancing work typically relates to clients downsizing (thereby buying homes outright without a mortgage) or selling properties as part of administering an estate.

For those firms which do act for lenders, we accept that the cost of PII would remain high, but that is because it should do so because this is where the main risk in conveyancing lies, and those firms should take the cost of their insurance into account when negotiating fees with lender clients. We are aware that lenders are against separate representation (which is not surprising as they currently benefit from free legal representation) and they have commented in the past that they would likely refer their work to a small number of large firms which could cope with large volumes of transactions, leading to a reduction in work for everyone else. However, we do not accept this would be the case, as surely there would actually be 50% more conveyancing instructions if the borrower and lender were separately represented, which in our view can only be a good thing for the profession.

Remove the requirement to reconstitute client account from the MTCs and require firms to purchase cyber / crime insurance to cover this area of risk

Zurich sits on the SRA Liaison Committee and, in the months leading up to this consultation being released, it was suggested that the SRA would consider removing the current requirement for insurers being obliged to reconstitute client accounts when firms fall victim to scams and lose client money.

It was pointed out that this is only covered by virtue of the very peculiar definition of "claim" in the MTCs which includes a breach of the SRA Accounts Rules (basically, a shortfall in client account). This provision was originally included in the MTCs to protect clients from internal fraud, i.e. a partner or employee of the firm stealing from client account) and it was never envisaged at the time that it would cover external attacks on client account as this phenomenon did not then exist. This is a relatively new phenomenon, but since 2014 it is estimated that this has cost the profession and their insurers well in excess of £100 million.

It is our strong view that a professional indemnity insurance policy should cover negligent acts or omissions, but should not cover fraud perpetrated against firms by external third parties. There are other insurance products in the market (such as cyber or crime insurance policies) which are far more appropriate and better suited to cover this element of risk. Indeed, at least one participating insurer has left the Solicitors' PII market in the past two years citing this issue as the reason for its exit.

Further, in light of the Court of Appeal's recent decision in Dreamvar v Mishcon de Reya, in which it was held that Mishcon de Reya should be liable for its client's losses despite having done absolutely nothing wrong, this has only served to strengthen our view that the current provision requiring cover for client account thefts should be removed from the MTCs, and law firms should be expected to purchase alternative insurance to protect themselves against this area of risk.

If this does not happen, we anticipate that premiums are likely to increase for firms undertaking conveyancing work or otherwise holding client money in client account (indeed industry experts have already commented that they expect this to happen as a result of this judgment), particularly given that the current legal position (and we understand that the decision is not being appealed to the Supreme Court) is that an entirely innocent firm can be found liable for a fraud perpetrated against the solicitors acting on the other side of a transaction. Alternatively, we suspect that some insurers may consider their position and potentially withdraw from the Solicitors' PII market, given that the only way to underwrite to avoid the risk of having to indemnify these claims is not to insure any firms which undertake conveyancing or otherwise hold client money.

Ban unrated insurers from becoming Participating Insurers

As has been demonstrated in spectacular fashion in recent years (Lemma, Balva / Berliner, Enterprise and, most recently, Alpha), it is our view that unrated insurers have no place in a stable and responsible PII market for regulated professionals of any discipline. Over recent years such insurers have entered the market offering unsustainable premiums in order to attract new business, but then not had the funds to pay claims made against their insured firms and, in some cases, collapsed leaving thousands of firms in the lurch.

Whilst we acknowledge that competition in the insurance market is good for law firms, there are currently 42 participating insurers according to paragraph 12 of the consultation document, so there is arguably more than sufficient good quality, rated, capacity in the market at present. Also, the Royal Institute of Chartered Surveyors ("RICS") has a minimum rating requirement for its Listed Insurers (RICS' equivalent of Participating Insurers). We would urge the SRA to consider implementing this for SRA Participating Insurers to protect the profession from any potential future insurer insolvency events.

Questions 13 – 23 relate to the Compensation Fund and, as such, we consider this to be a matter for the solicitors' profession and not one on which the insurance industry should express a view. As such, we do not intent to provide responses to these questions.

Zurich Insurance plc

14 June 2018

Protecting the users of legal services: balancing cost and access to legal

Response ID:248 Data

2. About you

1.
First name(s)

Alison

2.
Last name

Fielden

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Alison Fielden & Co

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The aim of bringing down cost which can then be passed on to consumers/clients is not achievable by what is proposed. Reducing to £.5m will only benefit a tiny minority of firms e g immigration (and not all of those) Other firms will have to buy in extra insurance at probably greater expense and with loss of clarity in cover Excluding claims by business clients will be extremely difficult to monitor and is discriminatory The aim of cutting down unnecessary defences is a false premise. Insurers are highly unlikely to pursue unnecessary defences! The aim of reducing disorderly closure will not be met, in fact the

insurance industry suggest the reverse will be true. Current obligations on insurers e g to pay claims immediately will be diluted thus causing disorder Some insurers will not be willing to write £.5m policies so there will be more difficulty in obtaining insurance leading to disorder in the market The data the SRA is relying on is flawed by being out of date and by excluding data from insurers representing 28% of the market share Data from failed insurers e g Quinn has not been used and those claims were largely in excess of £.5 In any case the figure of £.5m is stated by SRA to represent most claims, but even on the data they are using to justify this the correct figure is £.58m

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: As above, this is discriminatory and inappropriate In any case it will be extremely difficult to monitor clients who count as "large" business clients as their accounting years will differ and turnovers will constantly vary

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

I do not agree that exclusion is appropriate

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: Please see above Buying extra insurance will be more expensive more time consuming and more chaotic and risks diluting the good insurance deals we currently expect

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

As I disagree with the differentiation proposed I do not think it is appropriate for me to provide a definition

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

At this point I have not been able to come up with a clear suggestion but would wish to see the cost of run off cover genuinely reduced. The current proposals do not achieve that despite this being their stated aim. Perhaps run off cover could be built in to premiums throughout the firm's existence to provide a "pot" at the end. In those circumstances it would be easier for successor firms to obtain the cover they choose with less likelihood of any gaps in cover and detriment to clients. This needs more consultation with the insurance industry for a sensible solution.

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the

MTCs?

: Please see comments above in 2 Also, curbing defence costs will mean that firms need to fund these themselves leading to yet more expense in an already expensive area The proposals e g for carrying costs until settlement (which may be a lower figure) and restricting successor practices so that outgoing firms have to fund the difference if there is a shortfall in cover on succession, will potentially make it even harder for firms to close in an orderly fashion, and some solicitors will not be able to afford to retire!

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Please see replies above The proposed reduction in minimum cover is illusory for all but a few firms as extra insurance will have to be bought in for all the excluded risks, e g conveyancing, large clients The dismantling of the current arrangements will probably affect the minimum terms observed by insurers e g immediate payment of claims leading to potential hardship for their clients (us) and our clients The SRA data on which it bases its proposals is flawed

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The proposals are not clear enough. How will the cap result in a reduction in premiums in total? there is no data on this. Perhaps in this context the SRA could look more closely at the cost of interventions which is very high. It would be better to spend some of this money in getting right the procedure for firms to close in an orderly fashion rather than fund an expensive intervention for those who close in disorder. The SRA should perhaps invite more detailed input from the insurance industry.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Please see above No sensible firm would want to start in a situation where insurance arrangements are messy inconsistent and expensive not to mention untried and hence likely to be chaotic

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

25. Please explain what you think these impacts are

The proposed changes are stated to benefit smaller firms. I disagree with this. Smaller firms are more diverse than larger ones so the impact on minorities will be greater than the SRA acknowledges

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Yes

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: There is not enough data to form a sensible opinion. However I have strong reservations about the discriminatory practices suggested

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

yes

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Discriminatory practices are not appropriate for professionals

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

31. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

No

This is inappropriate

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

These have not been justified by any data

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

I do not believe it is appropriate to generalise on such an open question. It is far too vague to admit of a sensible answer. it goes far beyond the remit of the Compensation Fund.

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Clarity is always helpful

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

39. Please explain what you think these impacts are

You have not really identified the impacts at all so cannot comment

40. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Educate the public

Work with other organizations who are active in anti Cyber crime measures e g National Cyber Security Centre and continue to provide regular guidance e g on website

Foster a common approach with other legal sector regulators

Protecting the users of legal services: balancing cost and access to legal

Response ID:288 Data

2. About you

1.
First name(s)

Alison

2.
Last name

Fielden

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Alison Fielden & Co

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: By way of addendum to my more detailed response on 14 June 2018, i would like to draw attention to the Law Society initial comment of 23.3.18 which is spot on. Consumer protection will suffer if the proposals go ahead. In addition, it is my view that the proposals could put the SRA into breach of its obligations (under s28 (1) (a) Legal Services Act 2007) to act so far as reasonably practicable in a way which is compatible with the regulatory objectives. (none of the regulatory objectives in s1 seem to be helped by these proposals. Even s1(1)(e) which on the face of it is the most likely and which is probably the main

driving force behind the proposals, will not be met as it will quickly create an un-level playing field which can only end one way! i.e. the disappearance of the profession and the survival of the unregulated sector). The SRA could also be in breach of s28 (3) (a) which requires it to take action which is proportionate and targeted only at cases in which action is needed.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Please explain your answer

:

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Please explain your answer

:

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Please explain your answer

:

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Please explain your answer

:

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Please explain your answer
:

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Please explain your answer
:

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

29. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

30. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

31. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer
:

32. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

33. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:55 Data

2. About you

1.
First name(s)

Andrew

2.
Last name

Harrison

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Neither disagree or agree
Please explain your answer
: As I am not a risk expert so I can not say what is or is not appropriate, but what I can say is that I strongly agree that the current one size fits all discourages the likes of myself from entering the market thereby restricting competition.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree

Please explain your answer

: As many firms will not be instructed by such clients it is unreasonable to require basic PII to include cover for these clients that are able to choose firms that will voluntarily insure against risks to this group.

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree

Please explain your answer

: It is a sensible step to exclude the risk of conveyancing from firms that do not work in that area, thereby reducing premiums for lower risk firms.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

No

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

: see answer above

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: As previously a one size fits all minimum requirement fails to account for the variation in risk profiles of practices leaving the market and penalises those with low risk profiles.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree

Please explain your answer

: See previous answers

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

In order to encourage new entrants into the market place and innovative delivery and also to enable those who wish to operate small scale or part time practices there should be a requirement for a low level of basic PII together with a duty to ensure that there is sufficient top up cover commensurate with the risks involved in the work undertaken by the practice. This approach could encourage the insurance industry to develop bespoke policies to cover one off cases such as is done in the title indemnity market.

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

:

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

:

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

29. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

30. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

31. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

32. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

33. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

No

Protecting the users of legal services: balancing cost and access to legal

Response ID:162 Data

2. About you

1.
First name(s)

Ann

2.
Last name

Mear

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Other

8. Please specify

Currently non-practising

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Please explain your answer
: I comment in relation to firms funded by the Legal Aid Agency. Their quality control systems are sufficient to ensure continued competence, unlike Conveyancing firms, for example, where there is no quality control and yet they cause the majority of claims. I have never heard of any legally-aided client claiming from a firm's PII, especially in my area of work which is Mental Health Law.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree
Please explain your answer

: These organisations are adquately insured and if they are not then I suggest the SRA distinguish between "legal aid" and commercial firms. I have been saying for years that we have nothing in common and, quite frankly, I believe that regulation should be separate in any event. It is utterly perverse that legal aid solicitors, whose profits are a fraction of those in commercial firms, should subsidise their mistakes. And it is not fair.

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree
Please explain your answer
: This is a "no-brainer". As the majority of claims are made against conveyancers then they should pay more AND this component should be separated out. Far too many firms employ non-qualified people who are inadequately supervised. Obviously, this can then lead to things going wrong and I have personal experience of this within the last few years. It's a disgrace.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

15. 6) Do you think there are changes we should be making to our successor practice rules?

No

16. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

17. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree
Please explain your answer
: If the minimum purchase is reduced to £500,000 then premiums will fall accordingly. For legally-aided practices this would mean a reduction in overheads. It;s obvious really.

18. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree
Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The cap for legal aid firms, especially those practising Mental Health Law, should be the premium (of £500,00). I have never heard of a Mental Health Law Solicitor having a claim made against them in over 20 years of practice.

5. Questions continued

19. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat agree

Please explain your answer

: A requirement of the LAA (who award public service contracts) is the retention of PII. But they will not cover this massive cost. As a Sole Practioner I can tell you that my PII reduced my earnings considerably and I never did earn enough to provide a private pension for myself, which, in my view, is a disgrace to our civil justice system.

20. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

21. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Yes, the SRA originally proposed a three year run off period and I agreed with this. Six years for legal aid solicitors is utterly burdensome and should be scrapped for all legal aid solicitors. Legal Aid solicitors do not earn enough money to pay six years run off - that is why they cannot retire. They are like hamsters on a wheel going round and round and indeed, some only retire when forced to through illness, intervention or death. This is shameful and should have been identified much much sooner. Why is this that chaos must reign before help is given?

22. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Please explain your answer

: I agree for all of the reasons stated already by the SRA.

23. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Yes: compensation fund payments are based on too high gross income figures. Thus, compensation fund payments should be calculated according to earnings calculated for each £1000 earned annually. In other words, the fund should be a progressive tax and not regressive, as it is now.

24. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly agree

Please explain your answer

: Wealthier people can afford to buy all manner of insurances, including legal expenses. My clients never have insurance cover, on the whole, for anything. If there is a shortfall they can issue proceedings against the firm using their Legal Expense insurance. This should be sufficient and it is certainly fairer.

6. Questions continued

25. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

26. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

27. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

28. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

29. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

They should make all reasonable enquiries by checking all offical (and obvious records). For example, Companies House Register, trade and professional associations, and even foreign investment bodies. They should also employ other professionals, for example, a Financial Adviser, Account, Investment broker etc. They should also take out insurance.

30. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Again, this is an obvious step which could have been taken much sooner. Guiding Principles are set out now within many schemes, for example, the Property Ombudsman service (one of the three redress schemes against estate agents).

31. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

32. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

The SRA could work with National Crime Agency, for example but apart from that I do not have the expertise to suggest anything else other than being alert and solicitors training admin staff properly (although of course this may not help).

Dear Mr Passmore

I have recently attended a Bristol Law Society (BLS) seminar on the SRA's proposed changes to the proposed reductions to PII cover. It was confirmed at the seminar that BLS had also spoken with PII providers about the proposed changes (all of whom believe the proposals are flawed notwithstanding the likely result of the changes will be more work for them and higher premiums!).

I agree with the message put forward by BLS at the seminar and with the points which they raise regarding the proposed changes as follows:

1. The current PII market runs well – a relatively simple renewal process benefitting from a competitive market. The concerns set out below confirm why I believe any changes to the current system are unnecessary at this time.

2. I am deeply concerned that the SRA has fundamentally misunderstood how the PII market operates and that the changes proposed will not only reduce important financial protections for clients and solicitors alike, but will most likely lead to an increase in the overall cost of insurance and compliance rather than their stated aims to reduce it.

3. I am also concerned that, in the period since the SRA last consulted on this issue and were instructed to gain further evidence in support of their proposals, the data upon which the SRA base their projected savings is flawed running from 2004-2014. The data does not include the demised Quinn, Belva and Enterprise (where claims payments contributed to their demise); the rise of Friday afternoon account fraud and cyber fraud in general which has increased significantly since 2014; and the significant rising house prices since 2004.

4. It appears to me that, based on the estimated savings predicted by the SRA as against the % of turnover spent on PII, any savings to pass on to the client would be minimal and unlikely to have any effect on those looking to access legal services. In fact, you could argue the reduction in cover in the event of a claim is likely to be a far more significant consideration for them in choosing legal services.

5. The proposals, in my view would almost certainly:

- Substantially increase the cost of insurance for many firms through expensive 'top up' options,
- Leave individuals exposed to uninsured claims for which they cannot buy their own cover,
- Exclude small firms from lender panels, increasing conveyancing costs,
- Expose firms and individual solicitors to liability where they have until now been prohibited from limiting liability below the minimum £2/3m cover,
- Make reliance on undertakings from small firms risky, and thus putting even more financial pressure on small firms in a difficult legal market
- Increase costs of run-off insurance for firms which are closing - even if they have a successor practice - assuming they can buy it at all,
- Result in more coverage disputes, and
- Make the purchase of insurance more complicated, particularly for smaller firms, where insurers may try and introduce more exclusions from cover and more onerous notification provisions.
- Would leave solicitors more open to insurers potentially seeking to rely upon an aggregation clause.

6. The consequences of these radical proposals may go far beyond matters of 'mere' regulatory compliance: they may adversely affect the pockets of many solicitors both while they are in private practice and after retirement.

7. Based on the SRA's own figures, most firms would be forced to buy top up insurance. The market for the lower levels of top up is contracting and this may become harder for some firms to buy; inevitably, it will cost more than the cover it replaces under the current requirements. The cover may also be less beneficial to law firms.

I would urge the SRA to take on board the significant concerns of the profession on this issue. BLS' 4000 members have been canvassed on this subject and are all deeply concerned. In the circumstances, I believe it is an imperative that the SRA reconsider their proposals on the basis that the evidence on which they base their proposals is flawed. Further, that the proposed changes would significantly impact the financial protections for both solicitors and clients alike with little, if any, financial savings and indeed most likely if implemented, increase costs for solicitors and firms.

It is my opinion that, should these reforms be approved, it will cause significant harm to the reputation of the profession and I also endorse the more detailed submitted responses of The Law Society and PII Broker and JLT.

Yours sincerely

Becky Moyce | Partner
T. +44 (0) 117 325 3339
M. +44 (0) 7900 906659
Temple Bright | templebright.com
29 Great George Street | Bristol BS1 5QT

Protecting the users of legal services: balancing cost and access to legal

Response ID:48 Data

2. About you

1.
First name(s)

Charles Richard Tobias

2.
Last name

Harris

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Other legal professional

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Please explain your answer
: I left the solicitors' profession many years ago, to specialise in tax and estates, partly because the cost of cover was unsustainable for sole practise. As a CTA and TEP my professional indemnity premium was about 1/12 of what it would have been as a solicitor. The cost of cover is steadily driving small legal firms out of rural areas.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree
Please explain your answer
: They can look after themselves: this is an issue of resources.

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree

Please explain your answer

: It makes commercial sense.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

15. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

16. Please explain what these are and provide any evidence to support you view

The issue of succession is a major one for small firms.

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

:

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat agree

Please explain your answer

: The more important issue is keeping existing firms alive. If small firms flourish they will be able to take on people who can eventually succeed to ownership of the firm. Everyone should be within easy travelling distance of a firm; for a distressed

mother with children of school age (whose husband has taken the car to work) that might mean walking distance of home.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat agree

Please explain your answer

:

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

29. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

30. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

31. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

32. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

33. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:57 Data

2. About you

1.
First name(s)

David

2.
Last name

Ofosu-Appiah

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Davido Ltd

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Neither disagree or agree
Please explain your answer
: yes i do ,my opinion anyway

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions

and other large business clients?

Somewhat agree

Please explain your answer

: it must be legal focused firms ,and not necessarily consultancies

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree

Please explain your answer

: legal and business entity are separate divisions

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

17. Please explain what these are and provide any evidence to support you view

financing from clients and new business intelligence with law practices,money laundering making law firms rich.

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

: no one wants higher insurance premiums in these days of austerity and competition .

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: i am all for it ,affordability is the best practice and convenient ,for legal services to be accessed by all universal clients,

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree

Please explain your answer

: competition creates increase in legal key performance indicators and key target indicators to be achieved ,win win for firms and clients

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Please explain your answer

: so many vulnerable poor and deprived, clients and people in the UK ,and with the burden of Brexit coming,

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

educating clients from deprived communities,boroughs on their rights ,entitlements and privileged eligibility to secure access to funds,readily available.

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

: the rich have more than the others,they got bespoke premium services in legal available,deprived ,poverty stricken people have nothing

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

29. Please set out your suggestions and reasons for the change

the have nots outnumber the haves,UK is an unequal society ,still feudal

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

do background checks on the people involved
assess the source and origin of the finance and funding
checking the intended purpose or multifaceted approach to obtaining the monies
is the money or people clean in their dealings ,networks

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: very important ,as smooth criminals and rogues have infested the legal profession and practices with dirty monies from abroad from criminal entrepreneurs and spurious trading,a code is needed for guidance to clean the myriad legal profession

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

education in cyber security,analysis ,CPD is needed to broaden the horizon and intellect of firms and lawyers ,as organised crime is increasing globally .
Use of legal tech ,userbality training must be optimized and accelerated ,as law firms are targeted by white collar criminals.

Firewalls and app prevention measures must be promoted ,to protect,secure data of clients .

Protecting the users of legal services: balancing cost and access to legal

Response ID:71 Data

2. About you

1.
First name(s)

David

2.
Last name

Ofosu-Appiah

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Davido Ltd

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Please explain your answer
: very specific,expressive ,detailed and clarity in word communication.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions

and other large business clients?

Somewhat agree

Please explain your answer

: Law firms work in tandem in an environment of Business to Business,Business to customers settings ,i work as a lawyer and consultant in business,tax and accounting advisory.

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Neither disagree or agree

Please explain your answer

: All firms are eligible ,be it in legal or non legal ,be it real estates or government organisations and agencies.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

No

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: It is based on my opinion and points of view dissected from reading the provisions detailed .

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

: No Law firm wants high insurance costs ,welcome news ,helps the clients too with affordability.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: yes ,i agree absolutely ,such as in legal aid,support and assistance to poor,impoverished ,deprived clients in the communities ,i work most parts in the deprived boroughs of London city.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree

Please explain your answer

: competition must thrive to produce,effective,efficient new business legal advisory to break chains of monopoly sectors,to increase market services of legal services and products for clients and end users.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

A legal Allowance for the benefit of deprived clients and deprived communities through social enterprise.

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Please explain your answer

: the poor and needy need support and help ,as life is tough and challenging ,i deal with clients in Lambeth,Tower Hamlets,Haringey,Hackney and parts of Greenwich boroughs week by week.

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

increasing the fund availability to the deprived clients and accelerating it's opportunity coverage on social media,for awareness.

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

: wealthy people always have access to opportunities and disposable incomes,but the poor and deprived have no options

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

29. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

30. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

To do background checks
read and research the individuals or companies for the transactions
Read the SRA and LS handbooks to gain insights
Do inquiry with the Financial Conduct Authority

31. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes
Please explain your answer
: Guidelines is the key for communication transfer to assess,monitor and conclude decisions,i am all for it.

32. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

33. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Increase spending in Legal Tech by regulatory authority and Law firms
more training on Cybercrime attacks through CPD training
Increase in firewall technology at the workplace
App use in developing software to combat viruses,bugs from rogues and organised crime,in data protection,regulation and prevention

Protecting the users of legal services: balancing cost and access to legal

Response ID:182 Data

2. About you

1.
First name(s)

David

2.
Last name

Thomas

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Quay Legal

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The proposed minimum level of cover is far too low.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree

Please explain your answer

: I can foresee that without higher than the proposed levels of cover being maintained financial institutions will reduce panels resulting in (a) a loss of choice for consumers, esp. in more rural areas and (b) driving more consumers towards less regulated entities.

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree

Please explain your answer

: the approach is overly silo'd and definition tortuous. I foresee too much time will be spent on working out what does/does not fall within the definition.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: I do not believe that lower premiums will result. In any event, lower premiums will not result in savings to consumers as the amounts in question are too small.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative

level for the cap.

: Run off cover is far too expensive - it distorts actions of solicitors who would otherwise retire, keeps firms going too long and keeps people in the profession who otherwise do not want to be there. I have never seen data on what claims there are on run off cover but the so called formula seems arbitrary.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: I do not foresee insurance premiums coming down. Having set up my own firm 10 years ago, and been a member of the SPG and supported colleagues etc in setting up in practice, insurance premiums for new (small) firms has never been a barrier.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

I would like to see more data on run off cover claims in terms of up to date numbers of claims, their value broken down on a sector by sector basis.
Whilst not perfect, I believe the current system broadly works.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: A hardship fund is the wrong approach - it should be open to all consumer victims of fraud.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

the SRA needs to share all its data re claims on the compensation fund before this question can be answered.

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: part of the purpose of the fund is to protect the reputation of the profession for all. The less well off, those unused to dealing with the professions need to have trust in the profession; if trust drops, the less well off and vulnerable will be more reluctant to access legal services.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

I do not think wealth should be measured.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

32. Please set out your suggestions and reasons for the change

please share all data on claims and criteria used

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

35. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

36. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

:

37. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Continue to educate

Please accept this email as my response to this consultation on PII reforms.

So far as I can see there is nothing in the consultation about long term protection for clients of closed firms following the closure of SIF in 2020. I am appalled by this. The decision to close SIF was taken by the SRA without any proper public consultation. The absence of any scheme to replace SIF is clearly regarded by the SRA as a done deal despite my having been assured by Crispin Passmore that this subject would be considered in the consultation. I would refer you also to "SRA Board Public – Item 6, 9 March 2016" which is Mr Passmore's recommendation to the Board regarding the final end date of SIF. Paragraphs 17 and 29 of that document clearly envisage that long term protection of those clients would form part of the consultation. It is morally wrong that a removal of public protection is carried out virtually in secret and the fact that the Board's decision was based on information that was wrong (ie no consultation) means that it is open to future judicial challenge.

The SRA has said that one of the purposes of the proposals is to make it easier for firms to close. This is, quite simply, skewed thinking. If a firm did conveyancing (the most risky work in terms of long tail claims) the partners will need cover for the full 15 year liability period. Under SIF they pay for 6 years' run off insurance with the remaining 9 covered by SIF. If the SRA does not change its mind, those partners will have to try to buy 15 years cover, not 6. How on earth is that making it easier to close?

It is not acceptable that former clients of closed firms are exposed to uninsured losses. I have seen it said that the public will not suffer because they will be able to sue their former solicitors. I will ignore the difficulties the public will encounter eg finding those solicitors 10 years after closure and simply ask "if suing partners individually is a good enough protection for those people, why does the SRA insist that all continuing firms have PII?" It can only be because the SRA is fully aware that those firms will not have sufficient assets to pay claims. The closure of SIF will create 2 classes of client, one with full protection and the other with none. Is this gross unfairness acceptable in the UK's legal system? The SRA is abandoning the clients of closed firms and, given that the SRA's role is public protection, this failure to perform its role will be further grounds for challenge in the courts in due course.

I will not comment in detail on the other proposals as I am sure that there are plenty of people better qualified than me to criticise them. I will merely say that I do not believe that the proposed reforms will drive down insurance costs in any meaningful amount and that the hoped for savings to consumers of legal services will not materialise.

Fiona Swann

Protecting the users of legal services: balancing cost and access to legal

Response ID:134 Data

2. About you

1.
First name(s)

Graham

2.
Last name

Balchin

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Carter Lemon Camerons LLP

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: As your research demonstrates virtually all claims settle for less than £500,000. This is well understood by insurers and reducing the limit will have a negligible impact on premiums, but it will leave the public exposed to much greater risk of the solicitor being under-insured in those small number of cases in which the loss exceeds £500,000 (or £1m in conveyancing transactions). The real problem cases are as you also identify transactions involving property and other investment scams. As a solicitor practising in the area of professional negligence it is within my experience that the present limits mean as a result of

aggregation cover is often inadequate. Giambrone and Watson & Brown are illustrative of the point. You have helpfully provided details of the premiums paid across various professions. In the case of solicitors the total paid averages £1,437 per practising solicitor per annum. If a solicitor undertakes 100 matters in the course of a year that works out at a cost of £14.37 per matter. That really is a very modest cost. If the premium could be reduced by say 20% by reducing the level of cover that might result in a saving of £2.87 per matter. Plainly such a modest saving will not make any difference to pricing of services or competition within the profession, except of course when things go wrong and then the cost to the unfortunate consumer may be huge if it turns out the solicitor is under-insured. At present premiums set by insurers are largely based on the assessed risk of the work type. Insurance for family or criminal work is very cheap because it results almost no claims. On the other hand as you point out conveyancing is the source of about half of all claims and consequently conveyances pay more for their insurance. That is reflected in the case of licensed conveyancers who from your figures pay an average of £20,833 each per year which is 14.5 times more than the average premium for solicitors. Yet despite paying such high levels of insurance licensed conveyancers in many cases cater for the price sensitive end of the market.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree

Please explain your answer

: If solicitors are uninsured in respect of work carried out for certain classes of client, particularly sophisticated clients, it is doubtful that they will be able to act for such clients. That is reflected in the way that lenders will not instruct sole practitioners because of the risk that in the case of dishonesty there will be no insurance. There will also be cases where the question of insurance cover may be uncertain because the definition of large business will not always be readily ascertainable. So it appears to me that this proposal serves no purpose other than to push large commercial clients more and more into the hands of large firms of solicitors which I understand to be the opposite of your objective to encourage more firms to compete for work.

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

A business with a turnover of £1m is not a large business. This appears to be borrowed from the Ombudsman scheme. Excluding any business on the basis of turnover creates a lot of uncertainty. Does a business that has a turnover of £950,000 at the time of the retainer get excluded if it has a turnover of £1,050,000 at the time the claim is recognised. If business clients of an type wish to agree restrictions on liability that should be a matter for them. However, insurance cover should be compulsory for all clients with no ifs and no buts.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: This is just creating a complication to solve a problem that doe not exist. Insurers rate premiums according to the type of work undertaken. If a firm undertakes conveyancing work it will pay a much higher premium than a firm which undertakes say just crime. The claims risk profile is perhaps well illustrated by the fact that on average (according to your figures) licensed conveyancers pay an average annual PI premium of £20,833 per licensed conveyancer, whereas solicitors pay on average just £1,437 per solicitor. I have to say that this proposal does seem to indicate that the proposer has very limited understanding of professional indemnity insurance.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

Many sets of instructions have a property element, even though they may not readily fall into any particular definition of conveyancing services. For example a will writer may be instructed to sever a joint tenancy. If they get it wrong it may give rise to a substantial claim because property can be such a valuable asset. Your proposal for separate cover for conveyancing services appears to be a solution to a problem that does not exist, but at the same time puts unsophisticated clients at risk of finding their claim is uninsured in the event that the solicitor has failed to get appropriate cover.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

No

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: No you are not bringing the MTCs up to date; your proposals are retrograte.

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Your own figures suggest that any savings will be no more than about 10%. It may in fact make insurance more expensive for most firms that will have to buy top up cover or risk being under-insured.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: I have specialised in professional negligence claims for over 25 years. There is a real problem with inadequate run off cover now that so may firms of solicitors choose to incorporate. We have already seen this same trend with surveyors and valuers after the property crash in 1989-90. That has resulted in most failed businesses not having run off cover despite it being compulsory. Claims may and often do arise many years after the work in question was carried out. For example defects with the title to property, or a failed gift in a will which will usually only come to light when a property is sold, or the testator has passed away. Claims do not necessarily fall in value because of the passage of time and often the contrary is true. For this reason there should be no dilution of existing run-off requirements.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: I do not believe that your changes will make any material difference to the cost of insurance.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we

have not identified?

No

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

There is a difference between those firms that have incorporated and those that have not. Firms that have incorporated create a greater risk because for most claims personal liability is removed. Firms that have not incorporated have good reason to make sure that they are adequately insured. Firms that have limited liability have no personal liability and therefore no incentive to be as careful. The present MTCs rightly distinguish between the firms that have and do not have limited liability. You should consider increasing the amount and duration of run off cover required for all firms that have limited liability.

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: At present access to the compensation fund is already closed to business clients. If you wish to restrict it further why not do away with it completely. That will ensure that the cost is entirely removed. That is not a course that I advocate. I do not think any further restriction is required.

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Publish details of all claims and grants so that the profession as a whole can assess the need/value.

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: There is no fair way of defining a "wealthy household". Is it income, is it the value of your house, do you take into account the size of mortgage, the earnings, the savings, the number of children, etc, etc. In some cases the loss may in itself be sufficient to make someone "wealthy". I am sure there are examples of extremely wealthy households (the Duke of Westminster for example), but I do not suppose these are likely to be full of clients of firms where there is a risk of loss as a result of sole practitioner, or all of the partners, being dishonest or failing to account. My concern is that this is another example of a proposal designed to solve a problem that really does not exist, but which may then be very unfair on an innocent victim of a dishonest solicitor.

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

29. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

No - I think trying to measure wealth is a clumsy tool and a bad idea.

30. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

31. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

32. Please explain why.

As it is a discretionary fund this is unnecessary.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Two things:
Make sure you understand the scheme/transaction and what the purpose is and why you have been instructed (and that includes understanding the regulatory regime).
If the reward/return appears to be "too good to be true" investigate and understand every aspect because it almost certainly will be "too good to be true".

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes
Please explain your answer
: It is obvious that if there are clear rules it will be better understood. This is why I suggested publication of details of applications and grants made so that there is better transparency.

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

No

Protecting the users of legal services: balancing cost and access to legal

Response ID:195 Data

2. About you

1.
First name(s)

Jason

2.
Last name

Pearce

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Everett Tomlin Lloyd and Pratt

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: It is better for each firm to be required to maintain indemnity insurance of at least £3 million. It is only slightly more expensive than insurance of £500,000, but it provides much more security to the public, the partners in the firm, retired partners of a firm, and ensures that such policies will continue to be commercially available.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions

and other large business clients?

Strongly disagree

Please explain your answer

: All clients expect that their claims will be covered. Separating out which clients are or should be covered and which do not have to be is simply adding extra complexity and confusion for all concerned, unnecessarily.

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Neither disagree or agree

Please explain your answer

: I have not thought about this one.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

No

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: I have not thought about this one.

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: The required cover should remain at at least £3 million in order to give security to clients, partners of solicitors' firms and retired partners of solicitors' firms, as well as because lowering it will not make more than a small difference to the level of premiums.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: I have not thought about this one

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: In the areas of work that pay, there will continue to be plenty of firms in the market whatever you do about the insurance arrangements. In the areas of work that do not pay, they still will not pay whatever you do about the insurance arrangements.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The Compensation Fund should be changed to be more than a targeted hardship fund. The reputation of the solicitors' profession depends on it. At the moment, a client can suffer a substantial loss caused by negligence or dishonesty on the part of a solicitors' firm, and be uncompensated because it turns out the firm was not validly insured and the client is not poor enough to qualify as a "hardship case".

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

The Compensation Fund should be changed to be more than a targeted hardship fund. The reputation of the solicitors' profession depends on it. At the moment, a client can suffer a substantial loss caused by negligence or dishonesty on the part of a solicitors' firm, and be uncompensated because it turns out the firm was not validly insured and the client is not poor enough to qualify as a "hardship case".

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: The Compensation Fund should be changed to be more than a targeted hardship fund. The reputation of the solicitors' profession depends on it. At the moment, a client can suffer a substantial loss caused by negligence or dishonesty on the part of a solicitors' firm, and be uncompensated because it turns out the firm was not validly insured and the client is not poor enough to qualify as a "hardship case".

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

27. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

The Compensation Fund should be changed to be more than a targeted hardship fund. The reputation of the solicitors'

profession depends on it. At the moment, a client can suffer a substantial loss caused by negligence or dishonesty on the part of a solicitors' firm, and be uncompensated because it turns out the firm was not validly insured and the client is not poor enough to qualify as a "hardship case".

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

29. Please set out your suggestions and reasons for the change

The Compensation Fund should be changed to be more than a targeted hardship fund. The reputation of the solicitors' profession depends on it. At the moment, a client can suffer a substantial loss caused by negligence or dishonesty on the part of a solicitors' firm, and be uncompensated because it turns out the firm was not validly insured and the client is not poor enough to qualify as a "hardship case".

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

31. Please explain why.

The Compensation Fund should be changed to be more than a targeted hardship fund. The reputation of the solicitors' profession depends on it. At the moment, a client can suffer a substantial loss caused by negligence or dishonesty on the part of a solicitors' firm, and be uncompensated because it turns out the firm was not validly insured and the client is not poor enough to qualify as a "hardship case".

32. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

33. Please explain you answer and any suggestions you have for alternative approaches

I don't know enough about this aspect to make a suggestion. The only answers were "Yes" or "No". I would have liked to have answered: "Don't know".

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

I don't have a view on this.

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

: The rules should be clear on their face, and not require further "Guiding Principles" to explain them.

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

15 June 2018

FAO Mr Crispin Passmore
Executive Director
Solicitors Regulation Authority

By email: protectlegalusers@sra.org.uk

Dear Mr Passmore

Consultation – Protecting the users of legal services: balancing cost and access to legal services

I was a sole practitioner for 23 years, and a founding member of the Sole Practitioners Group. I was on the Executive Committee for about 18 years, and worked on professional indemnity issues for sole practitioners from before the time the profession went onto the open market, until 2011. I was Chair of the Indemnity Committee for about 8 years.

Since closing my practice I have continued to maintain a keen interest in solicitors' professional indemnity insurance. I have seen massive upheavals and difficulties in the market, and big changes. Now the market is reasonably settled and "benign". The effect of the current proposals would be to introduce huge disruption, risk and uncertainty into the market, as well as increased premiums for many firms.

The present proposals for drastically reducing the compulsory level of indemnity cover were consulted on in 2014 as I recall, and the responses received then were predominantly not in favour of change. It is disappointing that the SRA is again consulting on this issue.

I wish to endorse the response submitted by The Law Society, both in relation to the proposals for PII and for the Compensation Fund. I also endorse the response of Bristol Law Society of which I am a member.

The proposals particularly in relation to reducing the compulsory level of cover are misconceived. There is no evidence that premiums will be reduced either significantly or at all. It is much more likely that the cost of obtaining top-up cover will increase the overall cost.

The principle of claims made insurance leaves historic claims exposed to lack of cover.

Bottom line, not only will risk, complications and cost increase for solicitors firms, but their clients will risk suffering from inadequate cover in negligence claims. One can foresee more claims against the Compensation Fund.

I set out below the summary of objections and concerns raised in the response by Bristol Law Society which I think expresses the main problems very well:

The proposals in our view would almost certainly:

- Substantially increase the cost of insurance for many firms through expensive 'top up' options,
- Leave individuals exposed to uninsured claims for which they cannot buy their own cover,
- Exclude small firms from lender panels, increasing conveyancing costs,
- Expose firms and individual solicitors to liability where they have until now been prohibited from limiting liability below the minimum £2/3m cover,
- Make reliance on undertakings from small firms risky, and thus putting even more financial pressure on small firms in a difficult legal market
- Increase costs of run-off insurance for firms which are closing - even if they have a successor practice - assuming they can buy it at all,
- Result in more coverage disputes, and
- Make the purchase of insurance more complicated, particularly for smaller firms, where insurers may try and introduce more exclusions from cover and more onerous notification provisions.
- Would leave solicitors more open to insurers potentially seeking to rely upon an aggregation clause.

I do hope that the SRA will take on board the weight of concern about these proposals being expressed by solicitors, as well as brokers and insurers.

Yours sincerely

Janis Purdy

Janis Purdy
SRA No 115220

Protecting the users of legal services: balancing cost and access to legal

Response ID:140 Data

2. About you

1.
First name(s)

Jennifer

2.
Last name

Woodyard

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Hand Morgan & Owen

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: For the reasons given in, and in full support of, the Law Society's Response dated 6 June 2018

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: For the reasons given in, and in full support of, the Law Society's Response dated 6 June 2018

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

For the reasons given in, and in full support of, the Law Society's Response dated 6 June 2018

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: For the reasons given in, and in full support of, the Law Society's Response dated 6 June 2018

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

For the reasons given in, and in full support of, the Law Society's Response dated 6 June 2018

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

No

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: For the reasons given in, and in full support of, the Law Society's Response dated 6 June 2018

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: For the reasons given in, and in full support of, the Law Society's Response dated 6 June 2018

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: For the reasons given in, and in full support of, the Law Society's Response dated 6 June 2018

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: As the average cost of insurance for start ups is £3,000 pa, will a £300 saving make the difference to a firm being viable?

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The firm I work for will not reduce its indemnity from £10m. I do not want to spend hours more each year answering the many additional questions/finding data to enable us to buy another policy to cover work for lenders and other financial institutions/large commercial organisations - arranging cover will be much more complicated.
There will be additional costs to buying excess layer insurance at a lower attachment point.
Even if savings in premiums are achieved there will be little impact on affordability.

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: For the reasons given in, and in full support of, the Law Society's Response dated 6 June 2018

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Removing them from this consumer protection is unfair and will undermine the public's confidence in using a solicitor.

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

29. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

There should not be any exclusion based on wealth.

30. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

31. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

32. Please explain why.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

34. Please explain you answer and any suggestions you have for alternative approaches

For the reasons given in, and in full support of, the Law Society's Response dated 6 June 2018

7. Questions continued

35. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Those set out in the Law Society's Response dated 6 June 2018

36. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

37. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

I agree with the answer given in the Law Society's Response dated 6 June 2018

Protecting the users of legal services: balancing cost and access to legal

Response ID:70 Data

2. About you

1.
First name(s)

John S

2.
Last name

Mackay

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Non-legally qualified, working in legal services

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Neither disagree or agree
Please explain your answer
: It may be of benefit to a new law firm who has just set up given that there might a restricted level of funding. However, there might present an issue given the high risk areas of law the firm practices. It would be down to each firm to look at its structure and practice areas before making an decisions regarding its cover level.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: It should cover all clients as we act in the best interest of our clients not the insurer.

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree

Please explain your answer

: I strongly feel that all firms practising conveyancing should have PII cover.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

15. Please explain what you think should be an alternative definition.

All practice areas should be covered irrespective as the individual risk factors should be considered.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

No

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: N/A

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

: The firms will need to monitor its Complaints register, Compliance plan and its complaints throughout the previous year and its practice areas as well as its potential practice areas in the coming year before making any decisions.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The broker I use for the firms I consults with the firms and comes up with a reasonable proposal. They have a good name.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree

Please explain your answer

: It would certainly encourage new firms to enter into the market, as this is an expense that creates some doubt with initial

outlay and the fact that finance ought to be taken out.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The Proposal forms with the prospective insurers should be in a standardised format. Perhaps this is something that we could provide as feedback to the insurers direct.

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Please explain your answer

: I am in favour of changes as the Compensation Fund should be carefully utilised on a merit basis and sufficient due diligence should be done before it is provided.

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

N/A

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

: Individual circumstances might differ per application. A fair change should be granted to all. Everyone has had the opportunity to train as a lawyer.

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

27. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

It should solely be based on an individual basis. Equality and Diversity is practised and should be adhered to. This cannot be compromised in any way shape or form.

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

30. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

31. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Due diligence ought to be carried out.
Confirmation must be received where the transaction has come from - bank statements is generally the best way to prove where the money has come from.
Proof of full ID and address.
SLA and full details about the organisation.
Terms of Business

32. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes
Please explain your answer
: The Rules should be updated periodically all the same.

33. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

34. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Our Chapter on Chapter on Publicity should be amended in order to safeguard firms from being victims of Cybercrime attacks as well tightening our Chapter on Referral fees and Introducers.

By email to: protectlegalusers@sra.org.uk

Date: 15 June 2018

Dear Sir/Madam

Re: SRA Consultation – 'Protecting the users of legal services: balancing cost and access to legal services'

I am making this submission to the Solicitors Regulation Authority ('SRA') in response to the above Consultation ('the SRA Consultation') which was published in March 2018 alongside various Annexes (at www.sra.org.uk/sra/consultations/access-legal-services.page#download).

My submission is in five parts entitled as follows: (1) Declarations of interest. (2) Comments. (3) Further details. (4) Questions. (5) Some closing thoughts, including a warning.

(1) Declarations of Interest

Since September 2015, I have been an Assistant Professor in the School of Law of the Cyprus Campus of the University of Central Lancashire. I have taught and been the module leader on a variety of undergraduate LLB Degree modules, including Public Law and Land Law plus three short modules devoted to Lawyers' Skills.

From 2004 until 2015, I was a Senior Lecturer in the School of Law of the University of Hertfordshire where I taught and was the module leader on *inter alia* the postgraduate Legal Practice Course modules devoted to Property Law & Practice and Professional Conduct & Regulation.

From 2003 until 2007, I practised as a solicitor in private practice in London. Since 2007, I have been a non-practising solicitor and I have also served on the Executive Committee of the West London Law Society. From 2010 until 2011, I was honoured to serve as its elected President. I remain a Committee member to this day.

All that being said, my comments and other thoughts which follow are purely personal. Accordingly, they should not be interpreted as the

views of any organisation which I have - or have previously had - any relationship. My comments are mine and mine alone.

(2) Comments

According to page 8 of the SRA Consultation, 'we [i.e. the SRA] think it is the right time to review our approach to financial redress to make sure it offers appropriate protection.' This 'review' encompasses a number of SRA proposals including the one outlined on page 10 of the SRA Consultation, as quoted below:

'Currently firms must have minimum [Professional Indemnity Insurance] cover of £2m, rising to £3m for firms with certain structures. We plan to reduce this to £500,000 for all firms apart from claims for conveyancing services. ... Those carrying out conveyancing services would need a minimum of £1m cover ...'.

On page 13 of the SRA Consultation, one finds an additional proposal with profound implications: 'we are proposing changes [to the Compensation Fund] that reflect the purpose as a hardship fund to make sure that it is focused on vulnerable people that deserve it the most.'

I beg to differ with the SRA. To to that end, I endorse the objections to the SRA Consultation raised by the Law Society of England and Wales in its response dated 6 June 2018 and published at www.lawsociety.org.uk/policy-campaigns/consultation-responses/sra-consultation-protecting-users-of-legal-services-law-society-response/. The Law Society asserts *inter alia* that the proposals of the SRA:

'are likely to undermine the following regulatory objectives [as they appear in sections 1(a), 1(d) and 1(h) of the Legal Services Act 2007]: protecting and promoting the public interest; protecting and promoting the interests of consumers; and promoting and maintaining adherence to the professional principles.'

That being said, I object to the SRA proposals for additional reasons not mentioned in the said response of the Law Society. In my submission, the substantive proposals quoted above are fundamentally misconceived, misguided and mistimed. As such, they appear to rest on inherently defective intellectual foundations.

With the exit of the United Kingdom from the European Union ('Brexit') looming on 29 March 2019, the United Kingdom is on the verge of an unprecedented constitutional and legal 'earthquake' with enormous ramifications for all concerned. At the same time, the solicitors' branch of the legal profession is on the verge of separate regulatory and educational 'earthquakes'. These will arise from the SRA's proposed overhauls of regulation and legal education and training. At this point, I should declare additional interests as I have made personal submissions to the SRA objecting to both proposed overhauls.

Only yesterday, i.e. on 14 June 2018 and, somewhat curiously, one day before the end of the consultation period to which this submission relates, the SRA issued a statement entitled 'SRA announced detail of regulatory reforms'. This statement disclosed *inter alia* the following:

'Changes being introduced, on a phased basis from 2019 onwards, include: Creating separate Codes of Conduct for firms and solicitors and simple Account Rules that focus on keeping client money safe; ... Freeing up solicitors to carry out 'non-reserved' legal work working within a business not regulated by a legal services regulator. ... Allowing solicitors to provide reserved legal services on a freelance basis. ... Introducing a new enforcement strategy, providing greater clarity on when and how we would take action against a firm or solicitor.' (See: www.sra.org.uk/sra/news/press/handbook-reforms-june-2018.page)

All in all, therefore, in the 2019-20 period, solicitors, their firms, their clients and their banks will bear the brunt of the following four 'earthquakes':

(i) Brexit;

(ii) the 'regulatory reforms' and 'changes' to regulation announced by the SRA yesterday;

(iii) the SRA-inspired overhaul of legal education and training, which is expected to begin 'no earlier than September 2020', as per www.sra.org.uk/sra/policy/training-for-tomorrow/resources/sqe-questions-answers.page and

(iv) the SRA's proposed overhaul of Professional Indemnity Insurance ('PII') and the Compensation Fund, as per the SRA Consultation to which this submission relates.

In consequence, in the 2019-20 period, solicitors, their firms, their clients and their banks are going to be subjected to four separate 'earthquakes' and, thus, one post-earthquake 'tremor' after another. This prospect is fraught with all of the dangers inherent in any radical overhaul, let alone four radical overhauls and the plethora of changes which will be necessitated by each one.

The dangers are magnified by virtue of what appears to be the SRA's failure to adopt a 'joined up' approach to reform. This failure is symbolised by yesterday's announcement with regard to regulation. This was published one day before the close of the SRA Consultation relating to PII and the Compensation Fund. The timing of yesterday's announcement has deprived me of an adequate opportunity to digest the announcement (and the avalanche of hundreds of pages of related documents) before making this submission within the deadline which falls today.

In my submission, this disjointed approach is unreasonable and unfair. All the more so as yesterday's announcement has clear implications for PII, as effectively pointed out by John Hyde in an article entitled 'Freelance solicitors given go-ahead - without minimum indemnity cover' and published yesterday in the Law Society's *Gazette* at www.lawgazette.co.uk/news/freelance-solicitors-given-go-ahead-without-minimum-indemnity-cover/5066492.article#commentsJump.

To sum up, for the reasons set out in this submission, now is manifestly **not** 'the right time' for the SRA to go on a fresh frolic with the aim of restructuring the current arrangements, procedures, principles and rules governing PII and the Compensation Fund. Accordingly, I trust and hope that the SRA will abort or, pending Brexit, suspend the initiatives envisaged by the SRA Consultation.

(3) Further details

Let me now offer some further details which focus primarily on Brexit. Accordingly, in view of what follows, I should also make one other declaration of interest. I am a British citizen who, in principle,

supported Brexit at the time of the referendum held on 23 June 2016. I still support Brexit. However, I have grave concerns as to the rushed post-referendum procedures adopted by the Government of the United Kingdom with the aim of 'delivering' Brexit.

I have already expressed some Cyprus-specific concerns in written evidence, dated 12 October 2017, which I submitted to the House of Lords Constitution Committee in the context of the European Union (Withdrawal) Bill. My evidence has been published by the said Committee and is available at http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/constitution-committee/european-union-withdrawal-bill/written/71167.html.

In addition, as outlined below, I have other Brexit-related concerns flowing from what appears to be the failure of the SRA to factor Brexit into the SRA Consultation.

The 'earthquake' of Brexit will generate foreseeable as well as unforeseeable 'tremors' and other consequences of one sort or another. As a result, the immediate future is unclear, uncertain and potentially risky for solicitors, their firms, their clients, their banks and others. To illustrate my point, let me venture three somewhat inter-linked thoughts.

Firstly, if and when the European Union (Withdrawal) Bill is enacted and brought into force, it will have direct or indirect consequences which may expose solicitors to additional risks of being negligent which, in turn, may engage PII or the Compensation Fund. An obvious example might arise in a case where the client is a citizen of a member state of the post-Brexit EU and where the relevant post-Brexit English law is unclear or untested in the English courts.

In such circumstances, the risks of negligence are enhanced by virtue of the lack of time that solicitors will have to prepare for (i) the coming into force of the embryonic new European Union (Withdrawal) Act and (ii) Brexit generally. Indeed, all the signs are that the embryonic new Act or parts thereof will be rushed onto the statute book and rushed into force amid a risky culture of institutionalized ill-preparedness across the public and private sectors of England and Wales and of other parts of the United Kingdom. As a combined result, some solicitors in England and

Wales may find themselves facing exceptionally precarious situations, ethical dilemmas or other difficulties giving rise to negligence or the increased risk of negligence.

For these reasons alone, now is not a good time to reduce the prescribed levels of minimum PII cover or to restructure the Compensation Fund.

Secondly, Brexit may increase exponentially the risk of frauds taking place to the detriment of solicitors, their clients, their banks or others involved in a case. On this point, I can do little better than refer to a publication of KPMG entitled *Brexit: Potential Fraud Risks in a Time of Change* and published in August 2016. This publication issues a number of fraud-related warnings in the context of Brexit. One pertinent example is the following: 'Uncertainty, disruption and change heightens the risk of fraud.' Another pertinent example is the following: 'Fraudsters may look to exploit loopholes and confusion over legal and regulatory changes.' (See https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2016/10/brexit-potential-fraud-risks.pdf)

Against this background, I remind the SRA that a solicitor or his or her client may fall victim to a fraud but such a fraud may result in the solicitor facing a negligence claim for one reason or another, for example if it is alleged that the solicitor has made a negligent misrepresentation or if he or she has otherwise acted unreasonably.

For these additional reasons, now is not a good time to reduce the prescribed levels of minimum PII cover or to restructure the Compensation Fund.

Thirdly, as a number of ministers of the Crown have indicated, the post-Brexit trade strategy of the United Kingdom is designed to activate an increase in trade and other contacts with member states of the Commonwealth and with other states outside the European Union; after Brexit, I might add, Malta and the Republic of Cyprus will remain as the only member states of both organizations. Emblematic of this new trade strategy is the following aspiration which was articulated in 2017 by Dr Liam Fox MP, the Secretary of State for International Trade: '... the UK is committed to highlighting the value of, and

increasing, intra-Commonwealth trade.' (Hansard, *House of Commons Debates*, 23 November 2017, Column 1164.)

In consequence, Brexit may result in solicitors facing an increase in trade-related or other cases involving clients who hail from one of more Commonwealth states. On the one hand, that is to be welcomed. On the other hand, this development will create risks. After all, far too many Commonwealth states are mired in bribery, fraud, corruption, money laundering, human trafficking, modern slavery, child sexual exploitation, terrorism or other forms of criminality. Indeed, to illustrate the scale of the corruption in the Commonwealth and the wider world, I need only point to a press release, dated 14 May 2018, which was issued after a speech delivered in Abuja, Nigeria, by Baroness Scotland QC, the former Attorney General of England and Wales who is now serving as the Secretary-General of the Commonwealth.

According to Baroness Scotland: 'Globally, we are facing a tsunami of corruption. In 2015, UNODC [the United Nations Office on Drugs and Crime] estimated that the amount of money laundered globally each year is 2 to 5 per cent of global domestic product or between 800 billion and USD 200 trillion
... .' (See http://thecommonwealth.org/media/news/commonwealth-fights-back-against-tsunami-global-corruption).

These are eye-watering statistics. Yet, in the aftermath of Brexit, more and more solicitors may find themselves unwittingly struck by the 'tsunami of corruption' mentioned by Baroness Scotland. In turn, any such outcome may give rise to negligence claims involving astronomical sums. In this respect, I emphasise that even if a solicitor has acted honestly in a particular case which may be tainted by criminality, he or she may nonetheless face a negligence claim of one sort or another and, in such circumstances, it may be necessary for him or her to try to fall back on PII.

For these and for other reasons, I reiterate that now is not a good time to reduce the prescribed levels of minimum PII cover or to restructure the Compensation Fund.

Surprisingly enough, unless I am mistaken, not one of the 93 pages of the SRA Consultation makes any mention of Brexit or the effect which Brexit may have on solicitors, PII or the Compensation Fund; nor do any

of the 44 pages of the Initial Impact Assessment at Annex II of the SRA Consultation. Indeed, in the two said texts, Europe is mentioned only once - at paragraph 36 on page 28 of the SRA Consultation where reference is made to 'PII arrangements that apply where a Registered European Lawyer (REL) is a principal in a firm and wants to rely on their home state PII cover.' Yet, even in this context, Brexit is not mentioned.

Even more surprisingly, perhaps, neither of the two said texts makes any mention of money laundering or how a case tainted with money laundering may result in a solicitor having to try to fall back on PII as a result of, say, a negligence claim arising from such tainting.

All of which brings to mind the classic essay by George Orwell entitled 'In Front of Your Nose' and published in *Tribune* on 22 March 1946. To adapt the words of Orwell, it appears as the authors of the SRA Consultation and the Initial Impact Assessment have failed to spot, let alone discuss, something which was right in front of their noses namely Brexit and the anticipated consequences of this looming 'earthquake'.

All in all, I submit that these matters cast serious doubt on the intellectual foundations of what the SRA is proposing via the SRA Consultation. Accordingly, a number of questions, or sets of questions, arise. They include those listed below.

(4) Questions

1. Why did the SRA launch the SRA Consultation in March 2018, i.e. only twelve months before a development of such seismic significance as Brexit? Put another way, why did the SRA not wait until after the dust had settled in the aftermath of Brexit?

2. Why is the prospect of Brexit missing from both the SRA Consultation and the Initial Impact Assessment relating thereto? Has Brexit been factored into the thinking of the unnamed authors of these two texts? If so, where is the evidence to show this? If not, why not?

3. Why, in their various references to fraud, did the authors of the SRA Consultation and the Initial Impact Assessment fail to make any mention of the anticipated impact of Brexit upon the risk of fraud? Has the prospect of Brexit-related fraud been factored into the thinking of

the authors of the two said texts? If so, where is the evidence to show this? If not, why not?

4. Why do the SRA Consultation and the Initial Impact Assessment both fail to make any mention of money laundering in the context of fraud, negligence and PII? Has money laundering been factored into the thinking of the authors of the two said texts? If so, where is the evidence to show this? If not, why not?

5. Why has the SRA failed to adopt a 'joined up' approach to its proposed overhauls of (i) regulation, (ii) legal education and training and (iii) PII and the Compensation Fund? Does the SRA agree with me that yesterday's announcement with regard to regulation, i.e. only one day before the close of the SRA Consultation relating to PII and the Compensation Fund, has not given interested persons an adequate opportunity to factor that announcement - and the related documents published yesterday - into submissions relating to the SRA Consultation?

(5) Some closing thoughts, including a warning

I look forward to hearing from the SRA with a response to the various questions and other matters set out above. If the SRA deems it necessary to deal with them under the Freedom of Information Act 2000, I trust that the relevant procedures will be followed. Furthermore, if the SRA requires any clarification on any of the contents of this submission, I trust the SRA will let me know.

In the meantime, I hereby reiterate the recommendation I put forth at the beginning of this letter: the proposals embodied in the SRA Consultation are fundamentally misconceived, misguided and contrary to the public interest, the interests of consumers and the professional principles. The SRA Consultation is also mistimed. Consequently, I trust that the SRA will abort or, pending Brexit, suspend the proposals envisaged by the SRA Consultation.

I would like to end this submission by issuing a warning. To this end, I must highlight the collective dangers inherent in the four looming 'earthquakes' identified above, i.e.: (i) Brexit; (ii) the 'regulatory reforms' and 'changes' to regulation announced by the SRA yesterday; (iii) the SRA-inspired anticipated overhaul of legal education 'no earlier

than September 2020' and (iv) the SRA's proposed overhaul of Professional Indemnity Insurance ('PII') and the Compensation Fund.

Collectively, these four 'earthquakes' should be a cause for concern for the SRA, for the Legal Services Board, for the Law Society, for firms of solicitors, for individual solicitors, for their clients, for their banks and for anybody who cares about the rule of law and the proper administration of justice. After all, each 'earthquake' may generate 'tremors' or activate a plethora of changes which may have disruptive and destabilizing if not destructive consequences in the first few days, months and years after the United Kingdom is scheduled to exit the European Union on 29 March 2019.

In making the point set out in the previous paragraph, I am working on the assumption that 'prevention is better than cure'. No less importantly, I am mindful of the first three 'lessons from *The Nimrod Review*', as pinpointed in a speech delivered on 19 June 2013 by Sir Charles Haddon-Cave, the High Court judge who (as Charles Haddon-Cave QC) had previously conducted the said *Review* into the RAF Nimrod XV230 disaster in Afghanistan on 2 September 2006. To quote Sir Charles Haddon-Cave:

'First, it is important to look at the underlying organisational causes of any major accident ... [including] Torrent of changes and organisational turmoil. ...

'Second, beware assumptions. Certainly, beware making assumptions without being satisfied or checking that the assumptions you are making are valid, sensible and/or still justified. ...

'Third, avoid change for change's sake. ...'. (See: www.judiciary.uk/wp-content/uploads/JCO/Documents/Speeches/ch-c-speech-piper25-190613.pdf)

In the light of the above and before it is too late, I urge the SRA to rethink its whole approach to regulation, legal education, PII and the Compensation Fund. I also urge the SRA to factor Brexit into its thinking and to adopt a 'joined up' approach to consultation.

In the meantime, with Brexit on the horizon, I underline that now is not the time for the SRA to embark upon a series of radical reforms which

may result in a wholesale restructuring of the solicitors' branch of the legal profession and the culture inhabited by solicitors. If there is merit in simplicity, there is virtue in restraint and wisdom in moderation. Or, as the ancient Greeks used to say, *πάν μέτρον ἄριστον*.

Yours faithfully

Dr Klearchos A. Kyriakides
LLB (Hons), MPhil, PhD, Solicitor (non-practising)

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Protecting the users of legal services: balancing cost and access to legal

Response ID:264 Data

2. About you

1.
First name(s)

Laurence

2.
Last name

Mann

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

A L Hughes & Co

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: This is totally bonkers. There are hundreds of thousands of properties worth more than £1m now. £500,000 is a completely useless limit for a Wills or Personal Injury claim. It's just not enough.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: In practice, most of these people will insist on cover and won't deal with people with low PI limits. So it is pointless.

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree

Please explain your answer

: There is a case for firms who do not undertake work other than criminal work to have a lower level of cover. That's all.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

No

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: The changes proposed are bound up with changes to the regime with which we do not agree.

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: At the moment, there is one dish on the menu. It is easy to compare costs. However, the proposed changes will leave smaller firms in particular at the mercy of complex offerings.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: I would make it higher - £5m, and index link it.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal

services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: I think it will make it harder to start. The whole logic behind this is flawed. If I ran a practice with low risks, then the PI premium is normally lower as a result.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

You are not proposing leaving things as they are. What about that?

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The purpose of the CF is to bolster the reputation of the profession. That's what it's for!

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Losing a large sum of money can destabilise any household.

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

27. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

No.

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

30. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

31. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

I think there should be a threshold here. I agree it is not apposite for the CF to underwrite get rich quick schemes.

32. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: People should know what this is all about, but if you water it down, you had best not tell anyone!

33. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

34. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

No.

Protecting the users of legal services: balancing cost and access to legal

Response ID:285 Data

2. About you

1.
First name(s)

Leigh

2.
Last name

Price

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Non-legally qualified, working in legal services

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Please explain your answer
:

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Please explain your answer
:

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: We do not believe there is any need to implement any changes for the following reasons: Unnecessary Complexity The current MTC's provide simple and robust protection to clients, lenders and law firms. By making the system of assessing what level of cover is required far more complex and entirely down to each individual law firm it is highly likely to have the opposite effect to which the SRA's proposals suggest: ■ The complexity of assessing what level of cover required will mean that smaller law firms who in the past have dealt with conveyancing on an ad hoc basis will no longer do so. It will also put off potential new entrants to the market. This will reduce choice of the service provider for consumers and inevitably increase cost where there is less competition. ■ There is a much greater chance that a law firm will not have sufficient insurance cover. Owners of law firms who deal in conveyancing do not have the expertise or knowledge to assess what level of risk they should be covering against. It is likely that a claim relating to a property under £1M will result in compensation being paid of over £1M. The law firm owner would have assumed they were complying with the new proposed requirements but still find themselves under-insured. This will have a disastrous effect on the law firm, the client and the perception of the profession in general. There will be a much greater risk to consumers and clients of engaging a law firm who are unwittingly under insured for the work they are carrying out. ■ The added complexity of assessing and arranging layers or tiers of additional PII cover will add an extra administrative burden on law firms as well as increase the premium and administrative costs of carrying out all levels of conveyancing transactions. These additional costs and administrative expenses will no doubt result in law firms increasing conveyancing fees for consumers. It is also likely that the increased cost and administrative burden will result in less law firms engaging in conveyancing work, reducing competition which will increase cost to the consumer and stifle innovation. The increased costs for dealing with conveyancing will put off new entrants into the conveyancing market which will hinder future choice for consumers as law firms currently engaged in conveyancing retire, merge or close down. There will be no incentive to innovate as the firms left in the market will have less competition and be able to charge higher fees to the consumer. Mortgage Lender issues It is already common place for mortgage lenders to exclude sole practitioners and sub 4 partner law firms from their conveyancing panels. The uncertainty as to whether a law firm is sufficiently covered would likely result in the following: ■ all but a few large law firms, who can be efficiently assessed and monitored by the lender, being removed from lender's conveyancing panels ■ lenders requiring law firms to have much higher levels of PII cover than the newly proposed amounts and higher even than the current PII level to ensure that any potential risk to the lender is covered by insurance ■ Increased costs to law firms to cover the fees of panel management companies employed by lenders to assess a law firms' suitability for joining or remaining on each lender's conveyancing panel ■ Where lenders reduce their conveyancing panel, far greater instances of those lenders being separately represented by firms remaining on panel, doubling cost to clients ■ As mortgage lenders fall within a category of entities not covered by the proposed minimum terms they would require additional insurance to be taken out by a law firm as a pre-requisite of them being admitted to the lender's conveyancing panel The consequences of these actions for smaller, conveyancing centric law firms will be catastrophic. When a law firm is no longer on a lender's panel it is inevitable that they will lose clients to firms who are on panel. With fees already squeezed in conveyancing this will result in the disorderly closure of very many law firms on financial grounds. There will be less choice for the consumer in who carries out their conveyancing and due to the lack of competition, cost for the consumer will increase while innovation flounders. By far the most widely used legal service by consumers is conveyancing. If the SRA wish to increase suppliers of conveyancing whilst protecting consumers and reducing costs then there are far more effective ways of doing so rather than changing the whole PII market. An example would be requiring all mortgage lenders to include each and every law firm who is regulated by the SRA and has the minimum level of PII under the current system on their conveyancing panels. This would increase the number of conveyancing providers, attract new providers to the market and reduce cost to the consumer through increased suppliers of the service whilst retaining the 'gold-plated' indemnity insurance cover currently offered by the profession. This, together with stricter controls on non-declared referral fees paid to estate agents or mortgage brokers would do far more to achieve the SRA's proposed goals rather than these current ill-thought through PII proposals. Conclusion It is clear if you follow through the rationale of imposing greater PII administrative burdens and expenses on conveyancing practices that the result will be an increase in costs of insurance premiums, fees to PII brokers and internal administrative time, all of which will result in an increase cost of conveyancing to consumers. The most likely outcome is that due to the increased cost to a law firm and the likely stance of mortgage lenders should these changes come about there will be much less competition in conveyancing service suppliers. This would have a detrimental effect on consumers at the same time as increasing the risk that the law firm they engage is under-insured in the event of a property claim.

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14. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

15. Please explain what you think should be an alternative definition.

We believe that the inclusion of the words '…and other service ancillary to…' is too vague and far reaching. An alternative suggestion would be:
"Dealing with transfers, conveyances, leases, contracts, deeds, grants, mortgages, charges, licences and other documents in connection with the disposition, acquisition or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in land."

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: We strongly disagree with the approach being taken in respect of the MTCs and the PIA. We do not believe there is any need to implement any changes. The evidence produced by the SRA is out of date and therefore should not be relied upon to make a change of this magnitude. We understand that the evidence is only accurate up to 2014 and that there have been significant increases in cyber fraud since that date which all agree is one of the largest risks facing our profession at the moment. Unless more up to date evidence is obtained, we firmly believe the status quo is preferable to any change. In respect of the proposals to amend the MTCs, the evidence we have seen from information prepared by insurance companies and brokers would suggest that in all likelihood there will be a nominal reduction in premiums for some insured but in the majority of cases there will be an increase in premiums for most firms who would wish (and need) to maintain their current level of cover. Even on the evidence provided by the SRA in respect of reduced premiums, the levels are relatively small and would not encourage new entrants to the market and would not see costs savings to individual clients, to that end, it would not increase access to justice as intended. Indeed, we believe it would see the end of general practitioners who cover a variety of areas of legal work and it would likely lead to further "advice deserts" in rural or low populated areas.

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: 1. The jewel in the Law Society's PII crown is the MTC. Once it is gone or fractured it will be difficult (if not impossible) to re-create it. As we understand it, the current MTC provides protection for members of law firms and the public far greater than any other UK profession. Clients. It is important for the regulator (SRA) to appreciate that well run and competent law firms will ensure appropriate levels of indemnity cover for their work as protection for both the owners of the firm but also their clients. It is the poorly managed or incompetent firms that need to be protected, as well as their clients, and this obvious point seems to be overlooked in the SRA paper, which largely seeks to reduce the cost of PII by reducing the protection for both lawyers and clients. Reducing the level of cover to £500,000 (£1m for conveyancing firms) will expose clients of 'low cost' firms to uninsured loss claims. The SRA figure of £500,000 is based on settlements achieved (ie payments) and not the amounts actually claimed at the outset. It is not hard to envisage a scenario where a claim is for £1m and the insurer (wishing to limit its costs outlay + time exposure) agrees to pay £500,000 early on in order to avoid involvement in litigation. It is the 'under insurance' potential which is of great concern to us. 2. We understand that the figure of £500,000 has been arrived at on the basis of numbers of claims settled at £500,000 or less (96%), whereas that amount by reference to amounts actually paid out by PI insurers the figure represents 56% of the total value paid, a rather different and disturbing statistic. Obviously this is an aspect which the SRA must check before proceeding with the minimum £500,000 indemnity figure. 3. We question the evidence that the SRA has that the proposals will encourage the insurance market significantly to lower premiums. Our enquiries suggest that whilst there may be some minor saving initially the insurers will make up any perceived 'shortfall' by

increasing premiums for top up insurance (which is likely to be required by most (if not all) well run competent law firms). During the past 18 months (ie after the SRA's analysis) the cost of excess layer cover has increased, largely because of several large losses which breached the current mandatory levels of cover. As a consequence some top up insurers have left the solicitors' market, including Brit Insurance and Channel Syndicate, while others have raised their premiums. Only a handful of PI insurers now offer cover for £3m over £2m or £2m over £3m, ie up to £5m maximum. It is therefore fanciful to assume that lowering the primary level of insurance will result in overall premium reductions. The reality is that most (prudent) firms will need cover considerably higher than the suggested £500,000 minimum cover and that by implementing its current proposals the SRA will cause increased costs to law firms and not reduced cost as its Consultation Paper suggests. There is also the danger of 'dodgy' PI insurers entering the 'low cost' market with obvious unwanted outcomes – see Quinn and Enterprise …… 4. In our view a better proposal is for the SRA to provide specific waivers on request from firms that want to conduct low risk work only, such as crime and housing claims. In this way a full and proper assessment can be made (as to waiver) and PI insurance cover + premium obtained as appropriate for that firm. 5. We should add that PI insurance is 'claims made' and so law firms with 'legacy' work will need run-off cover for any 'old discipline' work. We suggest that the SRA is looking the wrong way through the telescope by trying to develop a one-size-fits-all solution, when in fact a bespoke solution (for waiver applicants) is a better option. 6. As for under insurance / lack of cover, it is not difficult to imagine scenarios where law firms are inadvertently underinsured. The writer is aware of a property investment fund which had c.£5m stolen by a law firm partner where the firm's indemnity level was only £2m (ie under insured). Alternatively, a small law firm (sole proprietor ?) might take on a low value RTA injury claim which (through inexperience) is settled prematurely. Following settlement the client's medical condition deteriorates significantly, which would have been detected if the right discipline of medical adviser had been instructed …… such a claim could easily exceed the £500,000 limit. 7. Finally, we have seen data from JLT, specialist PI brokers which queries the extent to which savings may be achievable. Since January 2018 they have placed PI cover for 38 start-up law firms where the average annual premium has been £3,000. It has been suggested in the SRA paper that (1) PI premiums are stopping new entrants coming into the market and (2) that the proposals will result in premium reductions of c.10%. We do not think it credible that new entrants to the legal market would be dissuaded by a £300 differential. If they are then we question their financial model and suitability to practice as law firms..

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: We strongly disagree that the proposed cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the needs for premiums to be more affordable. There is little evidence to show that premiums would be more affordable and it is our belief that in due course, the proposed changes are likely to lead to higher premiums for many who wish to remain insured at the current minimum level. Whilst it is appreciated that there will be some who are able to benefit from the lower cap, it is likely that those practitioners would have already had the benefit of significantly lower premiums in any event due to the low risk work undertaken. It is likely that those who have at some point been involved in the provision of higher risk services would see no reduction in a run-off premium.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat agree

Please explain your answer

: If PII premiums are potentially lower, it might encourage new firms to set up in practice. What is currently unclear, is an understanding of the number of solicitors who would be willing to set up a new practice because of the potential of lower premiums. We understand the cost of PII premiums is a major factor taken into account by solicitors considering setting up in private practice, but it is one of a number of factors. If the SRA's assumption is correct and new firms are encouraged to enter the legal services market, if any of the new set up's are in locations based in more rural areas, it would provide much needed

access to justice. This is particularly an issue in Wales. As with a number of the suggested proposals, solicitors will need to be under a clear regulatory duty to ensure their clients are made fully aware of any limits to their indemnity protection.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The current proposals concern us, as it would appear that they do not serve the purpose of protecting the public or encouraging new entrants into the market. The public will have less protection and there is a danger that it will undermine public confidence in the profession. We also understand, from leading PII brokers, that there will only be marginal savings on premiums for those seeking the minimum insurance. Further, it would also penalise firms who choose to retain their current level of cover above the minimum figure, as their premiums are likely to rise.

With there being no persuasive case for change, we favour the option of no change at all to our PII requirements.

We believe that the way to achieve lower premiums is to have less claims. To do so, we must improve the claims record of all solicitors. SRA resources should be directed towards assisting law firms with risk management, as ultimately prevention has to be the best solution.

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The proposed changes do not clarify the existing purpose they seek to reclassify it as a hardship fund. We do not believe the SRA has the power to change the purpose of the Fund. Its purpose is to be a fund of last resort, as a safety net for clients who are victims of dishonesty of solicitors or hardship due to a solicitor's failure to account for monies, or to provide compensation in respect of the civil liability of a defaulting practitioner who does not have a policy of qualifying insurance policy in place. We are concerned that the £250,000 household asset bar could have perverse and unintended consequences, which will lead to deserving victims not being eligible for the fund.

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No.

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat agree

Please explain your answer

: Ideally, the Compensation Fund would compensate all clients fully for uninsured losses or the fraud of someone regulated by the SRA. However, we accept that the claims made against the Fund may be unsustainable. The contributions required by solicitors to the Compensation Fund also have to be proportionate, and so we agree a balance should be struck between the losses suffered by the claimant and the need to maintain a viable, and affordable, Fund. One way of limiting calls on the Fund would be to restrict claims from wealthy individuals and businesses of a certain size. However, the difficulty is in drawing the appropriate thresholds for eligibility.

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

29. Please explain why.

We think it important to recognise that the SCF is intended to protect law firm clients from dishonesty and/or under/lack of PI insurance. We think the £500,000 cap is arbitrary and is unlikely to be accepted by the LSB, Parliament or the media, who will regard this as an attempt by 'fat cat' lawyers to avoid their responsibility to victims of unacceptable behaviour / incompetence by fellow members of their profession. As in insurance, the many pay for the few.
We also think it more likely that the SRA PII proposals will result in more claims (for under or no-cover insurance) than at present as the insurance protection for the vulnerable wronged client will be sharply reduced.
It is difficult to see (from the quoted examples) on what basis the clients should suffer losses of c.£500,000 (example 1), £300,000 (example 2), £500,000 (example 3) and £400,000 (example 5) when the losses were not caused or contributed to by the bona fide clients/beneficiaries. We think the SRA's time would be better spent educating vulnerable firms on business management and competence (cover and indemnity levels) and policing them for signs of possible dishonesty within the business.

30. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

31. Please explain you answer and any suggestions you have for alternative approaches

As we have just commented, the Fund (as with insurance) operates on the basis that 'the many pay for the few' losses caused by dishonest or incompetent law firms. It is not possible to protect against dishonest acts by individuals which is usually prompted by greed or financial mishap, sometimes both. Either the profession as a whole accepts responsibility for the losses caused by the (thankfully) small number of dishonest/incompetent law firms or it does not. A 'half way house' as suggested by the SRA proposals is not satisfactory. We should add that the Fund has considerable discretion at its disposal and we regard this as a better way of dealing with the problem than imposing arbitrary limits which are likely to cause public outrage.

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

In our view the claimant on the Fund should show that independent professional financial advice was obtained from an FCA regulated individual/firm before committing money to the investment scheme. In this way the Fund will be protected from cold calling scam claims and/or the investor will have rights of recovery from the IFA and/or FSCS. It occurs to us that this is the level of discretion that the SCF can (should) be adopting now.

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: It seems to us that the SCF already has set out reasonably clear explanatory notes on the current SRA (SCF section) website. If these can be improved / enhanced by Guiding Principles for the benefit / better understanding of potential claimants then we see no downside to this approach.

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

As regulator, it is clearly important that the SRA has an effective communication strategy in place to ensure the profession is updated in a timely manner on cybercrime issues. If there are any significant cybercrime updates the profession needs to be aware of, we would suggest timely emails are sent to COLP's of all firms to help ensure the messages are communicated. The SRA may also wish to consider seeking firm's agreement who have been the subject of a cybercrime attack to allow the SRA to share the relevant details with the profession for the benefit of all. This could of course be done on an anonymous basis, depending on the facts.

Protecting the users of legal services: balancing cost and access to legal

Response ID:109 Data

2. About you

1.
First name(s)

Lionel

2.
Last name

Conner

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Samble Burton & Worth

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: £500,000 does not provide sufficient cover. Your own research indicates that cover. If you were to accept a minimum amount would need to be over £580,000

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: If solicitors are not automatically insured to cover financial institutions the financial institutions will introduce restricted panels which will mean that consumers may end up paying for 2 sets of lawyers and with limited panel membership will pay the panel members are much more than they currently pay

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

Is to break

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: If the standard policy excludes conveyancing and you have to buy a top up policy for conveyancing. It is almost certain that the insurance companies will charge more for the top up policy than in effect they do at the moment.. Companies quoting for conveyancing work will lose some of the low-risk companies that do not do conveyancing and will take out the lower minimum policy and

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

There are ambiguities what would the position be for somebody saying doing a declaration of trust or a consent order for a divorce or severing joint tenancy

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

No

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: For a firm that provides conveyancing services. Your proposals are likely to increase premiums

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal

services whilst balancing the need for premiums to be more affordable?

Somewhat agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Unless your proposals reduce premiums which I don't think it will it would be unlikely that there would be more competitors entering the market

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

I would support reduction in the amount of cover required for companies to the same level as partnerships. There is no real additional risk to training is a company from the point of view of the consumer. The individual funds of the partners are not likely to be substantial in the insurance level at 2 million. Ought to be adequate. That would encourage more partnerships to incorporate which would have tax advantages transparency advantages and be a more modern approach and would encourage new entrants

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

:

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: I see no rationale to this

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

29. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

No

30. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

31. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

32. Please explain why.

The compensation fund should compensate

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

:

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

It is fundamental to the activities of a regulator that it should have an authentic and up-to-date database of approved and regulated practitioners which can be consulted to ensure that the profession and the public are consulting a properly regulated individual. This at the moment I don't think the SRA provides. The should also be pressure to prevent non-regulated firms for from giving the appearance of being qualified and hinting that the solicitors when they're not, which is common

Protecting the users of legal services: balancing cost and access to legal

Response ID:216 Data

2. About you

1.
First name(s)

Nicholas

2.
Last name

Davidson

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Other legal professional

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: 1) I am surprised and disappointed that you appear to make no mention of a) s.37 of the Solicitors Act 1974 b) Swain v the Law Society c) the parliamentary debates leading to the enactment of what is now s.37. The objective of the legislation is surely effective protection of those for whom solicitors work. 2) It is really grim for the claimant, and the professional also, if a claim arises in respect of which the professional is under-insured. 3) In practice few clients concern themselves at the time of engaging a professional with the quantum of insurance or terms of business. 4) Many clients, and many professionals, underestimate, sometimes grossly, the financial risk which a matter entails. 5) It is unpersuasive to be told that "only a tiny percentage of claims involve more than the limit we propose" and also that it is expected that if that tiny percentage is removed premiums are likely to drop substantially.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree

Please explain your answer

: 1) An all too common risk is theft of client funds. What does it matter who the client is? Prompt restitution is the only honourable course and the insurance should be there to justify it. 2) While I agree that in principle large organisations should take the trouble to understand the terms of business, in practice most clients don't.

12.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

13. Please provide an alternative way of drafting the exclusion definition.

No. I don't support this.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: The trouble with non-comprehensive insurance is that sooner or later - probably sooner - someone who opts out of elective cover will do work for which the regulator requires the person to have cover but the person does not. Then a claim follows. It is no consolation to the client that the foolish professional will be struck off. What the client wants is that there should in fact be insurance.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

16. Please explain what you think should be an alternative definition.

No. I do not support this.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

No

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: No. My experience of both documents as they are is that they are alright. I favour tightening up the obligations to make immediate restoration of monies wrongly withdrawn from client account.

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Somewhat agree

Please explain your answer

: "Potentially" that is what they do. I just don't see it actually happening, except in relation to run-off cover, where the proposals appear to me flatly contrary to the statutory objective of consumer protection.

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal

services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: 1) That's a loaded question. I don't accept that there is a need for premiums to be more affordable, even though I know from talking to practitioners that they are a burden. 2) What is "adequate protection"? A client who is told "we are sorry, but the insurance cover is now exhausted" does not have adequate protection - simply, no protection except going against the responsible individuals personally. Those individuals may or may not have the resources to pay, and will face penury if they do. 3) Bar Mutual has referred to a case of a barrister having to make a large payment in retirement because under-insured. Is that really what clients or solicitors want? 4) The only way to provide "adequate protection" is for the price of "adequate insurance" to be paid.

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Quite apart from this factor having nothing to do with the objective of s.37 of the 1974 Act, I suspect the effect of the proposal would be marginal. Any meaningful new entrants are likely to be well-capitalised businesses who would expect to be able to pay any necessary premiums.

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

No

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

: In general I do not propose to respond to the Compensation Fund questions

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

n/a

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Why? They will probably pay good money for solicitors' services. An honourable profession would see that they are compensated rather than left to whistle for their money.

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

30. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

31. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

In general I think people should take steps - but consulting a professional is one of them, which is the problem for the profession.

32. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: I believe the scheme is found opaque.

33. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

34. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Almost all professions now mandate Equality and Diversity training, so why not targeted mandatory cyber risk training? Having cyber compliance officers and mandatory training for them might help.

Protecting the users of legal services: balancing cost and access to legal

Response ID:226 Data

2. About you

1.
First name(s)

Oliver

2.
Last name

May

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Other

8. Please specify

Future pupil barrister

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Please explain your answer
:

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Please explain your answer
:

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Please explain your answer

:

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

4. Questions continued

15. 6) Do you think there are changes we should be making to our successor practice rules?

16. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

17. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Please explain your answer

:

18. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

19. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Please explain your answer

:

20. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

21. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

22. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

: With the exception of the proposed removal of eligibility for barristers and experts being able to make claims to the Fund for unpaid fees, the proposals are an appropriate way to ensure that the Compensation Fund serves the needs of protecting vulnerable people from hardship. Regarding barristers. The stated aim of the changes to the compensation fund is to "clarify its purpose as a targeted hardship fund, helping the vulnerable". Exempting barristers from being eligible for claiming from the Fund can therefore only be justified on the following assumption: solicitors failing to pay barristers' fees can never result in barristers being vulnerable and suffering hardship. This assumption is observably untrue. There continues to be a persistent and relentless squeeze on barristers' income, most keenly felt in the legal aid-funded sectors. While this is not exclusively owing to unpaid fees from solicitors, unpaid fees are undoubtedly contributing to this problem. Many barristers are suffering financial hardship, which in turn is damaging their wellbeing and mental health, and leaving them vulnerable – both directly, and through the need to work even longer hours to make up for this lost income. A blanket exclusion is a disproportionate measure as it prevents all barristers from ever being able to claim from the fund. The discretionary nature of the fund, coupled with the other proposals included in this consultation (in particular the exclusion of claims from individuals with high net wealth), are sufficient to prevent claims from barristers who are not suffering hardship or are not vulnerable. To exclude any and all claims from barristers would go too far as it would prevent claims from barristers who are vulnerable and genuinely suffering hardship. This proposed exclusion would unnecessarily fetter the discretion of the SRA in deciding who to allow access to the Fund, and prevent deserving claims from being made. As an example, under this proposal the following claim would not be eligible for compensation via the Fund, where: • a barrister has not been paid fees owed to them by one or more solicitors firms; • the barrister has net household financial assets of under £250,000; • the financial loss was directly caused by the actions of the solicitor(s); • in advance of taking the work the barrister had taken every reasonable step to ensure that the solicitor was able to pay the fees owed; • the barrister is able and willing to provide a full and frank disclosure of all documents requested by the SRA in conducting an investigation into the claim; • the loss cannot be made good by any other means; • the activities, omissions or behaviour of the barrister did not contribute to the loss being claimed from the Fund; and • as a result of the unpaid fees the barrister is facing financial hardship and suffering a detriment to their wellbeing and mental health.

23. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

24. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Please explain your answer

:

6. Questions continued

25. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

26. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

27. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

28. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

29. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

30. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer
:

31. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

32. Please explain what you think these impacts are

There are two negative EDI impacts that are likely to follow from the proposed exclusion of barristers from being able to make claims from the Fund.

(1) There is a direct negative EDI impact which is related to the demographic of barristers working in low income practice areas, who are therefore most likely to be disadvantaged by this proposal.
• This proposal is most likely to cause a detriment to barristers suffering financial hardship as a result of a failure by solicitors to pay fees owed to the barrister.
• Barristers most likely to be suffering financial hardship are those working in legal-aid funded practice areas.
• Both BME barristers and women barristers are disproportionately highly represented in legal-aid funded practice areas, in particular in the criminal justice sector.
• Therefore this proposal is disproportionately likely to cause BME barristers and women barrister to suffer from financial hardship, through their ineligibility to claim from the Compensation Fund as a remedy of last resort.

(2) There is also an indirect negative impact on EDI related to the access to justice implications of this proposal.
• Barristers working in legal-aid funded practice areas are seeing a significant squeeze in their income.
• This is threatening the viability of their practices, particularly at the Criminal and Family Bar, and increasingly barristers are having to leave practice in order to earn a sufficient income to support a family.
• This problem will be exacerbated if the proposal to exclude barristers from making claims to the Compensation Fund becomes a rule.
• The barristers being forced to leave practice are those most likely to be advising and representing vulnerable clients in criminal and family law matters.
• Therefore this proposal threatens to reduce the number of the barristers providing access to justice to vulnerable clients, thereby threatening the accessibility of justice to vulnerable people.

33. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

A more appropriate option would be to apply to barristers the same, or a similar, exclusion rule as the proposed exclusion of claims from individuals with high net household financial assets. The discretionary nature of the fund, coupled with the other proposals included in this consultation (in particular the exclusion of claims from individuals with high net wealth), are sufficient to prevent claims from barristers who are not suffering hardship or are not vulnerable.

Protecting the users of legal services: balancing cost and access to legal

Response ID:219 Data

2. About you

1.
First name(s)

PETER ANTHONY COPELAND

2.
Last name

SLOAN

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

PETER AC SLOAN SOLICITORS

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: For all my responses I endorse the views given by the SPG Group in their response to this consultation

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Neither disagree or agree

Please explain your answer

:

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree

Please explain your answer

:

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

17. Please explain what these are and provide any evidence to support you view

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

:

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer
:

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Please explain your answer
:

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer
:

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

28. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

SRA condoc on "protecting the users of legal services"

Introduction

This is to make a few submissions in relation to the SRA proposals to modify the Mandatory PII rules.

These are the views of a sole practitioner who does not hold client money and who does not do conveyancing. Much of what I do falls outside the reserved matters.

I have practised as such for over 10 years now (since retiring from full time practice) and have, over the years, paid substantial PII premiums without incurring a claim or needing to make a notification. I assume, therefore, that my premiums subsidise practitioners with a poorer claims record.

Pressure of other commitments has precluded my making a full submission. If the period is extended, I may be able to make supplemental submissions.

Whilst reform may be called for, particularly in relation to run off cover, the proposals put forward by the SRA are inappropriate and unjustified. The case is simply not made out.

I make this comment despite the fact that I would probably be a beneficiary of the proposals in relation to reducing minimum permitted cover.

Minimum Cover proposals

The only undisputed beneficiary of these proposed reforms would be the insurance industry, which would:

- Be subject to the SRA's unpopular mandatory minimum terms in respect of a smaller amount of exposure per firm/incident; and
- Be able to increase premiums for cover (on less onerous terms for the insurer) above the new, reduced, limit.

This will be detrimental to clients, who will face higher fees (to fund higher premiums) and a larger number of insolvent firms.

There are in fact multiple ways in which consumers of legal services could be prejudiced by the proposals taken as a whole:

- By the reduction of minimum cover itself,
- As a result of any non mandatory top up cover being outside the minimum terms regime, giving increased scope for insurers to deny cover,
- As a result of the proposed limits in access to the Compensation Fund.

Indeed, it is truly bizarre that the SRA is simultaneously proposing reducing the quantum of minimum cover and reducing the scope of access to the Compensation Fund, particularly in circumstances where calls on it (presumably in part because of inadequacy of current levels of cover) have manifestly increased in recent years.

This seems an odd result for a regulator whose roles include client protection and for a condoc whose heading is "protecting the users of legal services".

Nothing illustrates better the (perhaps unintended) insurer bias than the proposals in relation to financial, corporate and large business clients. As the SRA acknowledges, firms with large commercial clients will continue to need to have the same cover, and pay the same premiums; the difference will be that, for a large part of the cover, insurers will be released from the minimum terms they dislike; the quality of cover available to the firm and its clients will be correspondingly reduced.

Minimum or Adequate cover?

In this connection it is interesting to note that the SRA seems to acknowledge that the new minimum may not be adequate or reasonable in many circumstances. There are references to the need for firms to choose the level of cover which is right for them. I am not sure whether this may mean that there will be a regulatory initiative to require firms to take out cover above the new proposed minimum limit, or at least to justify to the SRA the choice of minimum cover. This would be perverse, particularly in view of the loss (for the benefit of clients), in respect of the excess above the new reduced limit, of the mandatory minimum terms.

PI cover for Commercial clients

The only comment I would make on the proposal to make cover optional for certain categories of commercial client is that, based on experience of competitive tenders and beauty parades, all sophisticated clients require firms to have cover well above

the current minimum limit. So I question the practicality and effectiveness of this proposal.

Complexity

The SRA's proposals will introduce a new element of complexity into PII arrangements. It is unclear how they will be policed and enforced; presumably this will lead to increased SRA costs, which will be borne by the profession and, indirectly, by its clients.

I am assuming that the condoc explains and resolves any problems of definition. Is probate, for example, of itself, likely to include conveyancing, even if there is no actual sale of real property included in the estate?

Nor is it clear what would happen if a firm strays into areas (or advises clients) outside the limited insurance it has taken out. Quite apart from anything else, might this invalidate any top up cover?

At the very least, presumably there will have to be a clear and transparent disclosure regime, even though there must be questions as to the level of confidence one can have that consumers will understand the full implications (and risks) of standardised "boilerplate" notices.

New firms

A word on new firms, in view of the importance attached to fostering these for the purposes of justifying the SRA's proposals.

A new firm may arise in multiple manners. My own sole practitioner firm was, I suppose, a "new firm" when I decided to practice on my own account after 30 years' experience in a large city firm.

I venture to suggest it was a relatively low risk practice, although it was difficult to persuade insurers of this; the mere mention of being a sole practitioner appeared to make the insurers assume one was high risk; indeed there may be a case for an exercise to educate the insurance industry in the different models (and risk profiles) of different legal practices.

Another type of new firm might be an entrepreneurially minded recently qualified solicitor setting up on his own account, either by himself or with others.

The risk profile of each "new firm" is different and the PII policy premium should be appropriately calibrated. A solicitor with limited experience who decides to set up independently (particularly if he is not specialised) **should** face relatively high premiums, because the firm is objectively high risk. In this respect, if no other, the prudent insurance risk assessment is no different than for a new driver taking out his first motor policy. The business plan of a new firm should take account of the real costs of the undertaking. The market should not subsidise inexperience, by exposing customers to undue (or inadequately protected) risk.

Run off cover

This is certainly an area which needs reform.

In particular, it is unreasonable and objectively unjustifiable that the 6 year run off requirement is absolute and takes no account of the claims experience of the closing firm.

A serious (and much broader) problem among some smaller and sole practitioner firms, staffed by practitioners towards the end of their careers, is that they may no longer be "fit for purpose" in a world where legal practice and regulation has become so much more complicated and specialised than it will have been when those towards the end of their careers were trained. Arguably such firms should, in the public interest, be encouraged to close (or be taken over). As the condoc mentions, one of the disincentives is the need to take out expensive run off cover.

In this connection, it would be interesting to know whether there is any data on such firms creating a vicious circle, in that it may be precisely these sorts of firm which tend to generate claims, pushing up for the profession as a whole the cost of PII cover and contributions to the Compensation Fund.

I understand that one of the reasons why run off premiums are so high is that a significant number of firms fail to pay them, in whole or in part. This is shocking and may suggest some degree of regulatory failure.

Disclosure

I have not had time to find out whether the condoc addresses the inevitable disclosure issues arising out of the proposed reduction in minimum cover.

There is of course a consumer interest in ensuring that potential clients are able to assess the varying risk profiles of different firms and to know whether a firm has decided to have the minimum cover or an increased level of cover (albeit without minimum terms).

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Protecting the users of legal services: balancing cost and access to legal

Response ID:67 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The level of cover proposed is insufficient for some claims. Even as a sole practitioner we will need to take out top up cover which will add to our costs base. The SRA previously said that £580,000 would cover 98% of claims but now says £500,000 would cover this. Which is correct? In any event 98% of claims is not 100%. The SRA did not survey insurance companies that have failed and they are the most likely to have had large claims which means the figures used are flawed.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: We will have to have additional cover for institutions which will no doubt cost more. For conveyancers, claims from institutions are quite likely and cover will be essential. In all likelihood this will lead to more sole practitioners being excluded from panels and being put out of business, leading to less competition not more.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

The exclusion is fatally flawed, whatever the definition

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: The risk profile of conveyancing firms is already factored into premium calculations by insurers.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

The proposal is fatally flawed, whatever the definition.

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

21. Please explain what these are and provide any evidence to support you view

The rules already make retirement very difficult. Reducing run-off cover will just add to the difficulties. We need to move to a system of cover for the year in which the claim arises to make retirements easier, at least in the longer term.

22. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: The proposals will lead to increased costs, the risk of institutions refusing to put sole practitioners on even fewer panels, and increased difficulties for retirements. We cannot see how reducing MTC helps clients, rather it disadvantages them. Given the Legal Aid situation, it is impossible to see how areas of criminal and immigration work would be attractive to ABSs, even if premiums were 5-10% lower.

23. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: We will just need to buy more expensive top up cover.

24. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: In retirement, we need run off cover that covers 100% of claims not 98%(and even that figure is flawed for reasons stated above). We will just need to buy expensive top up cover.

5. Questions continued

25. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Most unlikely that new firms will be set up to do crime, immigration and other low risk areas of work, given the Legal Aid situation.

26. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

27. Please explain what you think these impacts are

These proposals will disproportionately impact on small firms, thus reducing yet further opportunities in the profession. See the Final Report October 2017 Mapping Advantages and Disadvantages in the Legal Profession prepared for the SRA. Quote from the executive summary:

" Although the legal profession has become more broadly representative of the population over the last twenty years, with more women and minority ethnic groups entering it, the profession remains heavily stratified by class, gender and ethnicity. Large city law firms undertaking the highest paying legal work are dominated by white men, who are likely to have attended fee-paying schools and have a family background of attending university. Women are less likely to work in senior roles in

large city law firms and other high-income areas of the profession and minority ethnic women face a double disadvantage."

28. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

29. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: Excluding 5% of the population will simply dilute the solicitors brand and undermine the reputation of the profession.

30. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

31. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: see above response.

6. Questions continued

32. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

33. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

the proposal is flawed per se.

34. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

35. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

36. Please explain why.

the proposal is flawed per se.

37. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

38. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before

committing money to it and that it is genuine?

39. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

40. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

41. Please explain what you think these impacts are

The proposals will disproportionately impact upon small firms by diluting the solicitors brand and undermining the reputation of the profession. See the report identified at question 11 for the diversity profile of the profession.

42. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

The SRA could support affected firms rather than threatening disciplinary sanctions. All businesses can fall prey to cybercrime, even the NHS. The reality is that none of us can protect 100% against cybercrime no matter how hard we try. Certainly our Government cannot!

Protecting the users of legal services: balancing cost and access to legal

Response ID:89 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Please explain your answer
:

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: It adds an extra complication particularly as it says the solicitor would still need to buy separate insurance for that specific client which sounds a very complicated thing to do even if trhose bodies currently are excluded from the compensaton fund anyway.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

See above. Leave matters as they are and do not change things.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Neither disagree or agree
Please explain your answer
: I am not sure it would have much effect. I don't do conveyancing and presume my premium is already lower as a result.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

See above. I propose we leave the rules as they are and not have this change.

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

21. Please explain what these are and provide any evidence to support you view

They always seem a bit complicated and go on far too long.

22. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: The minimum insurance terms and conditions are wis requirements to keep. I have no particular comments on this issue.

23. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

:

24. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

25. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

:

26. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

27. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Perhaps make a much bigger difference between those who handle clients' money and those who do not. I do not and have not had any kind of claim or complaint in 20 years yet still have much higher insurance costs probably 20x higher than people who practise much as I do but instead as legal consultants. It is a very unfair system.

28. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: I don't agree we should cap it at only protecting those with under £250k of assets. The idea is that you do not lose out from your solicitor. Not that if you have not worked hard and have no assets only then are you protected.

29. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

30. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: The concept is that if your solicitor runs off with your money then the profession pays out. The fact you should have no protection just because you are successful is utterly unfair.

6. Questions continued

31. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

32. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

I don't agree with it at all.

33. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

34. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

35. Please explain why.

Keep things as they are.

36. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Very broad questionand hard to answer - eg are they being asked to pay into a work communal investment scheme to buy christmas presents or putting £1m into some obviously risky off shore scheme recommended by someone at their golf club with a dodgy past.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

: Rough unclear principles tend to be hard to construe fairly. Instead short crystal clear strict rules are better.

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do

not think we have identified?

No

Please explain what you think these impacts are

40. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Obviously the current suggestion firms that hold clients' money (I don't) hand over bank details in person etc etc is wise. Having good security, updating software and anti virus software, checking new staff in case someone is planted, doing more things off line (I hold paper records and files and they are hard to hack).

Protecting the users of legal services: balancing cost and access to legal

Response ID:98 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: Most firms undertake conveyancing, this is only going to benefit small sole practitioners.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: A claim can be brought forward in 2019 for work undertaken in 2014. Therefore, how are we to insure work undertaken for those organizations - Insurers are proposing to make us buy back cover. This is going to increase the cost of insurance for firms, therefore costs for legal work is likely to increase for the consumer.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: You are making the PII process more complex - this is going to result in longer PII forms and information required for the renewal thus costing the firm more money in time spent on administration.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the

MTCs?

:

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Only small sole practitioner will benefit. This is going to potentially cost firms more money to buy back cover for financial institutions and commercial organisations. It may potentially stop lenders from using small firms as they know they are going to need more cover and may just remove them all and give all work to the magic circle firms. It will be too much administration for lenders to ask all firms for their level of cover to ensure it covers what they require.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The cap is not high enough for run off cover. The value of claims is getting higher, the data SRA provided is based on 2012/14 data.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Based on insurance figures I have been provided and the data they collect - there may be a saving of approx £300 per annum on PI premium for new firms. This is not a significant amount to encourage more firms to enter the market.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

I believe they should stay as they are

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we

should consider further?

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

:

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

:

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:112 Data

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Please explain your answer
: The basis for the appropriate minimum level of cover appears sound. However, as far as affecting the premium amounts we feel this is debateable. The initial cover is where the expense lies not in the 'top up'. Excluding conveyancing may alter this but the amount of saving would not, in our opinion, be sufficient to effect any change in charges to the Clients.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree
Please explain your answer
: As indicated in the consultation paper, the financial institutions and other large business clients are in a position to assure themselves. Insurers and the institutions/businesses could deal with this independently. It may be worth considering, where the less common claims over £500,000 have occurred, are they generally related to financial institutions and bigger business? A complete exclusion of these bigger business clients may enable premiums for those firms who do not deal with these sorts of entities to be reduced more significantly. Larger savings for firms may be more likely to be filtered down to consumers, although as mentioned above at ques 1. the savings to firms would have to be significant to enable this to be passed on to clients.

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

13. Please provide an alternative way of drafting the exclusion definition.

Basically we agree with the exclusion definition, although wonder whether the figure suggested of £2,000,000 turn over is a little low. This would potentially force many medium size businesses to make their own arrangements for insuring. Financial institutions and bigger businesses we anticipate would have far more significant turnover figures. Would it be more appropriate to not only include turnover above a certain amount, but also include other factors such as number of employees and/or branches, for example?

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree
Please explain your answer
: Generally agree, as this has been demonstrated to be the area with the majority of claims. However this is also an area that many smaller firms and sole practitioners practice so would have little effect addressing the issues for access to the market. Throughout the paper you wish for the sole practitioners and smaller firms which are known to have a higher incidence of BAME, to be enabled entry to the market. The suggestion that conveyancing practices are removed from the calculation would appear to only address the BAME issue (as you allege BAME practitioners are more likely to deal in niche areas not including conveyancing), and not the issue of cost for all sole practitioners and small firms. As with our previous responses, even if this proposal were adopted would the savings be significant enough to address the issue of access to market and also enable clients to see a benefit?

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

16. Please explain what you think should be an alternative definition.

I believe further investigation is required into precisely the specific areas of conveyancing where the claims arise. Many firms may not undertake conveyancing work but their family or wills departments may prepare Deeds of Trust or transfer documents in divorce or will situations. Would they be required to have the full conveyancing top up? Would it be right for those firms who do not have a conveyancing department but who carry out those specific tasks to then have to purchase a full conveyancing 'top up'?

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Ensuring cover is available for the consumer should be of paramount importance. Clarity in the provisions for MTC and PIA would appear to be the most sensible way of easily establishing which insurer could be liable for any claim that arises in a period prior to the succession firm taking over. If run off insurance was required would this not create further situations where sole practitioners or smaller firms being unable to close and the SRA having to intervene, which appears to be a large consideration for the proposals being put forward in this paper? Bearing in mind the cost for independent QC's to be involved is this necessary and would insurers be willing to cover this sort of cost to establish which insurer is liable for a claim. We can see a potential issue arising where there are multiple successors and feel there needs to be clarity of the procedure in this situation to ensure matters are dealt with expediently for the claimant. The cover information should be made readily available to the previous clients and confirmation of who they should contact in the event of a potential claim following a successor firm taking over (or closure). Due diligence on the part of the successor firm needs to be stringent however we appreciate historic issues may be difficult to identify. We have no doubt that whatever arrangement is entered into with the insurers, there will be problems with historic claims. It seems that generally insurers will always try to reduce their liability for their company as far as possible. If PII is monitored sufficiently to ensure the correct level of cover is in place through the life of a firm, then the situation should not arise. Claims during the life of the firm that is closing should be covered by the insurer they had in place at the time. Once succession has occurred then the live files are taken over and suitable cover is obtained by the successor firm for those files. We see the reason for indicating the SRA involvement in the PIA's rather than MTC's but from a claimant point of view this needs to be clear who they should go to in the event insurance is lacking irrelevant of the reason.

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

: We can see that the proposed PII requirements could potentially lower insurance costs for firms. However, the level of reduction we feel, would not enable premiums to be reduced by a sufficient amount that client's would see the benefit. The issue of increasing cybercrime may well cancel any benefit initially felt however. In addition the definition of 'conveyancing' may encompass far more firms than anticipated who would be expected to acquire the 'top up' cover. The proposed savings in all aspects suggested including defence costs and the reduction of minimum levels of cover, we would suggest, will not be evident to any great degree and in addition would be nowhere near the levels required to enable and encourage more entry

to the market or enable any savings to be passed to clients. In addition, we can't see how removing defence costs would assist smaller firms. If the firms are expected to foot the bill more information is required on the likely costs of such a move. Would insurers allow firms to negotiate settlements and then agree to pay on behalf of the firm if they were not responsible for defence costs. More information may be required on the two sides as to costs of settlement and proceedings and obtaining confirmation from the insurers that they would not encourage proceedings to be commenced, to enable them to potentially reduce their costs at the expense of the claimant? A commercial view needs to be taken that ensures that potential claimants are protected and to maintain the standing of the profession.

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: From the statistics provided in the report it would appear that this is one of the factors preventing solicitors leaving the profession which, if the reduction in run-off payments could enable leavers may be a sensible option. However, in the event a claim were made with the additional proposal for capping eligibility to make a claim against the Compensation Fund, it is difficult to demonstrate that there would be sufficient cover in place without further more analytical statistics being available.

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: If reductions in premiums are a direct consequence of the proposed PII changes this may enable start up firms to enter the market. However, we suspect this will not create an influx of prospective firms as we believe a large number of start ups would be wishing to offer conveyancing services and thus have to take out the 'top up' insurance, which will increase their premiums, with little or no saving compared to current levels. More niche firms such as those specialising in immigration issues may be financially enabled to enter the market place (provided the premium reductions were more significant than indicated in your report), although how this assists the consumer when the availability of public funding has been so greatly reduced, we are unsure. Many of the niche areas are poorly remunerated in any event so as mentioned previously, unless there was a significant decrease in the premiums for these types of firms we can't see the benefit would encourage new entries to the market. Unless consumers can access the services how can a start up niche immigration firm create a sensible business plan to even get going. On the figures put forward in the report we can not see that there is a potential benefit that will be seen by prospective clients, who in the niche areas are often the more vulnerable in society. Unless savings were significant we also cannot see how any reduction in premiums could encourage innovation and/or competition.

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

23. Please explain what you think these impacts are

We note the incidence of the more niche type firms who do not conduct conveyancing apparently having a higher proportion of BAME individuals involved. We do not believe that any benefit to the firms and in turn the BAME numbers, from the potentially reduced premiums will be anywhere near sufficient to enable these reductions to be passed to prospective consumers, particularly those vulnerable clients who need it the most. Insurers attitudes historically within their industry, for example when dealing with personal injury claims, does not fill us with confidence that savings will be of a level that could filter down. The increase in data breach type claims will be another factor which we believe, in the insurers mind would enable them to argue there should be no significant reduction in premiums.

If the Compensation Fund criteria for access is to be capped this could further reduce the cover available to consumers.
We have no issue with a review of the levels of cover but believe it is short sighted to suggest the client's may gain a benefit from this overhaul.

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

There should be more targeted discussions with the main PII insurers to obtain indications of the likely savings on the minimum policy levels proposed. It will then provide more accurate evidence of the savings that may be possible and therefore how this may have an impact on potential costs or savings for consumers. How does the SRA currently ensure firms have appropriate levels of cover and how could this be improved in the future, ensuring protection for those clients needing recourse?
With the separation of conveyancing from the other areas, would this not encourage more panel firms to exist? Is this necessarily in the client's/consumers best interests? The statistics do not appear to indicate whether claims in the area of conveyancing have increased with the increase in the number of licensed conveyancers. Has a marked increase been demonstrated and if so is there a better way to insure, depending on the level and number of conveyancers, both licenced and solicitors, practicing in the firm?
It seems that a major reason for an overhaul of the current PII arrangements is to prevent the requirement for intervention by the SRA rather than allowing competition or savings for consumers. Is this the correct way to address the issue? On the basis of the research obtained in relation to the value of the majority of claims, it does appear to support a reduction in the level of PII cover required although it should be clear that one of the main reasons is to reduce the intervention requirements of the SRA and not sold as reducing costs for consumers.

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree
Please explain your answer
: The use of the Compensation Fund to protect the vulnerable should be paramount. Preventing larger businesses, experts and barristers from utilising the fund appears appropriate. The issue of charities may be more troublesome. In the current climate charities are being considerably squeezed. Historically they have covered their backs and maybe an inability to access the fund may make them investigate who they use more thoroughly and possibly be more sensible in taking any action. This does not assist smaller niche firms, including those with more BAME professionals from entering the market place as the bigger niche firms may appear to carry more clout, causing charities to stick to those firms, similar to the conveyancing panel situations mentioned above at Qu 12. The use of the fund to deal with poor investment schemes for the more wealthy does not appear to be correct. However, it is important to get the balance right, particularly in a situation where the firm was underinsured or did not have correct insurance in place. Surely the point of the regulation is to ensure standards are maintained and protect those who use the service. It enables the regulated services to be promoted due in part, to the fact that there is recourse for individuals, in the event things go wrong through no fault of their own. Regulated firms can also utilise the fact of their regulation, in order to promote themselves and reassure consumers that there is something that can be done in the event things go wrong, whilst using a regulated firm. In an age where there appear to be more unregulated practitioners being introduced to the market place it seems even more important to be able to make a distinction between those firms that have robust regulation and those where the client would have no or little recourse.

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

As mentioned above a more comprehensive cap that takes account of more criteria such as whether your asset is your residential home or a second home, or investments etc. would seem more appropriate.
Maybe the fund should be treated as a fund of last resort. If the individual has an alternative claim that could be made, this should be encouraged in the first instance, before the fund considers any claim. A straight forward questionnaire and means test to filter out those claims that will not be successful at the outset is important. Directing potential claimant to other routes for

recourse that could be explored also need to factor into this initial questionnaire. If a prospective claimant gets past this first hurdle, fuller details can then be taken.

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly agree

Please explain your answer

: As indicated in the answer at Qu13, we believe the fund should be there to ensure that individuals are protected in the event they are wronged through no fault of their own. The use of the fund for higher risk investment or tax evasion schemes seems to be wholly inappropriate. We do however have some concern on what would be classed as a wealthy household.

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

29. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

Individuals should not be penalised for having equity in their own private residence, who on the basis of the current suggestion of £250,000 capital could be prevented from accessing the fund. A cap would appear to be a sensible route to prevent inappropriate access to the fund but significant thought needs to be put into how the access is enabled for those who may be asset rich as they own their own private residence, but are cash poor. There are also national differences that may need to be taken into account, particularly when considering the cost of housing in differing parts of the country. An alternative would be to remove the primary residential property from the equation altogether. It would then be possible to set the threshold far lower than £250,000, maybe £25,000 if this does not include personal chattels.

30. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

31. Please set out your suggestions and reasons for the change

With an increase in the number of unregulated practices allowed, employing solicitors, is it foreseeable that there will or may be more potential claims? Should there be more consideration of protection for those consumers utilising unregulated firms when they see a solicitor? It does not seem correct that the regulated sector covers for those operating in the unregulated sector, but we feel there should be some protection for consumers otherwise there is the potential for the name 'solicitor' to be dragged into disrepute. Maybe an obligation on those companies employing practicing solicitors who are unregulated to confirm in simple language that they are not regulated and what course of action may be open to them in the event issues arise. Consumers and clients already struggle to understand the differences and what specific protections are in place to protect them in certain situations. A definite distinction needs to be made and confirmed clearly to all consumers/clients.

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

33. Please explain why.

We feel that as indicated in the report, conveyancing would appear to have the most issues with regard to claims made, hence separating it from the basic insurance levels. However we would anticipate that many conveyancing transactions would involve couples as a 'single' transaction. It seems unfair that couples are penalised, particularly if the transaction relates to a main residence (although if the cap on claims and the net value of an individual was set at £250,000, this may well have prevented the conveyancing scenario in any event!). For the purposes of demonstrating the imbalance however, it is more likely that both individuals will have contributed, but due to the fact they are purchasing together they are penalised. What if this were a couple splitting up and the home was being sold to enable them to separate and meet their housing needs? This could prevent them being able to home themselves and any children of the relationship adequately when this wouldn't have

been an issue. Whereas, a business transaction where three individuals have separate retainers selling shares in a company appear to be treated more favourably. We appreciate that they each receive a smaller value than their individual claims, but this does not hide the fact that business type transactions seem to far better than individuals. The same can be demonstrated with the scenario dealing with beneficiaries.
Similar criteria to those used to assess wealthy households may be a better way of dealing with the issue but on the basis of individuals and not single transactions. More factors need to be taken into consideration, such as whether the claim relates to a private residence for example. There should also be a distinction made between personal and 'business' type transactions such as the 'investment' scenarios, sales of shares and the like.

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

35. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

For such schemes it should be made clear that this is at the 'buyer's' risk. There should be an obligation on firms, when dealing with these sorts of schemes, to provide written information on what steps and research the client should take before proceeding with a transaction. This could be by providing the warning leaflets produced by Action Fraud and the FCA. Further information confirming the lack of recourse from the Compensation Fund in the event something goes wrong should also be flagged to clients. Maybe an award type system could be launched where firms have shown a commitment that they do not knowingly have involvement in these sorts of schemes and are able to promote this to prospective clients?
Heavier penalties should be in place to deal with solicitors and firms involved in these schemes. Investigations should be completed expediently and then a robust approach taken in dealing with these individuals and firms should be taken where it is found they are breaching SRA principles.

36. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Information about the Compensation Fund needs to be readily available to consumers/clients. The fact that the principles indicate no investment schemes pay outs will be considered under the fund, should be highlighted to those clients wishing to enter into a retainer with a firm to deal with these sorts of transaction. Proof that the information has been provided to the Client should be kept on file.

37. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

It is difficult to make suggestions for prevention in such a rapidly changing area. As firms get wise to certain types of attack, more sophisticated schemes are created. As the report suggests the incidence of these sorts of attack have reduced in number, which is mainly due to staff being more aware of the issue.
Compulsory training should be introduced in firms to run alongside the usual fire safety, health and safety and money laundering training that should already be taking place. This way all staff are aware of the issues, are updated regularly and

are in a better position to identify potential problems, they may come into contact with.
Continued reporting of incidents to obtain a wider picture of the situation, is sensible and the information gathered could be used to flag to other firms, developments in the cyber attack techniques, how firms spot the attacks and then deal with them. The more information there is available to firms on how to identify issues before they arise and the sorts of processes that they should have in place to prevent such attacks happening is essential in an area that is only going to develop more devious methods of attack, to achieve their goals.

Protecting the users of legal services: balancing cost and access to legal

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3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Neither disagree or agree
Please explain your answer
: We think that this will only cause confusion as at the moment you know what a law firm cover is depending on its structure so a client will only no the minimum once it has terms of business and if it is covered.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree
Please explain your answer
: This only means you will still have to have the same cover if you have such clients as otherwise you will lose any such client.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

What happens if one year they exceed £2 million after they become your clients and you will always have to check the clients' accounts which could become a minefield if they delay lodging them or do not have to disclose them. Seems an unnecessary risk

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Please explain your answer
: We note conveyancing makes up half of the claims, but this seems disproportionate as surely it should depend on what volume you do. The SRA or certainly the insurers must have statistics of which firms are giving rise to claims as it is accepted that volume conveyancing firms who employ less qualified personnel receive more claims. The intention seems to be good, but the proposal applying one policy fits all. We have a no claims history despite doing conveyancing and get penalised because others do not do their job properly.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

Why could the definition not have been linked to the Land Registry definitions as just another area to review and may cause conflict

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

21. Please explain what these are and provide any evidence to support you view

One hurdle is that the renewal forms make it clear you cannot enter into any discussions about closure of your firm. Good planning who require one to do this so that you can plan and put aside relevant funds to deal with run-off cover, but the renewal form makes it clear that you have to disclose this even if you are just planning for retirement in the event you could not merge.

22. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: It would make more sense have one application form to give firms a greater opportunity to shop around as every form is different which is unlike other insurances

23. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: We would be very surprised if the insurers reduced their costs at all as if the SRA know that the first £500,000 is the most common claim value then the insurers will note this and merely explain the same costs due to this being the most common claim zone.

24. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The proposal is great having a cap so you can secure cover. However again one rule fits all. The run off should be up to a maximum and those firms with high claims history should bear more. From what we read and hear those firms that constantly have claims are more likely to do in the run-off as well. We have a no claims history and we would be penalised by merely having undertaken conveyancing in our firm.

5. Questions continued

25. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: Suspect it will not change anyone's intentions

26. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

27. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Only those highlighted in our responses

28. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Please explain your answer

: The Compensation Fund as the SRA states is for hardship and the proposed new level of cover gives this message.

29. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Careful how the contributions are applied as the SRA will know which areas trigger claims to the Compensation Fund and every firm should not be treated the same.

30. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer

: If the limit is £500,000 and they have been wronged then surely their case should be considered as just because you are in a household you may not have the wealth or have lost your wealth. As wealth has many meanings.

6. Questions continued

31. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

32. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

We agree in part to the defintiion, but you could exclude wealth where it is insured as well as one individual may have cover through a business but meet the definition of not being wealthy as surely the Compensation Fund is there for those who have no other recourse

33. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

34. Please set out your suggestions and reasons for the change

See number 16)

35. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

36. Please explain why.

Yes in principle although scrutiny of each claimant must be undertaken as after all it is the Compensation Fund not a benefit and should only be paid where the solicitor has been found liable not merely a suggestion

37. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

38. Please explain you answer and any suggestions you have for alternative approaches

It appears to penalise those firms that have procedures in place and the smaller firms or even sole practitioners who seem to bear a higher share of the payment to the Fund where they have in place procedures to avoid holding client monies any longer than need be. How people operate and who accesses their client accounts should be looked at in greater detail during the renewal process.

7. Questions continued

39. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

You would need to provide what a reasonable person would do save where you are vulnerable (for example elderly) where other circumstances would need to be looked at such as family support as a lonely elderly person will behave differently to a well supported one. Any reasonable person would research, talk to others, look at reviews and take advice from an independent person. Anyone putting monies in that are a lot of money to them (for example if you earn £14,000 and have saved £15,000 this is a lot to that person so you would be careful and proceed carefully) or a reasonable person.
Someone cannot rely on the Compensation Fund as a backup to not doing their own checks when the internet is available to all (it can be accessed in the library too) as is the Citizens Advice Bureau and other charities.

40. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: The Fund is to some extent shrouded in mystery even to those who contribute to it.

41. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

42. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

The insurers have to some extent washed their hands as to cover for this without a separate policy which is wrong and the fact you cannot rely on a Find A Solicitor (in conjunction with other checks) means this has given the criminals a chance to reap their rewards even on those who innocently become the subject of such an attack. Thankfully as a sole practitioner we can be alert to such attacks and have put in policies to double check details and so on and warn clients of criminals do such attacks. What would be good is to make the public more aware of just what criminals are trying to do such as those the bank has done.

Protecting the users of legal services: balancing cost and access to legal

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3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Somewhat disagree
Please explain your answer
: not enough to cover many transactions

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: they are clients and should be covered - why otherwise would they instruct us?

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree
Please explain your answer
:

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

It is a discouragement to older or failing practitioners to close down. When closing down, practitioners should be at liberty to choose their own level of cover for run off.

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Do not know what those abbreviations mean

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Somewhat disagree

Please explain your answer

: Better to continue as we are. they are understood by the public, and work for practitioners.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Yes - see previous answers. practitioner needs to have flexibility to choose cover amount.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: Would not make any difference. The view that it would is based on a theoretical academic view which is not based on the reality.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Just in relation to run-off cover. The practitioner should have flexibility to choose the amount and period of cover. See my comments above.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Please explain your answer

:

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer

: All of us have contributed to the Fund during our careers, so should benefit in the unlikely event of having a claim.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

No

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

It is for the client to investigate and supply instructions. The practitioner should easily realise the transaction is bad from the structure which is revealed by the instructions. Statutory liability on practitioners for transactions which are logical and not apparently fraudulent is wrong.

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Good idea.

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

No

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Response ID:159 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: For even small law firms the current minimum levels may require top up. Small law firms, especially sole practitioners, will almost certainly not buy top up cover and in the event that cover is insufficient there is a good chance they will not have the personal resources to make up any shortfall.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Neither disagree or agree
Please explain your answer
:

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree
Please explain your answer
: It is my understanding based on current insurer proposal forms that no-one has conveyancing cover priced into their premiums if they do not do conveyancing - you only buy cover for the areas of work declared.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the

MTCs?

:

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Somewhat agree

Please explain your answer

:

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat agree

Please explain your answer

: It might encourage new entrants but given that most problems causing loss for consumers occur at the small practice end of the market I cannot see that making changes allowing new small firms to start with less cover makes sense for the consumer.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: The reputation of the profession depends on everyone being able to use solicitors with confidence. This is like saying "it is OK to rob rich people". Also with house prices as they are the suggestion that anyone with £250k of assets is "weathy" is ridiculous,

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

See response above. If someone has assets of £250k and a solicitor defrauds them of a mortgage advance of £500k would they really get nothing?

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

33. Please explain why.

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

35. Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

: By definition of a client has to consider whether they would be eligible for compensation from the Fund if they instruct a particular solicitor, they would already have to mistrust the solicitor. The whole point is that consumers should be entitled to trust solicitors and take them at face value.

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

39. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

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Response ID:166 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The SRA failed to introduce changes a very few years ago and now, again, it is seeking to make changes that simply are not necessary. The existing system works fine, it is does not need fixing as it is not broken

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: All clients, regardless of their value, need the cover we provide at present; there should be no distinction

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: By doing so, you will create opportunities for insurers to wriggle out of claims; something that is not an issue now because all activities are covered and the only questions that need to be answered are, "have I been negligent and, if so, has my client suffered loss"

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

Given the reply to the previous question, I do not believe this needs to be answered by me

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

Please explain what these are and provide any evidence to support you view

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: You have not made out any case to suggest this would be the result; the Insurers do not agree that that will be the case and the SRA is as far removed from the market-place as any top-heavy bureaucracy could be

23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Is there not enough choice already? New firms/individuals choose to enter the market as new suppliers for a multitude of reasons, PII requirements are just a small piece in a very large jig-saw puzzle

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

See my very first comment; I'm really not sure why you are so concerned with this particular topic - there are far more-significant topics to get involved with that would make our practising-lives a lot easier

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: I totally agree with the Law Society's response to this particular point - it will create anomalies that are patently unfair

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

31. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

see above

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

Given that the whole subject is shrouded in mystery by the SRA, it is simply not possible to make educated comments on the system; perhaps there should be more openness on the part of the SRA as to the workings of and data from the Fund

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

:

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

39. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:167 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Please explain your answer
: The current system is disproportionately against small firms. The consultation is correct to propose a more reasonable approach especially where there is small or little risk.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree
Please explain your answer
: However, some cover is always advisable and reasonable safety net

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Please provide an alternative way of drafting the exclusion definition.

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree
Please explain your answer
: As this is high risk area the cover should reflect the high level of risk

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

Please explain what you think should be an alternative definition.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

The PII minimum run off cover should be reduced (and maybe proportionately, year by year etc)

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

: It is good thinking and to be honest should have been done long time ago because they have low risk and low claims against them.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Yes, and could be reduced further year by year .... in the later years, the changes of claim reduce

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree

Please explain your answer

: We had difficulties initially trying to get cover

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

25. Please explain what you think these impacts are

it will allow new firms to setup; benefit existing small firms and improve competition

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Not sure

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly agree

Please explain your answer

: They would already have insurance and other cover. It also depends on the definitions of wealthy ... some people just above the borderline or under it maybe at a disadvantage.

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

there should be a robust approach

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: it would promote transparency

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:196 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Please explain your answer
:

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree
Please explain your answer
:

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: Removing the requirement for PII will mean the least scrupulous and least secure firms no longer will purchase it. They will not pass on the savings to clients. Businesses do not think like this. If there is a saving then it is extra profit. It is never passed back to the client. When/if this comes in ,it will prop up failing law firms, undermine trust in the legal system and cause hundreds of clients to suffer uninsured losses. Clients assume solicitors are insured. No press campaign will ever change this, clients will be stung. It will be a double whammy. The law firms who go on to use this to end their PII are the ones who play fast and loose and receive claims. They are, by and large, the ones who service vulnerably clients and who make mistakes. The fall out from the proposed change will be very significant.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

:

23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: If new firms want to enter the market then they just set up an an advisory business and don't trade as solicitors. All that will happen is, with these proposals. The main difference between a regulated law firm and an unregulated legal business is the availability of insurance on the minimum terms. Clients choose solicitors because they want an insured product. Removing that comfort will not be well understood and clients will suffer.

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

:

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: the weathly deserve as much cover as the poor. The advice they receive must be right and there should be consequences if not.

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

31. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

36. Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

: Consumers will have no interest in this. They assume and will continue to assume that if there is an error they will be covered.

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

40. Please explain what you think these impacts are

It wont work, as set out in the Law Society' s response, which we endoose.

41. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Warning notices
Inspections/monitoring
Requiring an anti cyber crime policy and process to be filed before seeking authorisation. This should then be monitored just as AML is.

Protecting the users of legal services: balancing cost and access to legal

Response ID:208 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Somewhat agree
Please explain your answer
:

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree
Please explain your answer
:

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree
Please explain your answer
:

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

:

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

:

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer

:

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:221 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The cover will be insufficient and will require us to incur substantial additional costs in obtaining top up cover.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: Our main liability is to these institutions.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

See above

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: It will introduce extra cost.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

21. Please explain what these are and provide any evidence to support you view

Simplify it to allow people to allow people to retire more easily.

22. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

23. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: See replies above.

24. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

25. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

:

26. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

27. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Run off cover should be included in your existing premium.

We should require licensed convenyancers to carry the same insurance as solicitors.

28. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The current situation is fair.

29. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No.

30. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

:

6. Questions continued

31. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

35. Please explain you answer and any suggestions you have for alternative approaches

See answer above

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

We think its the investors responsibility, not the solicitors unless that is the specific instruction.

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

39. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of

cybercrime attacks?

Make sellers solicitors responsible for checking their clients identity, not pass the risk on to the buyers solicitors.

Accept that the solicitors are not responsible for the acts of their fraudulent clients provided that they make reasonable enquiries.

Protecting the users of legal services: balancing cost and access to legal

Response ID:268 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: There is a need to maintain minimum cover at current levels. Many firms, including ourselves purchase additional cover. There will be no true savings. Discussions with insurers suggest market will not pass on savings to consumers.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: Definition of financial institutions is not realistic in terms of size / capacity

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

N/A

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree
Please explain your answer
: Market should address all aspects of legal profess and not seek to "hive off"

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Market is unlikely to respond and pass on savings

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Believe premia will stay at the same levels

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: N / A

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Market will not respond to changes - number of stable insurers participating is already small - not likely to introduce new companies into this field, other than already damaging experience of "fly by night" companies who have come into the market and then exited.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

: N / A

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Simply discriminatory. Suprised that it has been mooted.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

N / A

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

N / A

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of

cybercrime attacks?

No

Protecting the users of legal services: balancing cost and access to legal

Response ID:273 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: I shall have to find higher levels of top-up cover and shall have to negotiate minimum terms cover for top-up policies

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: Financial institutions rely on solicitors having minimum terms cover

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

N/A

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: Conveyancing risk is already built into premiums

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

N/A

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Insurers say that premiums will not reduce. If there is a marginal reduction it will be cancelled by the increase in premiums for increased top-up cover. More time, effort and anxiety will be expended on negotiating top-up cover.

23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: As above

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Please take note of responses from solicitors and insurers

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: This would drive wealthy clients away from sole practitioners

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

31. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

35. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

36. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

:

37. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

continue to send firms news bulletins, tips and guidance.

Protecting the users of legal services: balancing cost and access to legal

Response ID:281 Data

3. Consultation questions

9.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The suggested LOI of £500,000 is inadequate in the modern litigious environment, aside from a very small minority of firms. Even those firms that are providing low risk services could be exposed should there be a multitiude of claims arising from orginating cause, leading to an aggregation of the limit, in excess of the proposed amount. The LOI of £1,000,000 for conveyancing, again is insufficient, given the level of house prices, especially in London and the Home Counties. Commercial property would also typically be in excess of this value. Excluding cover for all comercial clients with a turnover of more than £2m, would also restrict cover for the vast majority of regulated firms. The aggregation of run-off cover is a mis-guided proposition, as this would have the potential of leaving a retired member uninsured, should the Limit of Indemnity be eroded early on in the run-off period.

10. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree
Please explain your answer
: Whilst it is understood that the purpose of the minimum terms is to protect the consumer, and as an Insurer, a restriction of this type would be beneficial, the definition of a large business client is very much at odds with other well-established measures of large business. One only has to look at EU definition of a 'micro-enterprise', which is a firm with fewer than 10 employees and a turnover of €2m or less to see that your suggestion of what is deemed large in the context of this consultation, would exclude commercial clients for the vast majority of the profession.

11.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

12. Please provide an alternative way of drafting the exclusion definition.

If this is a route that the SRA intends to propose, it needs to understand better what truly constitutes a large business.

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree
Please explain your answer
: This works for PI Insurers as this creates certainty as to what exposures they have, without having to rely on the disclosure of the member firm. Issues will arise though from those firms who are successor to another firm, who in turn could have successor to another firm, whereby it is not necessarily known that have exposure to conveyancing, but could find themselves without cover, as they have not elected to have this area of work covered, and therefore uninsured.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

15. Please explain what you think should be an alternative definition.

Having taken counsel on this, it is thought that definition is too broad.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

17. Please explain what these are and provide any evidence to support you view

I would refer you to the response of DAC Beachcroft, which provides a fair and balanced response to this question.

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Have not had the opportunity (seen) the draft MTCs and PIA in order to provide an appropriate response.

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: If one accepts the analysis of claims data, which lacks credibility given its age, and is missing claims data from 'failed' insurers, and would appear not to have been trended (application of claims inflation to earlier years to bring them to current level) or developed (taking current incurred claims through to ultimate, using acturial modelling, based upon experience of the class of business), reducing the limit of indemnity will not lead to reduced premiums to the extent suggested. If 98% of all claims sit within £500,000, rates and therefore premiums will be modelled accordingly with the large proportion of premium sitting at this level. This is not new practice, as a reaction to this proposal, but recognised underwriting practice, utilising increased limit factors appropriate for the class of business and profession. The suggested reduction in limit in minimum terms, could in fact have the inverse impact, seeing a rise in PII costs, as top up insurers will begin to charge more, as they are being expected to attach lower down, and for reasons already given, the vast majority of the profession will most likely have to arrange limits in excess of the proposed minimum terms.

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Reducing the limit and period, whilst aggregating the limit at the same time, could leave a retired member exposed to uninsured losses, in the event the limit is eroded, failing both to protect the user of legal services and the retired member. The SRA should be educating their members on setting aside a proportion of earnings to cater for the run-off premium, whilst they are still practicing.

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer
: I'm not sure this will have any impact.

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Allowing insurers to cancel a policy for non-payment of premium would be a start. In addition, allowing insurers and policyholders alike to have the same protections as afforded by the Insurance Act 2015 could have an impact on premiums.

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree
Please explain your answer
: Have not given this any consideration

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree
Please explain your answer
:

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

30. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

31. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

32. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer :

33. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

34. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:284 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: By reducing the minimum level of cover and, at the same time, reducing the maximum payment from the Compensation Fund, you are leaving the public more exposed to any issues arising from poor practice by firms of solicitors.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree
Please explain your answer
: If it means better focus on more vulnerable legal users (I am not convinced that it does) then I am for it. However, there are gaps in the Compensation Fund coverage and those gaps will only become wider with the changes you propose.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Neither disagree or agree
Please explain your answer
: No opinion on this

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

18. Please explain what you think should be an alternative definition.

No opinion upon this

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

20. Please explain what these are and provide any evidence to support you view

There is an issue about what happens if an insurer becomes insolvent. Firms that had a turnover of greater than £1,000,000 (See FSCS Rules) are not covered by the Financial Services Compensation Scheme. It is not clear whether or not, indeed the SRA's position would seem to be that it does not, the Compensation Fund Will step in and cover claims made by vulnerable clients. I think that it is wrong and is a gap that needs plugging.

21. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: I have no opinion on this.

22. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

: Very much depends upon how the PI insurers react to the changes.

23. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: It depends upon how vulnerable clients are treated by the Compensation Fund if the cover later proves to have been inadequate.

5. Questions continued

24. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: I do not agree that the cost of PI insurance is a barrier to entry. Regulation is a far higher barrier to entry.

25. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

26. Please explain what you think these impacts are

See above re insolvency of insurers and gaps with the Compensation Fund. This is an enormous issue where a firm is insolvent, the insurer is insolvent and the FSCS does not meet any claims made by vulnerable clients.

27. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The importance of insurer solvency must be looked at again by the SRA.

28. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: You are right to identify that The Compensation Fund is crucial in protecting the public and small businesses. However, it is

not easy to claim from The Compensation Fund. Rule 5, relating to negligence and no insurance, leaves a gap into which vulnerable clients can fall. I have numerous cases where the client is the victim of an insolvent firm, the firm's insurer is insolvent, there is no FSCS coverage (based on the rule relating to turnover) and I am told that Rule 5 only covers claims where there was no insurance at all rather than no insurance that can actually meet a claim made.

29. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Rule 5 should be amended to cover situations where the firm is insolvent, the insurer is insolvent and the FSCS will not meet the liability.

30. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Reduces the trust that the public place in the profession.

6. Questions continued

31. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

32. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

None

33. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

34. Please set out your suggestions and reasons for the change

Yes, see above regarding insurer insolvency.

35. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

36. Please explain why.

I think that the limit should remain at £2,000,000.

37. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

38. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

No opinion

39. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of

the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: The current rules are poorly drafted.

40. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

41. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

None

Protecting the users of legal services: balancing cost and access to legal

Response ID:294 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Somewhat disagree
Please explain your answer
: We disagree with this proposal. Given the research presented (98% of claims fall under £500k); a PII limit of either £500k (or £1m) appears credible. However, a "class-action" arising out of the same negligent act could be treated as one claim which, dependent on the number of claimants and the amount in issue, the proposed minimum level of cover may well be insufficient to meet the loss being re-claimed. This would potentially leave the Compensation Fund exposed to clients bringing claims to make up any shortfall in under-insurance on the firm's part, leading to a greater number of applications on the Fund. This in turn would increase the need for increased contributions from firms. Alternatively, it may leave clients having to absorb the financial loss caused by a firm, which would of course be unpalatable. It could also lead to the demise and insolvency of the firm in question which in itself would give rise to an additional regulatory cost having to deal with the insolvent Practice. Our preference would be to leave in place the current levels of primary cover which would help alleviate applications to the Fund.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree
Please explain your answer
: We disagree with this proposal. All firms should offer the same and adequate primary level of cover to all clients, whether or not the firm's client base is corporate or individual. All firms must have appropriate indemnity to cover the work being carried out to ensure that any client is not left with having to bear any financial shortfall owing to the firm's negligence. Any reduction to the minimum terms of cover will put more onus on firms to consider the need to take out top-up insurance, given the type of work undertaken, against the financial burden of a top-up insurance premium. The cost of top-up insurance may in any event, negate any savings obtained through these proposed changes to the primary layer.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

We disagree with the proposal that large financial institutions corporations and business clients should be excluded from minimum PII requirements for the reasons stated in "2" above. We would also question whether a business with £2m turnover in a financial year should be classed as a large financial institution / business client. This seems a somewhat low threshold.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat disagree
Please explain your answer
: We disagree with this proposal. Whilst an increased indemnity level for conveyancing would be advisable given the potential cost of remedying any errors caused, an indemnity limit of £1m would be inadequate compared to the property prices in and around (but not limited to) a number of cities in England and Wales and especially the area of London . Such a limit would require each and every law firm clearly informing and perhaps advertising to clients their level of indemnity cover, prior to the firm's engagement. A client would then be able to make an informed choice as to whether or not the firm held adequate insurance cover to meet any losses if the firm dealt with the transaction in a negligent manner. To advertise the level

of cover at the outset of a retainer and as a potential "differentiator" from one firm-to-another would in our view, paint a very negative picture of the profession. By imposing further PII burdens on conveyancing practices, it is likely this will increase the administrative costs those practices have to cover, in addition to a likely increase in insurance premiums (to include top-up insurance premiums) both of which is likely to be passed on as increased costs to the conveyancing consumer.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

19. Please explain what you think should be an alternative definition.

The definition of "conveyancing services" is extensive however, the definition of "dealing" needs to be further defined as this word is extremely broad; for example, does "dealing" include the simple retention of a client's title deeds?

4. Questions continued

20. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

21. Please explain what these are and provide any evidence to support you view

We do not agree there should be amendments to the MTCs & PIA. The successor practice rules do not need to be amended. However, if there are amendments to the MTCs and PIA as proposed, some changes will be necessary to the successor practice rules. It is highly likely that any firm would not risk becoming a successor practice to another firm as they will not know with any certainty whether or not their own level of PII cover would be sufficient under the work of the "succeeded" firm. The amendments would also mean that a retiring party would have to obtain their own insurance as they would have no way of knowing whether the successor practice was providing adequate protection under their own policy. Given that one of the aims of the reforms is to make retirement from practice easier and less expensive (especially if run-off cover is required for closed client matters), it would be our view that it could in fact cause greater uncertainty and make retirement from the profession more onerous.

22. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: We strongly disagree with the approach being taken in respect of the MTCs and the PIA. The evidence produced by the SRA is out of date and therefore it should be viewed with caution rather than being relied upon to make far-reaching amendments. Since 2014, there has been a significant rise in both cybercrime and fraud and is one of the largest risks currently facing the profession. In the absence of any up-to-date evidence we do not consider it sensible to move away from the current regulations. On the evidence provided by the SRA in respect of reduced insurance premiums, the amounts are relatively small and would not, in our view, encourage new entrants to the market and would not see costs savings passed onto individual clients; to that end, it would not increase access to justice as intended. In fact, the cost of top-up insurance could drive up the overall cost of insurance for a firm, especially if firms wish to maintain their current level of indemnity, which is highly likely. Increased costs could actually cause a reduction to the number of Practices who cover a variety of areas of legal work and it would likely lead to further "legal deserts" in rural or low populated areas.

23. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: We strongly disagree. At first glance the SRA proposals appear to be reasonably sensible. However, when they are considered in detail, a number of shortfalls are identified. The current MTC provides adequate protection for members of law

firms and the public alike. The SRA will appreciate that a competent law firm will ensure appropriate levels of indemnity cover for their work as protection for both the firm but also their clients. It is the clients of poorly managed or incompetent firms that need to be protected. Whilst the SRA seeks to reduce the cost of PII insurance, by doing-so this will reduce the protection afforded to both lawyers and clients alike. The SRA figure of £500,000 is based on settlements achieved (i.e. payments made) and not the amounts actually claimed at the outset. It is possible that where a claim for (say) £1m is presented, the insurer (wishing to limit its costs outlay and time exposure) agrees to pay £500,000 early on in order to avoid involvement in litigation, which in turn, could leave a client with a significant financial shortfall.

24. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: We strongly disagree that the proposed cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the needs for premiums to be less expensive. We have seen little evidence to demonstrate that insurance premiums will be more affordable under these proposals. Whilst on the face of it initial savings may be made on the primary layer, these savings may well be dissipated when it comes to the cost of top-up insurance, especially for prudent and competent Practices who wish to retain their current level of indemnity.

5. Questions continued

25. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: If PII premiums are potentially lower, it might encourage new firms to set up in practice. What is currently unclear is an understanding of the number of solicitors who would be willing to set up a new practice because of the potential of lower premiums, given that the protected reduction in premiums is anticipated to be in the region of £300.00. We understand the cost of PII premiums is a major factor taken into account by solicitors considering setting up in private practice, but it is only one of a number of factors. If the SRA's assumption is correct and new firms are encouraged to enter the legal services market, if any of the new set-ups are in locations based in more rural areas, it would provide much needed access to justice. A more effective way of achieving this would be for new firms to apply for a waiver under the SRA's existing powers rather than implementing the proposals in relation to the MTC. As with a number of the suggested proposals, solicitors will need to be under a clear regulatory duty to ensure their clients are made fully aware of any limits to their indemnity protection which may only lead to further confusion for consumers.

26. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

27. Please explain what you think these impacts are

In theory, the proposals have the potential to open up the market for solicitors to set up on their own or in partnership, if there is a positive impact on PII premiums. This may in turn encourage for example, a higher number of solicitors from a BAME background, to set up in practice. However, what the paper does not appear to have considered is any negative diversity implications the proposals may have, on for example, the BAME community.

It is unlikely the proposals will bring about significant cost savings (in itself), encourage a new Practice (whether owned by someone from a BAME background or otherwise) to commence trading, especially given adequate indemnity protection may require the purchase of additional top-up insurance and thereby eroding any saving made on the primary layer.

Whilst the Consultation Paper identifies the potential EDI impacts, a number of assumptions have been made in the

consultation and it is therefore unclear at this stage if there are any further potential EDI impacts.

28. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The main concern regarding the proposed changes are that it could lead to the public having less protection and in so doing, undermining the public confidence in the profession.

There is little evidence (in terms of costs-saving) that the proposals will help promote new entrants into the legal market and in fact, the cost of adequate insurance cover could actually rise for firms who wish to retain their current level of indemnity by way of purchasing top-up insurance.

The way to achieve lower premiums is to reduce claims and the SRA should consider re-directing resources towards assisting law firms with risk management, as ultimately "prevention is better than cure".

29. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: We strongly disagree with the proposed change to re-classify the Compensation Fund as a hardship fund and we would question whether the SRA has legal standing to effect such change, in any event. Its purpose is to be a fund of last resort, as a safety net for clients who are victims of dishonesty by a solicitor or hardship due to a solicitor's failure to account for monies, or to provide compensation in respect of the civil liability of a defaulting practitioner who does not have a policy of qualifying insurance in place. The proposals actually reduce the protection to clients being exposed to unscrupulous or non-compliant Practices who may under-insure the risks to which their Practice is exposed (and failing to take out top-up insurance) and there being no "safety net" for such clients by way of the Compensation Fund, if the £250,000 household asset bar is implemented. Deserving clients (and potentially those which are both vulnerable and who have lost the most) would not be ineligible to apply for further financial redress.

30. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Eligibility to claim on the fund should remain unaffected to preserve the integrity and confidence the public have in the profession, especially if any of the proposed changes are made to the MTCs or PIA.
We agree with the view of the Law Society of England and Wales that the SRA should seek to reduce the costs of interventions on the Compensation Fund, or even to remove the cost of interventions from the Compensation Fund altogether, with the costs of interventions being paid for out of the SRA's general funds. When it is not the purpose of the Compensation Fund to be used for interventions, it cannot be right that the Fund is utilised for such, especially given the cost of interventions has risen from 2.2% to 27.7%. The cost of interventions needs to be properly costed if the SRA considers that it needs more general funding to meet this need.

31. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat agree

Please explain your answer

: We are of the view that the Compensation Fund would, in an ideal world, compensate all clients fully for uninsured losses or the fraud of someone regulated by the SRA. Nevertheless, there is an acceptance the claims made against the Fund may be unsustainable, especially if the Fund has to continue funding the costs of firm interventions, which we would again question. The danger of means testing applicants (which may be regarded as discrimination by some) is that it may erode trust and confidence in the profession by those who have suffered the greatest financial loss (who may be the elderly and/or the vulnerable within society) who were inadequately covered by a Firm's PII insurance, in the first instance. The erosion of the level of primary layer of insurance cover as proposed by this consultation heightens this risk.

6. Questions continued

32. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

33. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

We do not consider the exclusion of an applicant based purely on their wealth is appropriate. Such a restriction is likely to lead to unfairness between claimants, especially when it could exclude those who have suffered the greatest loss.
On the assumption the Fund is not a bottomless resource; we would support a cap on the amount the Fund has to meet, per claim. This would not restrict any applicant making a claim in the first instance and each and every claim being determined on its own merits. In any event, we would agree that a person's rights to a state pension should be excluded from any means tested assessment.

34. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

35. Please set out your suggestions and reasons for the change

We do not propose any changes to eligibility and the circumstances to the current position.
If any change is necessary, we would support an appropriate "cap" on the amount the Fund can award, per claim, as per our response to Question 16 above. The Fund should not be used as a source to fund firm interventions, as detailed in Question 14 above.

36. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

37. Please explain why.

The purpose of the Fund is to protect law firm clients from dishonesty, under-insurance or lack of PI insurance, where the many pay for the few. The SRA PII proposals are likely to result in more claims (for under-insurance or no-cover insurance) than at present as the insurance protection for the vulnerable wronged client will be greatly reduced.

38. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

39. Please explain you answer and any suggestions you have for alternative approaches

As detailed above, the Fund operates on the basis that 'the many pay for the few' losses caused by dishonest or incompetent law firms. It is not possible to protect against all dishonest acts by individuals so the whole profession either has to accept responsibility for the losses caused by the (thankfully) small number of dishonest/incompetent law firms or it does not. There is no reflection on the level of contribution a firm has to make to the Fund compared to the controls and measures they may have put in place to limit the risks. To do so would encourage firms to fund new and innovative ways to manage those risks.

7. Questions continued

40. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Any claim made on the Fund should have to demonstrate that a reasonable degree of independent and influential professional advice was obtained from a regulated individual or firm before the investment was made.

41. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of

the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: The Fund already has reasonably clear explanatory notes on the SRA (SCF section) website. If these can be improved or enhanced by Guiding Principles for the benefit of potential claimants then this would be ideal.

42. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

43. Please explain what you think these impacts are

As indicated by the Law Society of England and Wales in its response, without a more detailed quantification of impacts, it is unclear.

44. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

As regulator, it is clearly important that the SRA has an effective communication strategy in place to ensure the profession is updated in a timely manner on cybercrime issues. If there are any significant cybercrime updates the profession needs to be aware of, we would suggest timely emails are sent to COLP's of all firms to help ensure the messages are communicated. The SRA may also wish to consider seeking firm's agreement who have been the subject of a cybercrime attack to allow the SRA to share the relevant details with the profession for the benefit of all. This could of course be done on an anonymous basis, depending on the facts.

This is one of the main risks affecting the profession today. We agree with the Law Society's suggestion in their response to this Consultation that developing a sector-wide approach (with the SRA and the Law Society working with the government and other relevant bodies) is a useful approach to try to combat cybercrime.

Protecting the users of legal services: balancing cost and access to legal

Response ID:305 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: we consider that, to protect firms and clients, the minimum insurance should be £2 million

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Neither disagree or agree
Please explain your answer
:

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Please provide an alternative way of drafting the exclusion definition.

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree
Please explain your answer
: Conveyancing is a far higher risk area than other areas of legal work

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

Please explain what you think should be an alternative definition.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

Run off cover must be in place on transfers of a practice, including a chain of transfers

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: The consultation document finds only a 5-15% premium reduction. Top up premiums to cover £2m or £3m would be disproportionate and are likely to result in greatly increased fees for small practices (which make up most of the solicitors' practices in England and Wales). This would increase their overheads and fee levels. It may also encourage them not to take out adequate insurance, to the disbenefit of the profession and clients.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: We not consider that the proposal would result in significant reductions to premiums, and would come at a cost.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: The changes will only benefit a few practices. Most practices will need top up cover at disproportionate cost and administrative complexity

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Limited companies should not be required to put in place higher PII cover than sole practitioners. Merely the form of business structure does not mean a higher risk of negligence or quantum of pay out.

It is unfair that those who pay run off cover should have to subsidise those who do not pay it (IE insurers charge higher premiums because they know that 50% of closing practices will not pay it). The subsidy should be paid by the profession as a whole through some kind of mutual fund.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

: Maximum payments from the fund should not be higher than the insured limits of the firm of which the client was made aware.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat agree

Please explain your answer

: This is inequitable.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

This is not the usual business of a solicitor.

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:323 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The proposed level is likely to prove grossly inadequate for the majority of firms. A significant number of firms of all sizes buy top up cover now and only a very small percentage would be able to take advantage of the reduced cover. Of those firms which might be able to take advantage of reduced cover, savings are unlikely to be achieved as insurers price according to risk in any event. When acting for a purchaser of a property, the extent of a seller's solicitor's PI cover will become highly relevant in light of the decision in Dreamvar and varying limits may hinder the whole conveyancing process. The proposed exclusion for business clients will also create a two tier system and will impact the conveyancing market. Lenders will be affected and therefore firms who carry out conveyancing will be forced to purchase additional cover in any event.

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: The description of small businesses is misguided. There are many businesses which will fall into this category which would not see themselves as "large" and in no way could be described as sophisticated users of legal services. The proposal is also out of line with other regulators e.g the FCA. To implement this proposal is going to add a further level of complexity. Many firms would have to buy additional policies to provide the additional cover which their clients require. Brokers may then charge additional fees for the arranging of this insurance and a claim could involve two policies with the associated danger of coverage disputes.

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

16. Please provide an alternative way of drafting the exclusion definition.

We do not agree that the proposed exclusion is appropriate. The suggestion that clients with a turnover of over £2 million are sufficiently sophisticated to be excluded is unrealistic. We do not agree with the idea in principle, but if it goes ahead, this threshold is too low and it is a very crude measure which is likely to result in anomalies. In addition, little consideration appears to have been given to the fact that the insurance is "claims made". A business over the threshold at the time of the act or omission could be significantly under the threshold at the time the claim is made. Explaining this to clients in a way that would be meaningful to them would be both confusing and counter productive.

17. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: We strongly disagree with the proposal as this introduces an additional layer of complexity into the system and is likely to prove very confusing to users of legal services. We foresee that there would be an increased risk in coverage disputes as a consequence. In addition as insurers already take into account the work type undertaken when pricing their insurance, we see little benefit to the proposal. The major concern however, again stems from the "claims made" nature of the insurance. If a firm is carrying out conveyancing now, it will still have to maintain conveyancing cover for many years to come – probably 15

to ensure that historic claims are covered. In addition, lawyers joining from other firms where conveyancing has been practised will be exposed if they join a firm where no conveyancing cover is taken out.

18. 5) Do you think our proposed definition of conveyancing services is appropriate?

Please explain what you think should be an alternative definition.

4. Questions continued

19. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Answer to question 7 - The issue with successor practices is complex and not ideal. However, change generally introduces uncertainly and there would be a risk that liabilities currently covered under the successor practice rules no longer remain insured. On balance, we do not want any changes made. Answer to question 8 -We have not seen the PIA and have no further comments to make on the MTCs.

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: We are extremely sceptical that these proposed reforms will lower insurance costs to any material degree for the reasons below: • The majority of claims fall under the proposed level of £500,000 and insurers are aware of this and this is no doubt built into their pricing models. • The risk profile of a firm is already considered by insurers when pricing a policy and this includes both the nature of the work undertaken and the claims history. • Those firms which carry out conveyancing now but decide to cease doing conveyancing work will still have a historic liability problem which will require obtaining conveyancing cover for many years to come. • The majority of firms already buy top up cover and we do not foresee this changing particularly in light of the business exemption.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: We have no data on run off claims to be able to make an assessment of the adequacy of such a cap.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: We have no evidence to make an assessment of whether this is likely to be the case. We remain sceptical for the reasons set out above.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Firms should be allowed to negotiate liability caps appropriate to the job they are undertaking which is not tied into the minimum insurance requirements.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: General observations • We have seen no evidence of a risk benefit analysis • We have no data about payments from the Compensation Fund to assess • The £250,000 asset bar seems perverse and unworkable.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Please explain your answer

:

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

30. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

31. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

32. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

33. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

It is not clear in what context this question is being asked. Is it being suggested that a client who has been duped by a solicitor should not be entitled to compensation? If the direct reason for a claimant's loss is the failing of the solicitor, then the Compensation Fund should compensate them.

34. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer
:

35. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

36. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

We agree that many attacks are as a result of a client's system being compromised. The SRA could do more to alert the public particularly private clients of the risk which solicitors cannot control.
Firms must have strong and robust systems to minimise their own risks and Cyber Essentials is a useful starting point. The Law Society's Cyber Security Hub is a good source of information. We believe that the regulators working together with government and government agencies should provide assistance through a sector wide approach.

Protecting the users of legal services: balancing cost and access to legal

Response ID:331 Data

3. Consultation questions

13.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Neither disagree or agree
Please explain your answer
: Effect yet to be seen

14. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree
Please explain your answer
: How these groups get protection? Unless the rules state these,e .g lenders have their own cover, will they?

15.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

16. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree
Please explain your answer
:

17. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

It will be up to the successor firm to accept successor status or not for PII purpose.

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat disagree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: It does not reflect the true market conditions.

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Somewhat disagree

Please explain your answer

: Firms may expose to high premiums outside the minimum cover limit. It may cover a small proportion of firms but the impact would be huge. It may not reach the effect that helps small firms to tackle the high premiums or closing down.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: It is a claims basis policy. It is never certain when a claim will appear. Run off for six years is not adequate. Better option is to scrap the PII and runoff completely. Firms are left to decide if they need to take out cover and the amount. Lenders are left to decide the type of firm they will instruct. Public is to be educated they will have better protection by firms that offer PII cover and firms are able to recover contribution from clients they act for.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: Effect is yet to be seen. Lower cover may not lower the barrier to enter the market.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

See my reply in an earlier question. Clients are looking at lower figures of quotes. They will not look at indemnity cover offered, or quality of service, expertise etc. These are unseen. Clients are unwilling to pay more, why we have to offer more than they pay for. This is a free economy. When the legal services market is opened up, let the market decide, not the profession or its regulator.

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

: People whose are themselves to be blamed should be excluded, or their claims limited. Or the compensation fund to be scrapped, pass the burden to the police to recover the loss.

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

See my reply in Q13.

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat agree

Please explain your answer

: If the amount of loss is up to a limit of their net worth.

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Consulting independent financial advisors, consulting regulatory body, or regulate the setting up of similar type of schemes.

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: It would help the public.

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Education, compulsory CPD on this subject, a role in the firm like COLP, encourage insurance cover.

15 June 2018

Dear Sirs

Response to the Solicitors Regulatory Authority's Professional Indemnity Insurance Proposed Reforms

We write with regard to the above to express the views of the

From our review of the SRA's consultation document, we understand these objectives and outcomes of the reforms principally to be:

(i) To permit more flexible options for firms with regard to PII cover so that costs will be reduced.

(ii) The anticipated reduced costs for PII will be passed on to clients in reduced charges thereby increasing access to professional legal services.

Whilst any measures which ultimately reduce costs to clients, and therefore increase access to professional legal advice, are to be welcomed, after careful consideration, we write to express our doubts as to whether the current proposals will achieve this to any significant degree if at all. Indeed, we have concerns that the proposed reforms, despite their good intentions, may have a damaging affect on both practitioners and clients. Our concerns are as follows:-

i) The proposed changes to PII cover

Under the SRA's current Minimum Terms and Conditions 2013 LLPs, limited companies and alternative business structures providing legal services are required to have £3m of cover and traditional partnerships and sole practitioners are required to have £2m of cover. The SRA's consultation envisages a reduction in the level of cover so that the

general PII cover would be reduced to £500,000 (with cover of £1m for firms engaged in conveyancing work). The SRA then contemplates, in keeping with its ambition to have a more flexible market for indemnity insurance, firms topping up their cover where appropriate so as to 'maintain professional indemnity insurance that provides adequate and appropriate cover in respect of current or past practice'.

The minimum levels of cover, before any topping up, are based on the SRA's conclusions from its own research (the reliability of which we note as being questionable) which leads it to conclude that the reduced requirements would cover 98% of claims.

Even if the figures presented by the SRA are correct, our view is that the reality of this reform would be most firms having to buy additional cover. There is no guarantee that this additional bespoke insurance would be on any better terms than the existing policies secured by practitioners. In all probability, the additional costs involved would negate any benefit from the reduction in minimum cover. It therefore follows that any cost savings are likely to be marginal, if present at all. On the contrary, there is the significant risk that many firms will face increased cover costs which in turn may lead to similar increases in costs to clients.

ii) Potential saving to clients.

The current research by the Law Society shows that firms spend on average 4.8% of their turnover on PII. The SRA's consultation suggests that its proposals will result in savings of between 9% and 17% in the cost of PII to practitioners. Allowing for the SRA's maximum level of a 17% cost saving, and on the assumption that firms passed on the entirety of this saving, the potential discount to clients would be barely 1%. In other words, for a fee earner charging £250 per hour, the client could look forward to a post-reform hourly rate of £247.50.

iii) Impact on sole practitioners

It is already the case that many lenders are cautious with regard to sole practitioners. By removing the current relative certainty over the extent of cover under the present MTC obligations, lenders may be increasingly unwilling in particular to include sole practitioners on their panels (although small and medium size firms may also face this prospect) because of the uncertainty over smaller firms' level of protection. In our view, this will not only be harmful for practitioners, and in particular conveyancing firms, but also clients who may face a reduction in the range of solicitors in the market.

iv) Increased risk of non-coverage

As mentioned above, in our view it is highly likely that the majority of firms will need to go into the market to obtain additional cover. In such circumstances, where firms made be insured under a number of policies, there is an increased risk of events falling outside of the cover obtained by practitioners and/or disputes between insurers as to which should accept liability.

v) Risk to practitioners

Where practitioners fail to obtain sufficient or appropriate additional cover, then there will be an increased risk, quite apart from inadvertently breaching their professional conduct rules, that solicitors will be held personally liable for claims, whether settled or pursued through the Courts.

vi) Risk to clients

As well as the pressure on the legal market mentioned above, our view is that there will be an increased risk to clients suffering uncompensated claims, whether as a result of insufficient cover and/or the exposed practitioners being unable to meet any claims personally.

vii) Affect on retirement

Our considered view is that retirement will become more expensive because of the anticipated reduced availability for single one-off premiums. This will impact also on firms which are being merged or taken over by successor practices, who may well be concerned as to whether the firms they are taking over have adequate protection under the successor's policies. This will lead to increased costs to the outgoing practice as they will need to take out additional run-off cover.

In light of the above, we conclude that the proposed reforms are unlikely to achieve the SRA's stated objectives and will be of benefit to a very limited number of clients or practitioners, if any at all. We therefore invite the SRA to reconsider its proposals and not to continue with the reforms outlined in its consultation.

Yours faithfully

Dear Sirs,

I am responding by email since I am unable to access the SRA's online questionnaire. However I adopt the same format as the questionnaire.

My firm also agrees with the detailed points made by the Law Society in its response to the consultation dated 6 June 2018.

Question 1 - Do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

I strongly disagree.

My reasons/comments:

The Law Society's research show that 22% of firms purchase top up cover at present. My firm is one such firm. If the current (already quite low) minimum levels of cover were reduced, inevitably many more small and medium sized firms would have to purchase top up cover to accommodate their retained instructions, particularly given the continuously rising cost of residential and commercial property and the high concentrations of very high residential property prices in major cities and towns, already in many places higher than the existing minimum cover levels.

This will lead to more time and cost to the legal profession in obtaining top up cover, at absolutely no benefit to their clients, and substantially increase the likelihood of coverage disputes between their primary and top up cover insurers.

All this will lead to insurance becoming more costly to obtain, rather than less, which would run entirely counter to one of the SRA's regulatory objectives.

The insurance industry has no incentive to reduce premiums, other than in response to the present market forces, which have already led to a significant reduction in premiums in recent years.

So the consumers of legal services will enjoy no reduction in cost yet suffer greater uncertainty concerning their levels of protection and a reduced ability to rely on solicitors having their current " bullet proof" PII arrangements if these proposals proceed.

Question 2 - Do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

I strongly disagree

My reasons/comments: I see no legal or indeed moral justification for this proposal. It does not mirror any compensatory arrangements elsewhere in the country. Logically larger

organisations and institutions are likely to be involved in larger transactions, where the ready and guaranteed existence of sufficient insurance cover is both needed and expected.

Question 3 - Do you think that our definition for excluding large financial institutions, corporations and business clients is appropriate?

No

An alternative definition: I strongly recommend that no distinction is drawn, and that if one has to be made then the minimum turnover level should be far higher, perhaps matching the GDPR fines threshold. Also firms would then be obliged to establish the turnover of all clients before being able to take on any work. That would not be in their clients or potential clients interests.

Question 4 - Do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy that cover?

I strongly disagree

My reasons/comments: This would be divisive within the profession and insurers and unclear to clients. The suggested £1million cover limit is manifestly inadequate anyway due to increases in property prices.

Question 5 - Do you think that our proposed definition of conveyancing services is appropriate?

No

An alternative definition: It is invidious to try to define conveyancing for the artificial purpose of trying to justify a differential insurance cover. Conveyancing cannot be simply differentiated nor defined in any meaningful way as it integrally linked to so many aspects of other legal work that would not carry the same cover level. All that would happen would be that insurers would seek to attribute any conveyancing claim to a fault within a non-conveyancing aspect of the work in order to reduce and limit their exposure.

Question 6 - Do you think there are changes we should be making to our successor practice rules?

No

My reasons/comments: The present system is working well and provides a sure source of recompense to clients.

Question 7 - Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

I strongly disagree

My reasons/comments: The MTCs are an excellent source of comfort to all law firms and through them to their clients. To allow the MTCs to be reduced or eroded would be extremely unwise and the MTC's could not be renegotiated once they had been diluted.

Question 8 - Do you agree that the [proposed] changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

I strongly disagree

My reasons/comments: This suggestion is misconceived. Has the SRA canvassed all participating insurers for their views? If not, experience suggests that the cost of PI insurance would not diminish, or if it did then not by any significant amount. So, aspiring new entrants would not be able to derive any benefit, or worthwhile benefit, from these proposals.

Question 9 - Do you agree that the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

I somewhat agree

My reasons/comments: Anything that reduces the cost of any solicitor buying run off cover is to be welcomed but not at the cost of a loss in the level of client protection. The profession is effectively self-insuring on this anyway because few solicitors actually buy run off cover, so the rest of the profession, through their own insurers, pay any shortfall.

Question 10 - Do you agree that the [proposed] changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

I strongly disagree

My reasons/comments: The cost of PI cover is not a deterrent to any new entry, merely one of a number of start-up costs. The SRA has produced no data to back up its premise.

Question 11 - Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

Impacts: More solicitors would have to buy top up cover. The proposed dilution of the MTCs would further skew the PI insurance negotiations in favour of insurers.

Question 12 - Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further?

Explain: The SRA should review the impact and options for remedy where a firm does not buy run off cover.

Question 13 - Do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it most?

I somewhat agree

My reasons/comments: It is important to keep the ongoing operation of the Fund affordable but the whole area needs better data and research. The proposed maximum income limit for any claimant seems arbitrary and would probably be far too low.

Question 14 - Are there any options for changes to how we manage the Compensation Scheme that we have not identified and which we should consider further?

Explain: 1. Impose a claim financial limit rather than a limit on the income of any claimant.
2. Review and limit the cost of interventions on the Fund.

Question 15 - Do you agree that we should exclude applications from people in wealthy households?

I strongly disagree

My reasons/comments: If any change is to be made, impose a financial limit on any claim rather than seek to discriminate between claimants on any factor not related to the merit of any claim.

Question 16 - Do you think that our proposed measure of wealth and threshold for excluding these applications is appropriate?

No

My reasons/comments: See my answer to question 15.

Question 17 - Do you think we should be making any other changes to eligibility and/or circumstances where we wold make a payment?

Yes

Explain: See my answer to question 15.

Question 18 - Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

If no, explain: The appropriate assessment criteria for claim should be derived from detailed research of past claims and trends.

Question 19 - Do you think that the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

If No, Explain: the whole structure of the Fund needs to be re-evaluated against present day trends in claims and their causes.

Question 20 - What steps do you think it might be reasonable to take to investigate a scheme/transaction before committing money to it?

Others are better placed than I to comment.

Question 21 - Do you think that setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make our decisions clearer to users of legal services and their advisers?

Yes

Explain: Transparency and certainty are to be welcomed.

Question 22 - Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes/No

Explain: I have no comment.

Question 23 - Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being the victim of cybercrime attacks?

The SRA should actively participate in a public awareness campaign to promote greater understanding among clients of the risks and the common sense and other preventative steps available.

Protecting the users of legal services: balancing cost and access to legal

Response ID:50 Data

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: There will be instances where the reduced level of cover will lead to financial losses for the client. It is better that appropriate level of cover is in place rather than reduced cover. The reductions in premiums will be negligible but the adverse impact in the protections for clients will be huge. Clients will be unaware that they are protected at a reduced level.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: All individuals/organisations should be treated equally. The SRA is discriminating against individuals on the basis of background, wealth, etc. This is not good from a regulator who should be promoting fairness and equality.

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

13. Please provide an alternative way of drafting the exclusion definition.

There should not be any sort of exclusion

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: Again causing confusion for firms and their clients and there will be a myriad of different PII rules which will lead to uncertainty for all concerned.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

16. Please explain what you think should be an alternative definition.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Lower insurance costs will be negligible and no guarantees that these will be passed on by the insurers. The reputation of the profession is being further eroded by the SRA as protections for clients are being reduced.

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: There is already enough choice in the legal market for consumers. These changes will only provide further firms with less protection sin place for the public. Do we really need more firms who provide less protections for the public. Ultimately, the public will lose out as a result of these proposed changes.

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

23. Please explain what you think these impacts are

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Rules work well at the moment and it is merely change at the edges which will cause huge amounts of confusion for little benefits overall for clients, firms and the reputation of the profession.

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The rules are fine at the moment and set out the position nicely.

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Again the SRA is discriminating against certain people merely on the basis of their perceived wealthy background. There should not be a ban on claims from wealthy households as they will have also lost out due to the dishonesty of a solicitor. If money has been lost because of a solicitors action it should be replaced regardless of wealth. The FSCS does not discriminate on the grounds of wealth and will pay out if a banking customer loses out as a result of the financial institution going under.

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

29. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

Discriminatory in nature and possibly against the law. There should be no threshold in place and if only 5% of the population fall within the definition then the claims from these people will be minute. Will it really have a big impact on the fund? Proper research needs to be done on how many people in this category will actually be making claims and the impact of these claims.

30. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

31. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

32. Please explain why.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Clients should not be required to investigate schemes especially where solicitors are involved.

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer :

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

37. Please explain what you think these impacts are

Discriminatory action by the SRA

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:59 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: Don't feel reduction in cost to firms by way of premium will result in any meaningful cost savings and is more likely to lead to firms being under-insured as was often the case when there was a £1m cap.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: These are the most dangerous types of claims in terms of risk and cost.

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

Do not feel an exclusion is appropriate.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Neither disagree or agree
Please explain your answer
: May be helpful for a handful of firms but think unlikely to have significant benefit for many.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Public needs protection - as do firms.

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Don't believe the financial benefits are likely to be meaingful.

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Caps are only useful if they cover the claims - no retired practitioner will be happy to find themselves un or under insured.

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: There are already routes into the market which avoid the MTC if that is the only consideration.

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

: Concerned that those who suffer at hand of fraudsters should be compensated regardless of who they are.

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Just because a victim has other resources doesn't mean they should not receive the same benefit as someone with fewer

resources. A victim of a dishonest solicitor remains a victim of that dishonesty even if it will not make them destitute.

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

28. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

Don't feel there should be an exclusion

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

31. Please explain why.

32. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

33. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

34. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

:

35. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

36. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:72 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Somewhat disagree
Please explain your answer
: I'm sure there are firms that only need such a low level of cover but I can't imagine that any firm in the SE that does conveyancing would be included, so you are relying on firms to take out more than the minimum cover they are required to.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree
Please explain your answer
: Why should a larger / institutional client not be protected by the same insurance cover as any other client - just because you assume they can afford to make good any shortfall or have insurance cover of their own? That means they deserve a less good service from their solicitor?

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree
Please explain your answer
: This would enable you to set lower limits for lower risk businesses and higher limits for higher risk businesses.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

18. Please explain what these are and provide any evidence to support you view

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

: Your blanket reduction in limits is placing the onus on Firms to ensure they have adequate levels of cover. If you could provide flexibility in some other way that might be better. Flexibility is fine provided the public are protected - so variable rates according to levels of risk and ensuring appropriate cover is in place to cover the value of property being conveyed for example, might mean that a conveyancing practitioner in the North of the country could be allowed to have lower cover in place to a conveyancer in the south - to reflect the difference in property values and the potential loss that might be suffered, while ensuring that an appropriate level of cover was maintained to protect clients.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: my feeling is that your desire to cut costs predominates over your desire to protect the public.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: I doubt people are motivated, or otherwise, to set up a Firm by the amount of insurance premiums.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The impact on the market - ie the public - of knowing that there is no insurance cover in place and that they are no more protected going to a solicitor rather than some other provider of legal services - may not be the outcome you expect. You expect prices to fall and solicitors to become more accessible. the outcome could actually be that the public sees no point in going to a solicitor as there is no added protection and accordingly goes for the cheapest service available notwithstanding reservations about its efficacy. This would not have a good effect on either the solicitors profession, nor be of benefit to the public.

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Please explain your answer

: I don't understand why you would wish to draw a distinction between some clients and others - some should be protected while others should not?

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

I'm sure there are

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer

: Have they not suffered loss as much as anyone else? Why should they be expected to bear that loss themselves simply because they have a certain level of wealth?

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

29. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

see answer to previous question

30. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

31. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

32. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

33. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

34. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

:

35. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

36. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:79 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: I do not think that the insurance levels should be reduced. I think those who would take advantage of this would potentially be under-insured for their clients and for the rest of us, insurance at the current levels would be more expensive. In addition top up may not be readily available. Although I work in family law, I would be uncomfortable having insurance at less than £2m, as if I made a mistake I would want my clients to be fully covered and not to seek to rely on my personal assets to make up any shortfall.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree
Please explain your answer
:

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

I don't agree with the exclusion. Solicitors who deal with these clients should have the minimum insurance and then add top up as necessary

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree
Please explain your answer
: I agree that a separate component for high risk areas is probably a good thing

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

I think it should exclude straight transfers of equity where there is no remortgage between husband and wife following on from a financial remedy order

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: I don't think the responsibility should be on solicitors to take out adequate insurance. I think this is risky for consumers. The good solicitors will comply and the bad solicitors will not comply and further damage our profession.

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

: It probably does provide greater flexibility, but at a cost to the paying public.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: I think it is risky to have a cap on run off cover. In most circumstances the cap would suffice, but where it didn't the public is at risk.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: I have no idea

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

24. Please explain what you think these impacts are

I do not think the risk to consumers and the reputational risk to the profession have been fully considered.

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

N/A

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: I think it unfair to exclude people who have suffered loss simply because of their asset level, particularly in London where a normal family home far exceeds the level proposed.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No view

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer

: I think this unfair

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

If there has to be a wealth level then it should be higher in London to take into account the cost of average housing

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

32. Please set out your suggestions and reasons for the change

I think payment should not be made where solicitors fail to obtain appropriate insurance and have the assets to meet their clients' claims

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

35. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

I don't know

36. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

37. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

No

Protecting the users of legal services: balancing cost and access to legal

Response ID:91 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Please explain your answer
: There is a suitable level of cover which will protect the bulk of claims

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree
Please explain your answer
: Large institutions have the resources required so do not necessarily need to fall back on the compensation scheme so this is an excellent idea

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree
Please explain your answer
: I am an immigration practitioner and have often considered opening my own practice however PII puts me off as it is so high. My area of law is low risk and no doubt premiums would be lower if conveyancing was a separately covered item. It is a good idea that only those firms requiring conveyancing cover are required to have it and if reduces the cost for other firms. It will encourage people like me to open and therefore fresh blood can enter the market.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: Yes this allows greater flexibility in an changing market and prepares for the future

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

: Yes the proposed changes are an excellent idea and should lower premiums

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: the proposed cap is a good idea given the historical date of claims

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree

Please explain your answer

: I am one of th people who have been considering opening and welcome this change if the premium will be lower as current cost for me to open are around £10k and this could reduce to about 7k which is more affordable.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Allow all general insurers to quote on PII insurance e.g. accountants / will writers etc can get PII on the general market solicitors cannot. They have an unfair advanatge over sols when it comes to setting up on their own.

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Please explain your answer

: Generally those that need greatest protection are individuals and their claim amounts are quite low - nowhere neat the limits of the comp. fund

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we

should consider further?

What about one off indeminity policies for high risk transactions which sols can buy if a case is high risk

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly agree

Please explain your answer

: If the person has a lot of money they may not need the fall back

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

29. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

30. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

look at the file

31. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Yes so practitioners and public know the extent of it.

32. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

33. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Just give out regular updates of latest scams to firms doing certian areas of law that are affected

Protecting the users of legal services: balancing cost and access to legal

Response ID:95 Data

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: Breaking down PII cover into a menu of options, many of which have the potential to be quite complex, will add hugely to the process of understanding what cover needs to be bought; it also raises the prospect of firms cutting corners when money is tight and buying cover that is below what they really need.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: This presupposes that the person in the firm who is dealing with PII renewal has a complete client list for the current year and 5 prior years and is able to identify absolutely that no financial institution or other large business has been involved in any situation that may lead to a claim. For most firms this will be at best time consuming and difficult and at worst impossible to achieve. This would leave firms badly exposed.

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Neither disagree or agree
Please explain your answer
: In theory it makes sense but I do wonder whether it could create issues where a firm either used to undertake property work but has dropped it within the last 6 years or where a firm decides to include some limited conveyancing within perhaps a probate matter.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

15. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

16. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

17. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Given that insurers are commercial entities and are well aware of the data on which this consultation relies it would be foolish to suggest that splitting out elements of cover on a firm by firm basis would magically create significant savings. It is possible that splitting out conveyancing may save money for non-conveyancers but anything more complex would probably add more cost in management than it saves in risk.

18. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: My concern is with aggregation, which would be likely to impact higher volume firms and for which your suggested cap might quickly be overtaken by even a small number of aggregated claims.

5. Questions continued

19. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: The reality is that any cost savings would be small and would only apply to firms working outside the property arena and I would be amazed if a few pounds or even a few tens of pounds saved would make any noticeable difference.

20. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

21. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

22. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Please explain your answer

:

23. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we

should consider further?

24. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

:

6. Questions continued

25. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

26. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

27. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

28. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

29. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

30. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

:

31. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

32. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:100 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: It is far too low, and encourages people to set up firms which cannot offer the well respected "solicitor" quality.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: The current minimum is not just about institutions and big clients. It's a decent Conveyancing transaction or litigation matter for many firms, even smaller ones like ours,

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

I would not have the exclusion. What a terribly leading question!

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: It will increase the overall cost of PII by having "bolt ons" like some sort of consumer TV or mobile phone deal. Bad idea.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

Not required.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the

MTCs?

:

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: I think it will see an increase in PII to all but the very small firm and the very big firms.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Somewhat disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Although run off cover is expensive, to protect the consumer it must remain as it is.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree

Please explain your answer

: Agree, but this is not necessarily a good thing. Increased choice of cheaper lower quality alternatives who are prepared to cut corners and give poor advice.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

24. Please explain what you think these impacts are

Higher cost for middle size firms

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The minimum should be £2m for any one claim

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer

: Access to it should not be means tested

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

It should not be means tested.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Unsure

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of

cybercrime attacks?

Working closer with the banks to incorporate a check of account name to bank details before releasing the payment

Protecting the users of legal services: balancing cost and access to legal

Response ID:102 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
:

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
:

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
:

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

:

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat agree

Please explain your answer

:

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

:

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

:

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

30. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

31. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

32. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

33. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

34. Please explain what you think these impacts are

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:127 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Please explain your answer
: Provides the correct balance of flexibility and protection in place of a rigid and too expensive belt and braces approach.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat disagree
Please explain your answer
: To be sued by a client with deep pockets could bankrupt a practice if no insurance cover.

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree
Please explain your answer
: May make PI cover out of reach for occasional conveyancing work.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Somewhat agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: No comment

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

: We have to move away from a one size fits all very expensive compulsory cover.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: No comment.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: Unlikely to be the most critical factor.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

No comment.

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Please explain your answer

: The Fund is a paternalistic anachronism which is a financial burden on smaller firms with heavy levies every few years becoming the norm. It makes the innocent pay for the guilty.

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Not aware.

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly agree

Please explain your answer

: See 13. above.

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

29. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

30. Please explain you answer and any suggestions you have for alternative approaches

It should be based on ability to pay, i.e. gross fees.

7. Questions continued

31. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Not my area of expertise.

32. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Clear guidance is desirable.

33. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

34. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

A spam reporting function with email alerts sent out if several firms have been targeted by a specific email.

Protecting the users of legal services: balancing cost and access to legal

Response ID:170 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly agree
Please explain your answer
:

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree
Please explain your answer
:

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree
Please explain your answer
:

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

17. Please explain what these are and provide any evidence to support you view

I will explain later - time-permitting.

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

:

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly agree

Please explain your answer

:

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

:

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

28. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

30. Please set out your suggestions and reasons for the change

I will explain later, time-permitting.

31. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

32. Please explain why.

Later

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

34. Please explain you answer and any suggestions you have for alternative approaches

Later

7. Questions continued

35. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

36. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

:

37. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:172 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Please explain your answer
:

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Somewhat agree
Please explain your answer
:

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Somewhat agree
Please explain your answer
:

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

17. Please explain what these are and provide any evidence to support you view

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

:

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

:

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

:

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat disagree

Please explain your answer

:

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

28. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:178 Data

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The minimum is too low. At a time when your own consultation comments how claims are increasing and demand on the fund is increasing. Any rduction in PII level is foolish and misguided.

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: To do this will make acting for Lenders very difficult in transactions which will almost certainly lead lenders to react by only allowing a select few trusted providers act for them. This will wipe out competition and the ability for smaller firms to compete. The antithisis of this proposals aim.

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

13. Please provide an alternative way of drafting the exclusion definition.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: While it is true conveyancing claims are likely to be higher than other forms of claim due to the value of assets involved, to believe that any two tier insurance system will provide a significant benefit is misguided. Insurance is and always will be underwritten and based on risk analysis. Insurers already price PII depending on the type of work carried out and the risks involved. Lowering the minimum just provides insurers most get outs in the event of a claim and damages the solicitor brand for clients and employees.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

17. Please explain what these are and provide any evidence to support you view

In short, the burdens on people attempting to close a firm are to onerous in particular, run off cover. This is a larger reason new entrants consider entering the market with care rather than initial fees.

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: Insurance is based on risk. The minimum insured value is only a small factor of this. Any change is counterintuative. An example is buildings insurance. Direct line's home insurance which is always unlimited buildings cover. Do the folks at direct line do this out of the goodness of their hearts? No they do it because based on the risk analysis the average claims in the sector mean insured value does not matter to much. The same applies here. Insurers underwrite on the basis of average claim numbers and other big data. The only thing a reduced min insured value will do is decrease consumer protection.

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: Again it will not. Being regulated by the SRA is now a choice as there are other regulators now allowed to provide legal services. Each has their own pros and cons. The Solicitor regulated by the SRA model is touted as offering a modicum of respect and security to clients for the minimum levels of protection for clients. To dilute this at all is diluting the Solicitor model further.

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

23. Please explain what you think these impacts are

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a

targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: I do not beleive any particular party with means should be exempt or illeligible for the fund just because their hardship is less that someone who has less means. This is particulaly dangerous when the current trend in recent years is to exclude people of less means from obtaining legal services through legal aid. Thus the majority of remaining clients being people with means its is again counter intuitive to risk the remaining market with this change.

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Excluding claims for investments is a good idea. I do not understand why the proposals are so unclear. Why not just specifically exclude those types of claims?

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: The fund is one of the main selling points of providing LS under the SRA. Where will wealthy people choose to go for advice of this change is made? The wrong message is sent in general. Are you wealthy? Then I do not have to protect you as much as others . This idea flies in the face of every piece of negligence case law out there.

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

29. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

30. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

31. Please set out your suggestions and reasons for the change

May want to exclude fraud not carried out or assisted by the firm used completely.

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before

committing money to it and that it is genuine?

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Yes

37. Please explain what you think these impacts are

38. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

The CLC provides a digital certificate service for firms websites. Although not a silver bullet, every little helps.

Protecting the users of legal services: balancing cost and access to legal

Response ID:205 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: Dreamvar – if you don't understand that you should.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: Financial Institutions - you mean the financial institutions who primarily instruct solicitors to transfer risk? Will they accept that? If not what's the point? Large business clients - where they find cover on the open market? How many want to accept the risk for the marginal saving in costs that would flow through to them?

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

It's your job to provide a coherent definition not mine.
Turnover - Businesses don't know what their turnover is until their year end. For any who are near the margin their risk is greater at the beginning of their financial year than the end? What happens if they have an unexpected downturn and find they have no cover after the event? Will there be post facto cover available on the open market? What if they "buy" cover (i.e., pay higher fees) and then find they didn't need it?
Capital - Capital is not a surrogate or correlated to sophistication. Some businesses are capital intensive, e.g., farming and manufacturing. Some are not, e.g., creative industries and franchising. What is capital? Gross or net? Are businesses that are highly geared less sophisticated than those who leave capital in their balance sheet? What about funds allocated for acquisitions or investment in equipment? Does it include IPRs and goodwill? What if the business doesn't value those in their accounts? Who values it and when?
How long am I expected to spend in the KYC process asking the client about their anticipated turnover or net current assets? Please explain this in words that a reasonably educated and literate business person will read, comprehend and understand when presented to them with all the other pre-engagement regulatory and contractual information we are required to provide and will be required to provide by these proposals.
What if the insurer questions the client's eligibility when a claim is made?
Should we be advertising on our websites "Special Offer this month - free PI cover for businesses with £3m turnover (subject to 4 pages on terms and conditions)."?

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: How does this meet your regulatory objectives? If these firms don't undertake this work and do low risk work the cost of their PI cover will reflect that. Are you proposing that PI insurers will not be required to meet claims that fall within your definition?

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

It's your job to provide a coherent definition not mine.
The fact that there are two exiting definitions and you have created a third should be enough of an answer.
Please explain this in words that a reasonably educated and literate consumer will read, comprehend and understand when presented to them with all the other pre-engagement regulatory and contractual information we are required to provide and will be required to provide by these proposals.
Have you tested that?
If you can't do that then these proposals will reduce consumer protection not increase them, and further damage the reputation of the profession for deluging potential clients with paperwork that is exhausting and unproductive for them and for us.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: (a) You have not provided any convincing evidence that they will. It is all "expect", "think" and "might be". (b) Dreamvar. (c) Please explain the options in words that a reasonably educated and literate consumer will read, comprehend and understand when presented to them with all the other pre-engagement regulatory and contractual information we are required to provide and will be required to provide by these proposals. Have you tested that? If you can't do that then these proposals will reduce consumer protection not increase them, and further damage the reputation of the profession for deluging potential clients with paperwork that is exhausting and unproductive for them and for us.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: It appears that the justification for reducing consumer protection is to reduce the SRA's costs arising from the SRA being unable to pro-actively regulate firms in which it intervenes. Please explain this in words that a reasonably educated and literate consumer will read, comprehend and understand when presented to them with all the other pre-engagement regulatory and contractual information we are required to provide and will be required to provide by these proposals. Have you tested that? If you can't do that then these proposals will reduce consumer protection not increase them, and further

damage the reputation of the profession for deluging potential clients with paperwork that is exhausting and unproductive for them and for us.

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: This is beautiful naive bit of GCSE economics. If they are low risk business they will have lower premiums. If they are "innovative game changers" you will give them waivers anyway.

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Please explain this in words that a reasonably educated and literate consumer will read, comprehend and understand when presented to them with all the other pre-engagement regulatory and contractual information we are required to provide and will be required to provide by these proposals.
Have you tested that?
If you can't do that then these proposals will reduce consumer protection not increase them, and further damage the reputation of the profession for deluging potential clients with paperwork that is exhausting and unproductive for them and for us.

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: Please explain this in words that a reasonably educated and literate consumer will read, comprehend and understand when presented to them with all the other pre-engagement regulatory and contractual information we are required to provide and will be required to provide by these proposals. Have you tested that? If you can't do that then these proposals will reduce consumer protection not increase them, and further damage the reputation of the profession for deluging potential clients with paperwork that is exhausting and unproductive for them and for us.

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

See everything above.

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: A wealthy household or wealthy household? When are they in the household? When is the household wealthy? Please explain this in words that a reasonably educated and literate consumer will read, comprehend and understand when

presented to them with all the other pre-engagement regulatory and contractual information we are required to provide and will be required to provide by these proposals.

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

29. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

It's your job to provide a coherent definition not mine.

30. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

31. Please set out your suggestions and reasons for the change

Why is there any cover for investment schemes? They should simply be excluded? That should be provided by the FSA.

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

33. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

34. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

I am not sophisticated enough to know.
This should be for the FSA not the SRA.

35. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes
Please explain your answer
:

36. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

37. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of

cybercrime attacks?

No. You have changed your approach to encourage reporting since I made my Complaint about your response to my doing that.

Protecting the users of legal services: balancing cost and access to legal

Response ID:217 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Please explain your answer
: As I am a retired solicitor I am only responding to questions relevant to me. Please skip to question 9

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Please explain your answer
: As I am a retired solicitor I am only responding to questions relevant to me. Please skip to question 9

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Please provide an alternative way of drafting the exclusion definition.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Please explain your answer
: As I am a retired solicitor I am only responding to questions relevant to me. Please skip to question 9

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Please explain what you think should be an alternative definition.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

Please explain what these are and provide any evidence to support you view

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: As I am a retired solicitor I am only responding to questions relevant to me. Please skip to question 9

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Please explain your answer
: As I am a retired solicitor I am only responding to questions relevant to me. Please skip to question 9

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal

services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: The SRA's run-off proposals are wholly inadequate: firms and individuals (ie "sole practitioners") who cease practice without a successor practice need indefinite cover for the public's and their own protection. Yet the SRA has decided to close the SIF to further claims after 2020 without putting anything else in its place. In doing so the SRA has abrogated the undertaking given by the Law Society (by Paul Marsh and Michael Matthews at a series of "roadshows" one of which was a well attended meeting at the Guildford College of Law) that indefinite cover would be provided by the SIF (or some form of successor) after the then newly implemented compulsory six-years market runoff cover expired. The SRA's own research revealed that many firms and sole practitioners would be likely to face at least one claim after their six-years market runoff cover expired and some claims were found to arise as long as 20 years or more after cessation of practice. The position of retired sole practitioners, such as myself, who relied on the undertaking given by Mr Marsh, must be reconsidered by the SRA.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: New firms would be discouraged by the lack of adequate and ongoing protection upon cessation

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

See reply to question 9

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Please explain your answer

: As I am a retired solicitor I am only responding to questions relevant to me - see question 9

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

As I am a retired solicitor I am only responding to questions relevant to me - see question 9

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Please explain your answer

: As I am a retired solicitor I am only responding to questions relevant to me - see question 9

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

29. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

30. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

As I am a retired solicitor I am only responding to questions relevant to me - see question 9

31. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer
: As I am a retired solicitor I am only responding to questions relevant to me - see question 9

32. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

33. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

As I am a retired solicitor I am only responding to questions relevant to me - see question 9

Protecting the users of legal services: balancing cost and access to legal

Response ID:277 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Somewhat agree
Please explain your answer
: Doesn't go far enough Run-off needs significant change

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree
Please explain your answer
: they're quite capable of understanding the exclusion of liability

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree
Please explain your answer
: Cover is too low (Needs to be £2M in South East)

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

17. Please explain what these are and provide any evidence to support you view

Simplify it - if you don't then more and more firms wont be successor practices

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

:

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Run off needs to be 1 year (except conveyancing) and limited to a maximum of 25% of previous years cover premium - otherwise more and more firms will irregularly close down

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Somewhat disagree

Please explain your answer

: Needs to go further - run-off stifles solicitors being innovative | (See comments at end)

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

save for commercial exclusion of liability for businesses
and
no need for run-off (except conveyancing) where company ceases trading by entering liquidation or being struck off

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly agree

Please explain your answer

:

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

n/a

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly agree

Please explain your answer

: depends on definition

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

29. Please set out your suggestions and reasons for the change

allow commercial exclusion of liability

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Lawyers should not be liable for investment scheme advice. This is an area where FCA advice is appropriate and risk lawyers giving advice instead of sending to FCA because of fees.

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: Currently excessive premiums for cover: 1. It is noted that the comparison did not look at average premiums on turnover. Whilst premiums have clearly improved over recent years, there is still a perception that solicitors are paying over the odds. 2. This is because of the need for approved insurers and it would be better if normal business insurance could be made with a very short minimum cover statement. 3. It is also noted that although the Market arrangements advice freedom of choice, the need for insurance via approved insurers clearly restricts choice and increases premiums. 4. The lowest available premiums are critically important as they influence the costs being passed onto the business or consumer client. The lowest possible premiums would reduce hourly charges. 5. It is unclear why solicitors should offer guarantees over and above competitive industry standards. Outside inheritance, conveyancing and client money cover, solicitors should be able to exclude liability for businesses dealing with them or should be able to simply liquidate as a limited liability entity. (The position would be different

for Outside inheritance, conveyancing and client money cover and certain consumer activities). 6. Minimum £500,000 cover for non conveyancing possibly with the exception of conveyancing, practitioners should be able rely upon the ability to fold a limited liability entity if it becomes insolvent and (possibly with the exception of conveyancing) there is no valid reason given why the lifeboat is still required. 7. Run-Off should be limited to 1 year (except inheritance and conveyancing) The cost of run-off is exceedingly high. This can be covered by a change in rules of insurance that where a solicitor has ceased to practice. As the practitioner is not conducting work, then the insurer takes little risk and there should be either a) a fixed fee per £1,000,000 cover for run off; or b) a ceiling of 25% of the previous years cover for run-off This would allow better planning for solicitors retirement. (In many other professional areas, a professional simply retires and closes down his limited liability company and walks away). Solicitors should be able to do this, perhaps holding run-off insurance for only 1 year in all areas except Client Money, Inheritance and Conveyancing. Most client money issues and inheritance issues should be known within a year). Without this, there will be an increasing number of irregularly closed-down firms. 8. There needs to be drastic changes to the very high premium for run-off insurance can stop solicitors retiring and closing their practices when they want to and it is agreed that this is a growing issue with small firms having an increasingly older profile. Run off should only be required (except for conveyancing matters) for a maximum of 1 year and should be limited to a maximum of 50% of the previous years cover and on a claims made basis – this way the solicitor knows their likely cost and as they're not taking on new work, the premium should be adequate. (Client funds matters will be known within 1 year and can fall into lifeboat thereafter). Conveyancing probably needs to retain the 6 year coverage period. 9. Investment schemes should be excluded from both run-off and lifeboat compensation schemes. 10. Rigidity of Approach It is certainly the case that the SRA current approach is too rigid. The legal sector is increasingly diverse, with solicitors and firms practising in many different ways and with unregulated law firms operating on the fringes whilst effectively uninsured and significantly able to undercut solicitors due to lower or non-existent insurance costs. Current rules mean some firms, particularly those working in low risks areas, are spending more on cover than is necessary and that evolution of law firms is stifled. 11. There should be an opportunity for firms, particularly smaller ones working in low risk areas, to reduce their insurance costs and open up innovative and revolutionary (disintermediated Uber-esque) practices. 12. Firms should be required to clearly advise clients of their level of insurance and the rules should allow limitation of liablity to that coverage level or to provide non-regulated legal services without insurance cover. (Over the last 10 years, our firm has offered business clients the ability to top up their insurance cover on a case by case basis, for additional up-front costs, and not a single client has availed themselves of this additional protection.). 13. In this respect the SRA should look at a) aTop-Up "Per-case cover" An "add-on cover scheme" whereby a solicitor can add on £1M cover for just a particular case; b) SRA Monthly legal defences insurance cover An ability to insure for legal fees for a monthly payment whereby clients (just as they do for the risk of car insurance, take out a monthly premium to cover them in the event of a crash), can pay a monthly premium to cover being sued as a Defendant. (The current market is very badly broken) and requires panel solicitors whereas an SRA scheme could cover a maximum charge 14. Limited Cover Sign-Off a. Clients should be able to sign-off with solicitors that they are willing to accept the work without insurance cover or that they're happy to limit cover to £500,000. b. Solicitors should also be able to do low risk work on a no-liability basis where the client signs off on this basis and clearly understands it (comparable to the FCA "I am a High-Risk Client and I understand the risks" declaration)…..certainly for business (may be different for consumers and inappropriate for conveyancing). 15. Limited Compensation Fund access It is agreed that the Compensation Fund should be there for dishonest solicitors and should not be there to protect the protect the wealthy, the handful of people who put their money into dubious investment schemes seeking a high return or other organisations who have more considerable resource. It is welcomed that the SRA seeks to introduce flexibility around who the cover should protect and that there would be no need for our minimum terms to include cover for financial institutions, corporate and other large business clients. This must also tie into an ability to contract to exclude liability except fraud or dishonesty. 16. No Claims Bonus Currently there is an absence of a no-claims bonus. Whilst the insurers look at claims history, there is an assumption that all firms have claims every few years, and many good firms with clear claims histories effectively subsidise the careless. 17. Competition and Innovation will only come if we can exclude liability If the CMA is right that the sector needs to become more open and competitive (and it does), then it must be able to operate without the enormous insurance costs and be able to rely (excepting conveyancing, inheritance and client money) on limited liability protection, only then can new firms, with potentially innovative ideas, to enter the market and it the SRA does not change its rules to do so, then the new firms, with potentially innovative ideas, will not be solicitors but will operate in the low risk high profit areas, causing solicitors to increasingly struggle to stay above water in the high-risk areas remaining to them 18. SRA Costs The enormous costs of the SRA operations also need to be reduced. 19. Lowering Cover Level a. It is welcomed that the SRA is considering reducing the claims limit to £500,000 for all firms apart from claims for conveyancing services. b. Having a higher limit for conveyancing is welcomed but the minimum of £1m cover is inadequate and needs to be £2M and linked to average house prices (or there needs to be a Home Counties premium cover

requirement)A modest 4 bedroom house at the edge of the M25 is not approaching £1M in value. 20. Conveuyancing Cover It is also welcomed that SRA will introduce a conveyancing component in insurance so that only firms that need cover for this work are required to buy it. 21. Compensation Funds changes Most of these are an appropriate step. 22. Provision of services outside regulated firms Key decisions, including allowing solicitors to provide some legal services outside of regulated firms are welcomed 23. Limiting cover for Commercial Claims: Solicitors should be entitled to limit liability by contract to £500,000 and if they do so and it is made clear to clients then they should be able to have the £500,000 cover level for commercial work. This allows larger solicitors with higher value work to advertise their additional cover at their higher costs and higher PII cover. Reduction of PII to a minimum level of cover required for each claim to £500,000 apart from claims for conveyancing services. 24. Clarity Required It would be helpful for SRA to claify what is meant by "exclude compulsory cover for financial institutions, along with corporate and other large business clients (firms will still need to buy appropriate and adequate cover for these clients) 25. Exclusion of liability where bill not paid within 30 days The coverage is all one-sided as many commercial clients fail to pay promptly.It is suggested that the ability to claim on a solicitors insurance should also exclude any claim from a client who has not paid the solicitor within 30 days of the bill being rendered. 26. Consumer risk Booklets Concerns about initial consumer perception of risk in legal services could easily be dealt with by an SRA booklet required to be given to consumers explaining their risk. Clear and open availability of information on redress could mitigate the risk to people that they choose a firm that does not have appropriate PII cover. 27. Non-LSA Areas Changes in compulsory protections for clients of solicitors working in non-Legal Services Act (LSA) regulated firms is welcomed and it is not proportionate to require the solicitors that work in these firms to have insurance that is equivalent to our MTCs. (Also appropriate to have exclusion of claims on the Compensation Fund.). 28. Phase 2 changes Phase two of our LTTF reforms, should allow individual self-employed solicitors to provide the full range of legal services without the need for the firm to be authorised by us, but should be limited to two solicitors per firm. (That way's there's at least cover for illness). If this proposal goes ahead there si no reason why SRA should continue to allow clients of these individual solicitors to have access to the Fund. 29. ?? To what extent do you agree that our minimum PII requirements do not need to include ?? cover for financial institutions and other large business clients? STRONGLY AGREE Commercial clients are easily able to understand exclusion clauses

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

none- firms must use industry standard approaches and if they do they should not be liable (as they weren't negligent)

Protecting the users of legal services: balancing cost and access to legal

Response ID:230 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The level of cover for most work carried out by this London sole practitioner in the realms of probate, wills, commercial, company, and property does not match the possibile claims that might be faced if things go wrong were the new minimum cover to be adopted. It does fall within the standard present minimum cover and so obviates the need to provide additional cover, and merely means some work has to be turned away.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: this again does not recognise reality even with mortgages - of course some niche smaller practices deal with clients other than lenders

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

Why should there be an exclusion definition? Solicitors should be able to serve such clients as they feel competent to serve without being restricted in this way. There are means available for dealing with solicitors who do not behave with adequate and proper caution.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: Insurers quote based on work and range of work and value of work and even top and bottom deals done. Their pricing may be supposed to take account of the issue you seek to regulate from above.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

I do not think it appropriate to single out the issue, but in any event a licence arrangement is not provided for being neither an interest nor an estate in land

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

I believe the notion of something akin to a reserve or sinking fund approach would be more appropriate - it woudl actually put the price of insurance up a bit, but properly handled and save for odd cases shoudl allow both in the case of successor practice and retirement for provision to be in hand. The reserve would of course need to be available to appropriate insurers so it may need to be held by a non commercial entity rather than eg passed on to the insurer for the time being

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: I believe the proposal above in reply to 6 would deal with the matter more efficaciously

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: For reasons set out in replies to initial queries, I believe the likelihood is that the proposals as they presently stand are likely to lead most prudent solicitors to seek additional cover and thus end by costing more in the matrix that yields their charges to clients. So I do not believe it is realistic to contemplate flexibility save for firms limited to particular fields of work and or in particular areas. There is in any event a minimum price for cover that invovles the the risk calculation and i do not see why insurers wouldl reduce this minimum to 25% of the old. Many firms in any event deal with eg conveyancing work country wide due to long standing connection with clients, and while the local area may involve lower priced property, the cost of keeping a proper firm profile will increase, I believe, even if lower limits applied to some areas and not to others.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: I believe the answers to previous queries should demonstrate why I strongly disagree with this proposition.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: I think some consumers are in fact clients, and others do not place any value on professional services. These are both mixed in with 'consumers' as if of equal strength detergents. The question put in the mouth of the putative consumer surely should be 'am i safe instructing this solicitor in case anything goes wrong?' not 'is this solicitor the cheapest regardless of what cover is held and any competence, client care, etc?'

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The EDI impact assessment you have made is hopefully correct and seems so, but it is incredible to introduce a change of the magnitude proposed to deal with this sector. The sector needs to be considered, but in some other way. I do not know to what extent firms base fees upon a general rate or upon the impact of work upon insurance rates, and perhaps if they knew the latter could adjust the former if and to the extent they do not already do so. I cannot begin to judge impact, difficulty of implementation etc. nor can I tell to what degree the fact that firms are based in certain areas with certain categories of work means that their current premiums do not already reflect the risk 'tone' sufficiently.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: The current system has its pros and cons. There is no measurement provided by which to judge the proposals and how they would impact and whether fairly or unfairly where there is dishonesty. Further, there are differences between disguised dishonesty which could not reasonably have been quickly spotted, and moving from there to tacitly condoned dishonesty and so on. No judgement is possible, in my view, on philospohical principles alone that makes the proposals prima facie better than the exisitng.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

it is discretionary and I agree despite attempts at professional credibility cannot be otherwise at any reasonable cost that will not, in turn, be reflected in fees. If rules for how the discretion is to be exercised are to be re-examined, then the coverage in the consultation appears broadly considered, but again there are no figures to help deal with constructive criticism.

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: this shoudl not be a sole criterion for judging whether someone should be entitled to this form of compensation.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

No, but please see response to 15.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Yes

32. Please set out your suggestions and reasons for the change

of course a discretionary decision if hedged about by rules becomes open to judgement. But i repeat the answer in 15.

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

I have no means of judging in the absence of empirical evidence. The whole matter of charging and or compensation should not be based on what might be seen to be seemingly political but on evidentiary and circumstantial bases.

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

I do not think solicitors should lend their names to these schemes unless they are themselves satisfied with a paper trail etc that they are credible and present merely "normal" investment risk. it is incredible that it should be otherwise and the rest of the profession called on for rescue.

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: transparency is all, though the fund then becomes less and less discretionary.

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

39. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Education and keeping soicitors up to date with latest scams etc is the only thing that can be done.

Protecting the users of legal services: balancing cost and access to legal

Response ID:256 Data

3. Consultation questions

11.

1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: The proposed changes will reduce the minimum cover to £500,000 and require top up insurance for conveyancing work. As a small firm (effectively 1 1/2 full time solicitors) with just under 50% conveyancing base we are unlikely to be able to obtain top up cover at an affordable price to be able to continue with conveyancing work. However as we could have historic conveyancing claims under the claims made basis of solicitors PII this will mean that the firm will have to close. The minimum cover also includes claimant's costs and aggregation. The proposed reduction will potentially leave clients with uninsured losses. In addition I would expect banks and building societies to impose a higher minimum level of cover (or use this as an opportunity to reduce their panel size) which would further limit our ability to provide a good, local, accessible service to clients who value our local and personal service.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: Acting for financial institutions is a significant part of conveyancing work. To exclude them would reduce the choice available to clients in conveyancing work. This does not benefit the client who may be forced to use an institution's solicitor who is not local and who will have no competition in relation to the fees they charge. It will place us at a disadvantage when competing with Licenced conveyancers. In addition there appears to be an assumption in the consultation that top up insurance to cover claims by institutions will be readily available at an affordable price. I can see no evidence of that and I would expect the top up premium to be high and unaffordable as there is no incentive or reason for the insurance companies to keep these fees down. If top up cover is not available at an affordable premium, given the historic claims nature of the PII we as a firm will have no option to close down, reducing the customers choice, particularly those more vulnerable or less IT able, who value the service of a traditional local high street firm. Even if top up insurance to cover financial institution is available the overall PII premium is likely to be higher than at present and this will therefore increase the clients' costs rather than reduce them. On our current premiums, the SRA is suggesting the proposed reduction to £500,000 would reduce our premiums by 7-16% which in our case would be a reduction of £360-£680. I am sure the additional insurance to cover financial institutions would exceed £680, and I would have the additional stress and time of completing additional application forms, dealing possibly with separate brokers and insurance companies and facing bureaucracy and costs which I would have to pass onto clients - increasing the costs not only for conveyancing clients but also for all matters generally. As lenders expect the customer to pay their costs in any event the additional costs for insuring the financial institution would be met by the small individual consumer.

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

I do not think they should be excluded. I also think proposing to exclude business clients will lead to problems with insurers trying to avoid cover for small businesses which inadvertently fall within the excluded definition. There would be additional costs in having to ensure a client falls within our insurance coverage which would have to be passed onto the consumer.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: I do not believe this would save money for anyone, be it the solicitor or customer. It means that there may be gaps in a firms coverage, particularly in relation to historic claims. In setting my current PII premium the insurance company is already taking into account, and weighting the premium, to reflect the conveyancing work we carry out. If I did no conveyancing work but only children or low risk work, my lower premium would be reflecting this lower risk and so again the change would not reduce the premium being paid.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

I do not think there should be a separate arrangement for conveyancing services. Conveyancing is a very wide definition (it has to be) but may include advice or registration of restrictions in matrimonial proceedings or assents in probate work. It is difficult to be clear when a matter becomes a "conveyancing service" and again may result in disputes about coverage of PII leaving client's potentially uninsured which cannot be to their benefit.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

I think it is important to have clear rules which mean a client knows who will be providing coverage following the closure of a firm. Also I think the SRA should be taking strong action against no only solicitors who fail to pay their run off premiums as a sole practitioner or partner but also directors in limited companies or LLPs which close and fail to pay their premiums. Run off cover is a known future expense and should be paid and directors should be personally liable if not paid by their company. To change the rules to 3 years or restricting the cover available (for example reducing the cover to a maximum of £500,000 per claim) can leave partners who retired several years ago open to possible personal claims and financial ruin at a time when they thought appropriate arrangements had been made. One off or separate insurance cover is unlikely to be available, and if it is unlikely to be affordable.

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: I do not think the proposals will reduce costs or benefit clients. I am not in a position to comment in any further detail on this.

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: As stated above we will need two separate policies to carry out conveyancing work. This will cost us more (as our current premium is calculated in the knowledge we are doing conveyancing work) as we will need top up insurance. As the top up insurance is not under the minimum terms I expect it to be more expensive, and less wide ranging in coverage which will not benefit the client. I cannot see how an insurance market which is already limited is going to lower costs. Having top up

insurance will increase the complexity of the system which will increase administration fees and ultimately increase the cost to the client whilst also increasing the risk that the client will not be covered.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: I think the run off cover should be retained at 6 years which is the primary limitation period. When renewing PII each year, one of the factors I take into account when considering whether to proceed is the cost of run off. If my insurance premiums jump too much with the knock on effect on my possible run off costs I would arrange to close the firm at that stage. Although it would have an impact on consumer protection there is an argument that coverage should only be provided for firms who pay their premiums. I have not seen any data for which firms fail to pay their run off cover but do not think a limited reduction in cost will make a significant difference to the number of firms the SRA deals with for disorderly closure. If they are not going to pay because of insolvency then the level of premium is irrelevant.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: The actual cost of PII in the first year is relatively low as there is no potential for historic claims. The reduced coverage may put people off from entering the legal services market.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

25. Please explain what you think these impacts are

Sole practitioners and small firms tend to have more BME and female solicitors and the PII changes are likely to adversely affect these smaller firms. Also small firms tend to work for individuals, often in more economically deprived areas so their clients will also be adversely impacted.

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

Maybe in relation to run off.

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: The compensation fund already limits who can apply and has protections in place. I have not been able to locate any statistics in relation to the compensation fund, how many people have been paid out, how many firms does this relate to, what was the turnover of those firms, how much is held by the compensation fund, how many claims are rejected. I cannot really answer the questions below due to a lack of information (particularly as the SRA no longer provides minutes to meetings so

there is no transparency in relation to this). I was surprised to learn from the Law Society response to the consultation that intervention costs are paid out of the compensation fund and not the SRA's day to day costs.

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

I cannot really answer this.

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

:

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

31. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

36. Please explain you answer and any suggestions you have for alternative approaches

I have not been able to locate this formula. There is a lack of information available to show payments made, the nature of those claims (lack of insurance, fraud, insolvency) and reference has been made to investment plans - surely if regulation was effective these would be dealt with before they became a significant issue.

7. Questions continued

37. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

I am not in a position to answer this.

38. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: At present it is difficult to locate information about this.

39. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

No

Please explain what you think these impacts are

40. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Analysis of information to see if there are common patterns, providing signposting to helpful advice.

Protecting the users of legal services: balancing cost and access to legal

Response ID:278 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: The minimum level of cover should remain as it is. To reduce it will expose clients to huge risks.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: They must do so to ensure the integrity of the profession

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: The market already provides weighting for these services which means that the risks are appropriately apportioned.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

Please explain what you think should be an alternative definition.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to

potentially lower insurance costs?

Neither disagree or agree

Please explain your answer

:

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Run off cover is critical to protect the interests of clients - the affordability of premiums is clearly a concern but not at the expense of the consumer

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

:

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: Why?

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

28. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

29. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

30. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

31. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

32. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

33. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer
:

34. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

35. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:283 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Neither disagree or agree
Please explain your answer
:

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Neither disagree or agree
Please explain your answer
:

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Please provide an alternative way of drafting the exclusion definition.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: We do not believe there is any need to implement any changes for the following reasons: Unnecessary Complexity The current MTC's provide simple and robust protection to clients, lenders and law firms. By making the system of assessing what level of cover is required far more complex and entirely down to each individual law firm it is highly likely to have the opposite effect to which the SRA's proposals suggest: ■ The complexity of assessing what level of cover required will mean that smaller law firms who in the past have dealt with conveyancing on an ad hoc basis will no longer do so. It will also put off potential new entrants to the market. This will reduce choice of the service provider for consumers and inevitably increase cost where there is less competition. ■ There is a much greater chance that a law firm will not have sufficient insurance cover. Owners of law firms who deal in conveyancing do not have the expertise or knowledge to assess what level of risk they should be covering against. It is likely that a claim relating to a property under £1M will result in compensation being paid of over £1M. The law firm owner would have assumed they were complying with the new proposed requirements but still find themselves under-insured. This will have a disastrous effect on the law firm, the client and the perception of the profession in general. There will be a much greater risk to consumers and clients of engaging a law firm who are unwittingly under insured for the work they are carrying out. ■ The added complexity of assessing and arranging layers or tiers of additional PII cover will add an extra administrative burden on law firms as well as increase the premium and administrative costs of carrying out all levels of conveyancing transactions. These additional costs and administrative expenses will no doubt result in law firms increasing conveyancing fees for consumers. It is also likely that the increased cost and administrative burden will result in less law firms engaging in conveyancing work, reducing competition which will increase cost to the consumer and stifle innovation. The increased costs for dealing with conveyancing will put off new entrants into the conveyancing market which will hinder future choice for consumers as law firms currently engaged in conveyancing retire, merge or close down. There will be no incentive to innovate as the firms left in the market will have less competition and be able to charge higher fees to the consumer. Mortgage Lender issues It is already common place for mortgage lenders to exclude sole practitioners and sub 4 partner law firms from their conveyancing panels. The uncertainty as to whether a law firm is sufficiently covered would likely result in the following: ■ all but a few large law firms, who can be efficiently assessed and monitored by the lender, being removed from

lender's conveyancing panels ■ lenders requiring law firms to have much higher levels of PII cover than the newly proposed amounts and higher even than the current PII level to ensure that any potential risk to the lender is covered by insurance ■ Increased costs to law firms to cover the fees of panel management companies employed by lenders to assess a law firms' suitability for joining or remaining on each lender's conveyancing panel ■ Where lenders reduce their conveyancing panel, far greater instances of those lenders being separately represented by firms remaining on panel, doubling cost to clients ■ As mortgage lenders fall within a category of entities not covered by the proposed minimum terms they would require additional insurance to be taken out by a law firm as a pre-requisite of them being admitted to the lender's conveyancing panel The consequences of these actions for smaller, conveyancing centric law firms will be catastrophic. When a law firm is no longer on a lender's panel it is inevitable that they will lose clients to firms who are on panel. With fees already squeezed in conveyancing this will result in the disorderly closure of very many law firms on financial grounds. There will be less choice for the consumer in who carries out their conveyancing and due to the lack of competition, cost for the consumer will increase while innovation flounders. By far the most widely used legal service by consumers is conveyancing. If the SRA wish to increase suppliers of conveyancing whilst protecting consumers and reducing costs then there are far more effective ways of doing so rather than changing the whole PII market. An example would be requiring all mortgage lenders to include each and every law firm who is regulated by the SRA and has the minimum level of PII under the current system on their conveyancing panels. This would increase the number of conveyancing providers, attract new providers to the market and reduce cost to the consumer through increased suppliers of the service whilst retaining the 'gold-plated' indemnity insurance cover currently offered by the profession. This, together with stricter controls on non-declared referral fees paid to estate agents or mortgage brokers would do far more to achieve the SRA's proposed goals rather than these current ill-thought through PII proposals. Conclusion It is clear if you follow through the rationale of imposing greater PII administrative burdens and expenses on conveyancing practices that the result will be an increase in costs of insurance premiums, fees to PII brokers and internal administrative time, all of which will result in an increase cost of conveyancing to consumers. The most likely outcome is that due to the increased cost to a law firm and the likely stance of mortgage lenders should these changes come about there will be much less competition in conveyancing service suppliers. This would have a detrimental effect on consumers at the same time as increasing the risk that the law firm they engage is under-insured in the event of a property claim.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

16. Please explain what you think should be an alternative definition.

We believe that the inclusion of the words '…and other service ancillary to…' is too vague and far reaching. An alternative suggestion would be:
"Dealing with transfers, conveyances, leases, contracts, deeds, grants, mortgages, charges, licences and other documents in connection with the disposition, acquisition or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in land."

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

:

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

:

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The current proposals concern us, as it would appear that they do not serve the purpose of protecting the public or encouraging new entrants into the market. The public will have less protection and there is a danger that it will undermine public confidence in the profession. We also understand, from leading PII brokers, that there will only be marginal savings on premiums for those seeking the minimum insurance. Further, it would also penalise firms who choose to retain their current level of cover above the minimum figure, as their premiums are likely to rise.

With there being no persuasive case for change, we favour the option of no change at all to our PII requirements.

We believe that the way to achieve lower premiums is to have less claims. To do so, we must improve the claims record of all solicitors. SRA resources should be directed towards assisting law firms with risk management, as ultimately prevention has to be the best solution.

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

:

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat agree

Please explain your answer

:

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Yes

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

30. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

31. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

32. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

:

33. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

34. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:287 Data

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
:

11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Please explain your answer
:

12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Please provide an alternative way of drafting the exclusion definition.

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: We do not believe there is any need to implement any changes for the following reasons: Unnecessary Complexity The current MTC's provide simple and robust protection to clients, lenders and law firms. By making the system of assessing what level of cover is required far more complex and entirely down to each individual law firm it is highly likely to have the opposite effect to which the SRA's proposals suggest: ■ The complexity of assessing what level of cover required will mean that smaller law firms who in the past have dealt with conveyancing on an ad hoc basis will no longer do so. It will also put off potential new entrants to the market. This will reduce choice of the service provider for consumers and inevitably increase cost where there is less competition. ■ There is a much greater chance that a law firm will not have sufficient insurance cover. Owners of law firms who deal in conveyancing do not have the expertise or knowledge to assess what level of risk they should be covering against. It is likely that a claim relating to a property under £1M will result in compensation being paid of over £1M. The law firm owner would have assumed they were complying with the new proposed requirements but still find themselves under-insured. This will have a disastrous effect on the law firm, the client and the perception of the profession in general. There will be a much greater risk to consumers and clients of engaging a law firm who are unwittingly under insured for the work they are carrying out. ■ The added complexity of assessing and arranging layers or tiers of additional PII cover will add an extra administrative burden on law firms as well as increase the premium and administrative costs of carrying out all levels of conveyancing transactions. These additional costs and administrative expenses will no doubt result in law firms increasing conveyancing fees for consumers. It is also likely that the increased cost and administrative burden will result in less law firms engaging in conveyancing work, reducing competition which will increase cost to the consumer and stifle innovation. The increased costs for dealing with conveyancing will put off new entrants into the conveyancing market which will hinder future choice for consumers as law firms currently engaged in conveyancing retire, merge or close down. There will be no incentive to innovate as the firms left in the market will have less competition and be able to charge higher fees to the consumer. Mortgage Lender issues It is already common place for mortgage lenders to exclude sole practitioners and sub 4 partner law firms from their conveyancing panels. The uncertainty as to whether a law firm is sufficiently covered would likely result in the following: ■ all but a few large law firms, who can be efficiently assessed and monitored by the lender, being removed from lender's conveyancing panels ■ lenders requiring law firms to have much higher levels of PII cover than the newly proposed

amounts and higher even than the current PII level to ensure that any potential risk to the lender is covered by insurance ■ Increased costs to law firms to cover the fees of panel management companies employed by lenders to assess a law firms' suitability for joining or remaining on each lender's conveyancing panel ■ Where lenders reduce their conveyancing panel, far greater instances of those lenders being separately represented by firms remaining on panel, doubling cost to clients ■ As mortgage lenders fall within a category of entities not covered by the proposed minimum terms they would require additional insurance to be taken out by a law firm as a pre-requisite of them being admitted to the lender's conveyancing panel The consequences of these actions for smaller, conveyancing centric law firms will be catastrophic. When a law firm is no longer on a lender's panel it is inevitable that they will lose clients to firms who are on panel. With fees already squeezed in conveyancing this will result in the disorderly closure of very many law firms on financial grounds. There will be less choice for the consumer in who carries out their conveyancing and due to the lack of competition, cost for the consumer will increase while innovation flounders. By far the most widely used legal service by consumers is conveyancing. If the SRA wish to increase suppliers of conveyancing whilst protecting consumers and reducing costs then there are far more effective ways of doing so rather than changing the whole PII market. An example would be requiring all mortgage lenders to include each and every law firm who is regulated by the SRA and has the minimum level of PII under the current system on their conveyancing panels. This would increase the number of conveyancing providers, attract new providers to the market and reduce cost to the consumer through increased suppliers of the service whilst retaining the 'gold-plated' indemnity insurance cover currently offered by the profession. This, together with stricter controls on non-declared referral fees paid to estate agents or mortgage brokers would do far more to achieve the SRA's proposed goals rather than these current ill-thought through PII proposals. Conclusion It is clear if you follow through the rationale of imposing greater PII administrative burdens and expenses on conveyancing practices that the result will be an increase in costs of insurance premiums, fees to PII brokers and internal administrative time, all of which will result in an increase cost of conveyancing to consumers. The most likely outcome is that due to the increased cost to a law firm and the likely stance of mortgage lenders should these changes come about there will be much less competition in conveyancing service suppliers. This would have a detrimental effect on consumers at the same time as increasing the risk that the law firm they engage is under-insured in the event of a property claim.

14. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

15. Please explain what you think should be an alternative definition.

We believe that the inclusion of the words '…and other service ancillary to…' is too vague and far reaching. An alternative suggestion would be:
"Dealing with transfers, conveyances, leases, contracts, deeds, grants, mortgages, charges, licences and other documents in connection with the disposition, acquisition or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in land."

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

Please explain what these are and provide any evidence to support you view

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Please explain your answer

:

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Please explain your answer

:

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Please explain your answer

:

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Please explain your answer

:

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

29. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

30. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

31. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer
:

32. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

33. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:289 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: Whilst it may catch the vast majority of claims, the data collected confirms that some claims would not have been caught by the level of cover and therefore the level is inappropriate.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: It is impossible to predict who will require the protection of the cover and this could lead to claims not being protected by insurance and being personally/privately funded by the law firm, for example.

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

As above.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: We do not believe there is any need to implement any changes for the following reasons: Unnecessary Complexity The current MTC's provide simple and robust protection to clients, lenders and law firms. By making the system of assessing what level of cover is required far more complex and entirely down to each individual law firm it is highly likely to have the opposite effect to which the SRA's proposals suggest: ■ The complexity of assessing what level of cover required will mean that smaller law firms who in the past have dealt with conveyancing on an ad hoc basis will no longer do so. It will also put off potential new entrants to the market. This will reduce choice of the service provider for consumers and inevitably increase cost where there is less competition. ■ There is a much greater chance that a law firm will not have sufficient insurance cover. Owners of law firms who deal in conveyancing do not have the expertise or knowledge to assess what level of risk they should be covering against. It is likely that a claim relating to a property under £1M will result in compensation being paid of over £1M. The law firm owner would have assumed they were complying with the new proposed requirements but still find themselves under-insured. This will have a disastrous effect on the law firm, the client and the perception of the profession in general. There will be a much greater risk to consumers and clients of engaging a law firm who are unwittingly under insured for the work they are carrying out. ■ The added complexity of assessing and arranging layers or tiers of additional PII cover will add an extra administrative burden on law firms as well as increase the premium and administrative costs of carrying out all levels of conveyancing transactions. These additional costs and administrative expenses will no doubt result in law firms increasing conveyancing fees for consumers. It is also likely that the increased cost and administrative burden will result in less law firms engaging in conveyancing work, reducing competition which will increase cost to the consumer and stifle innovation. The increased costs for dealing with conveyancing will put off new entrants into the conveyancing market which will hinder future choice for consumers as law firms currently engaged in conveyancing retire, merge or close down. There will be no incentive

to innovate as the firms left in the market will have less competition and be able to charge higher fees to the consumer. Mortgage Lender issues It is already common place for mortgage lenders to exclude sole practitioners and sub 4 partner law firms from their conveyancing panels. The uncertainty as to whether a law firm is sufficiently covered would likely result in the following: ■ all but a few large law firms, who can be efficiently assessed and monitored by the lender, being removed from lender's conveyancing panels ■ lenders requiring law firms to have much higher levels of PII cover than the newly proposed amounts and higher even than the current PII level to ensure that any potential risk to the lender is covered by insurance ■ Increased costs to law firms to cover the fees of panel management companies employed by lenders to assess a law firms' suitability for joining or remaining on each lender's conveyancing panel ■ Where lenders reduce their conveyancing panel, far greater instances of those lenders being separately represented by firms remaining on panel, doubling cost to clients ■ As mortgage lenders fall within a category of entities not covered by the proposed minimum terms they would require additional insurance to be taken out by a law firm as a pre-requisite of them being admitted to the lender's conveyancing panel The consequences of these actions for smaller, conveyancing centric law firms will be catastrophic. When a law firm is no longer on a lender's panel it is inevitable that they will lose clients to firms who are on panel. With fees already squeezed in conveyancing this will result in the disorderly closure of very many law firms on financial grounds. There will be less choice for the consumer in who carries out their conveyancing and due to the lack of competition, cost for the consumer will increase while innovation flounders. By far the most widely used legal service by consumers is conveyancing. If the SRA wish to increase suppliers of conveyancing whilst protecting consumers and reducing costs then there are far more effective ways of doing so rather than changing the whole PII market. An example would be requiring all mortgage lenders to include each and every law firm who is regulated by the SRA and has the minimum level of PII under the current system on their conveyancing panels. This would increase the number of conveyancing providers, attract new providers to the market and reduce cost to the consumer through increased suppliers of the service whilst retaining the 'gold-plated' indemnity insurance cover currently offered by the profession. This, together with stricter controls on non-declared referral fees paid to estate agents or mortgage brokers would do far more to achieve the SRA's proposed goals rather than these current ill-thought through PII proposals. Conclusion It is clear if you follow through the rationale of imposing greater PII administrative burdens and expenses on conveyancing practices that the result will be an increase in costs of insurance premiums, fees to PII brokers and internal administrative time, all of which will result in an increase cost of conveyancing to consumers. The most likely outcome is that due to the increased cost to a law firm and the likely stance of mortgage lenders should these changes come about there will be much less competition in conveyancing service suppliers. This would have a detrimental effect on consumers at the same time as increasing the risk that the law firm they engage is under-insured in the event of a property claim.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

We believe that the inclusion of the words '…and other service ancillary to…' is too vague and far reaching. An alternative suggestion would be:

"Dealing with transfers, conveyances, leases, contracts, deeds, grants, mortgages, charges, licences and other documents in connection with the disposition, acquisition or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in land."

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

19. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the

MTCs?

:

20. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: I believe that all firms should be protected with the same level of cover and same cost (in accordance with their size/caseload etc) as it is impossible to predict the potential cost of the claim or reason for the same whether due to conveyancing, civil litigation, matrimonial etc.

21. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

:

5. Questions continued

22. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: I do not believe that PII premiums are the major concern here and I believe that there is plenty of choice for the users of legal services already spanning from major firms to online firms. Also, as a further point, are law firms who are encouraged by the 'cheaper the better' incentive the law firms that the SRA wish to attract to the profession as a whole?

23. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

24. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

25. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Please explain your answer

:

26. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

27. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: I believe that access to justice should be universal and non-discriminatory, as the law is.

6. Questions continued

28. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

29. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

30. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

31. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

32. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

33. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

34. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Please explain your answer

:

35. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

36. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:307 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: I don't agree that reducing the minimum level of PII cover will reduce the costs to firms or clients; but this will potentially reduce the amount of protection available to clients. It also increases the risk to the profession from under insured and/or uninsured claims. Strong minimum insurance cover is also one of the ways that solicitors are able to differentiate themselves from unregulated lawyers.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Neither disagree or agree
Please explain your answer
: I don't deal with these types of client; although I fail to see why a large business client should be any less protected than a consumer. The potential impact of an uninsured claim by a large business client on the profession is significant.

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Please provide an alternative way of drafting the exclusion definition.

14. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree
Please explain your answer
: Conveyancing carries specific risks and it is right that the PII cover for conveyancers reflect this.

15. 5) Do you think our proposed definition of conveyancing services is appropriate?

Please explain what you think should be an alternative definition.

4. Questions continued

16. 6) Do you think there are changes we should be making to our successor practice rules?

Please explain what these are and provide any evidence to support you view

17. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: I doubt that the removal of minimum levels of cover will reduce cost. I believe it will simply cause greater confusion for individual firms in purchasing cover, make it more difficult to compare "like-for-like" quotes and increase the risks to the profession as a whole from uninsured/ under-insured claims.

19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Neither disagree or agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: I consider that lower run off cover costs to assist with an orderly winding up of firms is needed, and I believe that the cover needs to reflect the requirements and activities of individual practices. I would prefer to see shorter run-off periods as well as lower amounts of cover being required, but in all cases, run-off cover needs to reflect the individual firm and the work it has carried out.

5. Questions continued

20. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: I started my practice 3 years ago. PII whilst expensive, was by no means the highest cost overall. I did consider operating as an "unregulated lawyer" but decided the benefit of being a regulated solicitor was worth the higher cost. Part of the benefit is public trust and confidence in the profession and I would be reluctant to encourage anything that might reduce public perception. Further, as the minimum terms and cover are stipulated by the SRA, choosing and comparing quotes was simple. It would have been extremely confusing for me setting up a new firm if I had to choose between different levels of cover and different terms, with limited knowledge of both the insurance market and what cover I would actually need.

21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

22. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

23. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat agree

Please explain your answer

: I agree that the compensation fund should only be for genuine cases of hardship. The remainder of the profession should not be subsidising a minority of bad solicitors.

24. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

25. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat agree

Please explain your answer

:

6. Questions continued

26. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

27. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

28. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

29. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

30. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

Buyer beware. Anyone investing in anything has a responsibility to carry out a level of due diligence proportionate to the transaction and in a risky offer, only risk an amount they can afford to lose. Investing in a transaction/scheme is no different from choosing between investing in the stock market versus paying money into a savings account. Higher rewards inevitably carry higher risks and it for the individual investor to decide whether the potential risks and rewards are worth taking or not.

31. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

32. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

33. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:314 Data

3. Consultation questions

11.

1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree

Please explain your answer

: I strongly disagree with the proposal to reduce the minimum level of cover to £500,000/£1million for conveyancing firms. I understand that the SRA has provided statistical data in its proposals that claims that if the minimum level of protection was reduced to £580,000 then 98% of claims would be met. I have some observations on this claim which I believe casts serious doubt on the sense of the proposals to reduce the minimum level of cover. 1 Firstly, I have concerns over the validity of the data which the SRA says covers the period from 2014. The SRA's data does not include data from insurers who have left the market during that period. I understand that these insurers represented 26% of the total market. To the extent these insurers collapsed or left the market due to the extent of the PII claims that they had to cover under policies they had written (such as Quinn or Balva) these claims might be expected to influence the SRA's data, particularly as these insurers would be likely to provide cover to disproportionately greater number of the higher risk firms. 2 There is no data since 2014 and does not reflect changes that have taken place in the intervening period. Most significantly I feel that this period excludes the more recent instances of cyber-fraud which has become a significant risk for law firms. I understand that there are many instances in which claims for this kind of fraud exceed £500,000. 3 The £580,000 figure relied upon by the SRA reflects the settled cost of claims and does not include the total amount claimed nor defence costs. If firms took out the minimum level of insurance they would not be covered for their defence costs to the extent these took the overall level of liability to above £500,000. Leaving aside concerns over the validity of the data itself, on the SRA's own figures, a significant number of claims would fall outside the £500,000 minimum level proposed by the SRA. On that basis, unless firms elected to purchase top-up cover, a number of claims would be uninsured. It is also unclear what number of claims fall within the £500,000 to £580,000 range as these would also be potentially uninsured. I have further concerns over the £1,000,000 minimum cover that is proposed for conveyancing firms. The figure seems arbitrary and does not take into account the wide regional variations in house prices. For conveyancing transactions in London, £1,000,000 of cover is likely to be hopelessly inadequate when considering the adequacy of PII cover. Whilst I agree with the SRA's objective of reducing the burden of regulation, I don't believe that these proposals will achieve that aim. To the extent there are an increased number of uninsured claims (which seems likely just based on the SRA's own data as outlined above) there would be increased disruption for firms and their partners who face uninsured losses. That will lead to an increased number of failures of firms, an increase in the burden on the Compensation Fund plus an increase in the overall cost of regulation, with the SRA presumably having to undertake more enforcement action as a result. Firms engaged on matters having a value in excess of £500,000 will face an increased burden of having to assess the risk of dealing with another firm on the other side and whether they have adequate PII cover e.g. in being able to rely on undertakings, whilst the current arrangements give firms cover in knowing that there is a reasonable minimum level of cover without having to make that assessment. There will be a cost of having to make such assessments, which will either have to be borne by the firms themselves or passed onto their clients. None of this would appear to be in the interests of clients. I also believe that the market for top-up cover will become more complicated. In practice, responsible firms will purchase top-up cover and we are concerned that it will take longer to apply for, with potentially three different aspects having to be covered if a firm wishes to purchase general top-up cover as well as conveyancing cover and cover for large financial institutions and business clients. I also believe, having spoken to insurance brokers, that top-up cover will become more expensive to purchase. I note the SRA's assumption that there is a potential cost-saving of 9-17%. However, I am dismayed to note that the SRA has not asked insurers to provide any indicative quotes for the minimum cover nor for top-up cover to evidence its claim and I would ask that the SRA do this before the proposals can be considered further.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree

Please explain your answer

: Firstly, I believe that the definition of what constitutes a large financial institution is too simplistic, as it is based only on turnover. I believe that a threshold of £2,000,000 turnover is wholly inadequate in assessing whether a business is a sophisticated purchaser of legal services. Many relatively small businesses have a turnover in excess of this amount but they do not necessarily purchase legal services regularly. Secondly, in practice, those financial institutions who truly are sophisticated are likely to require the firms that they deal with to have additional top-up cover. Those who aren't sophisticated enough to understand the implications of the solicitors' PII rules are unlikely to require firms to purchase top-up cover whereas these are exactly the kind of businesses who need the additional protection that the current rules afford. Thirdly, I believe that the proposal will add to the regulatory burden for firms, as it will not necessarily be easy for a firm to determine what a client's turnover is at the time the work was done, and those records will need to be maintained for as long as it is possible that a claim may be made. That burden will lead to increased costs, which will either have to be borne by the firm or passed onto the client. Fourthly, I think this will add to the complexity and cost of obtaining top-up cover. Finally, most firms who undertake conveyancing work will act for lenders alongside buyers. Many smaller firms undertake conveyancing work. Lenders and mortgage panels are likely to require top-up cover be purchased at a minimum level as a condition of instructing a firm. If top-up cover becomes harder and more expensive to maintain then it is these smaller firms who are likely to be priced out of the market leading to a reduction in competition and higher costs for consumers.

13.

3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

As stated above, using turnover on its own as a means of determining who is a large financial institution is too simplistic and bears little relation to how sophisticated a purchaser of legal services they may be. Other factors, such as number of employees, how regularly they purchase legal services, what type of legal services they purchase and their asset base, are also relevant. Clients may satisfy the turnover threshold with one property transaction whereas another business with similar turnover may have several employees and require employment law advice, debt or equity funding and so may require corporate and banking advice and have a number of commercial contracts which require advice. Their needs and degree of sophistication are very different.

If there is to be only one test for "large", and it is to be based on turnover, then I submit that £2,000,000 is far too low.

Over 99% of businesses in the UK qualify as SMEs. Whilst there are several different definitions of a medium business, it will generally have up to 250 employees and a turnover of at least £10,000,000. This is significantly in excess of the SRA's proposal to define a large business solely by reference to turnover in excess of £2,000,000.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree

Please explain your answer

: I do not believe there is any need to implement any changes for the following reasons: Unnecessary Complexity The current MTC's provide simple and robust protection to clients, lenders and law firms. By making the system of assessing what level of cover is required far more complex and entirely down to each individual law firm it is highly likely to have the opposite effect to which the SRA's proposals suggest: ■ The complexity of assessing what level of cover required will mean that smaller law firms who in the past have dealt with conveyancing on an ad hoc basis will no longer do so. It will also put off potential new entrants to the market. This will reduce choice of the service provider for consumers and inevitably increase cost where there is less competition. ■ There is a much greater chance that a law firm will not have sufficient insurance cover. Owners of law firms who deal in conveyancing do not have the expertise or knowledge to assess what level of risk they should be covering against. It is likely that a claim relating to a property under £1M will result in compensation being paid of over £1M. The law firm owner would have assumed they were complying with the new proposed requirements but still find themselves under-insured. This will have a disastrous effect on the law firm, the client and the perception of the profession in general. There will be a much greater risk to consumers and clients of engaging a law firm who are unwittingly under insured for the work they are carrying out. ■ The added complexity of assessing and arranging layers or tiers of additional PII cover will add an extra

administrative burden on law firms as well as increase the premium and administrative costs of carrying out all levels of conveyancing transactions. These additional costs and administrative expenses will no doubt result in law firms increasing conveyancing fees for consumers. It is also likely that the increased cost and administrative burden will result in less law firms engaging in conveyancing work, reducing competition which will increase cost to the consumer and stifle innovation. The increased costs for dealing with conveyancing will put off new entrants into the conveyancing market which will hinder future choice for consumers as law firms currently engaged in conveyancing retire, merge or close down. There will be no incentive to innovate as the firms left in the market will have less competition and be able to charge higher fees to the consumer. Mortgage Lender issues It is already common place for mortgage lenders to exclude sole practitioners and sub 4 partner law firms from their conveyancing panels. The uncertainty as to whether a law firm is sufficiently covered would likely result in the following: ■ all but a few large law firms, who can be efficiently assessed and monitored by the lender, being removed from lender's conveyancing panels ■ lenders requiring law firms to have much higher levels of PII cover than the newly proposed amounts and higher even than the current PII level to ensure that any potential risk to the lender is covered by insurance ■ Increased costs to law firms to cover the fees of panel management companies employed by lenders to assess a law firms' suitability for joining or remaining on each lender's conveyancing panel ■ Where lenders reduce their conveyancing panel, far greater instances of those lenders being separately represented by firms remaining on panel, doubling cost to clients ■ As mortgage lenders fall within a category of entities not covered by the proposed minimum terms they would require additional insurance to be taken out by a law firm as a pre-requisite of them being admitted to the lender's conveyancing panel The consequences of these actions for smaller, conveyancing centric law firms will be catastrophic. When a law firm is no longer on a lender's panel it is inevitable that they will lose clients to firms who are on panel. With fees already squeezed in conveyancing this will result in the disorderly closure of very many law firms on financial grounds. There will be less choice for the consumer in who carries out their conveyancing and due to the lack of competition, cost for the consumer will increase while innovation flounders. By far the most widely used legal service by consumers is conveyancing. If the SRA wish to increase suppliers of conveyancing whilst protecting consumers and reducing costs then there are far more effective ways of doing so rather than changing the whole PII market. An example would be requiring all mortgage lenders to include each and every law firm who is regulated by the SRA and has the minimum level of PII under the current system on their conveyancing panels. This would increase the number of conveyancing providers, attract new providers to the market and reduce cost to the consumer through increased suppliers of the service whilst retaining the 'gold-plated' indemnity insurance cover currently offered by the profession. This, together with stricter controls on non-declared referral fees paid to estate agents or mortgage brokers would do far more to achieve the SRA's proposed goals rather than these current ill-thought through PII proposals. Conclusion It is clear if you follow through the rationale of imposing greater PII administrative burdens and expenses on conveyancing practices that the result will be an increase in costs of insurance premiums, fees to PII brokers and internal administrative time, all of which will result in an increase cost of conveyancing to consumers. The most likely outcome is that due to the increased cost to a law firm and the likely stance of mortgage lenders should these changes come about there will be much less competition in conveyancing service suppliers. This would have a detrimental effect on consumers at the same time as increasing the risk that the law firm they engage is under-insured in the event of a property claim.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

I believe that the inclusion of the words '…and other service ancillary to…' is too vague and far reaching. An alternative suggestion would be:
"Dealing with transfers, conveyances, leases, contracts, deeds, grants, mortgages, charges, licences and other documents in connection with the disposition, acquisition or creation of estates or interests in or over land and the sale and purchase of companies whose primary asset is an estate or interest in land."

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

On the basis that I do not agree there should be amendments to the MTCs or PIA, it would be my view that the successor practice rules do not need to be amended.
However, if the proposed amendments to the MTCs or PIA are approved, there must necessarily be some changes to the successor practice rules. In the event that the proposed amendments to MTCs or PIA are approved, it is highly unlikely that any firm would be able to risk becoming a successor practice to another firm as they will be unable to know with any certainty whether their own level of PII cover would be sufficient for the work undertaken by the firm to be succeeded. It would also mean that a retiring party would likely have to obtain their own insurance because they would have also have no way of knowing whether the successor practice was providing adequate protection under their own policy. Given that one of the professed aims of the proposals is to make retirement from practice easier, it would be my view that it would in fact cause the opposite.

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20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: I strongly disagree with the approach being taken in respect of the MTCs and the PIA. I do not believe there is any need to implement any changes. The evidence produced by the SRA is out of date and therefore should not be relied upon to make a change of this magnitude. We understand that the evidence is only accurate up to 2014 and that there have been significant increases in cyber fraud since that date which all agree is one of the largest risks facing our profession at the moment. Unless more up to date evidence is obtained, I firmly believe the status quo is preferable to any change. In respect of the proposals to amend the MTCs, the evidence we have seen from information prepared by insurance companies and brokers would suggest that in all likelihood there will be a nominal reduction in premiums for some insured but in the majority of cases there will be an increase in premiums for most firms who would wish (and need) to maintain their current level of cover. Even on the evidence provided by the SRA in respect of reduced premiums, the levels are relatively small and would not encourage new entrants to the market and would not see costs savings to individual clients, to that end, it would not increase access to justice as intended. Indeed, we believe it would see the end of general practitioners who cover a variety of areas of legal work and it would likely lead to further "advice deserts" in rural or low populated areas.

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21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree
Please explain your answer
: At first glance the proposals appear to be reasonable. However, further investigation makes them look rather less attractive. 1. The jewel in the Law Society's PII crown is the MTC. Once it is gone or fractured it will be difficult (if not impossible) to re-create it. As we understand it, the current MTC provides protection for members of law firms and the public far greater than any other UK profession. Clients. It is important for the regulator (SRA) to appreciate that well run and competent law firms will ensure appropriate levels of indemnity cover for their work as protection for both the owners of the firm but also their clients. It is the poorly managed or incompetent firms that need to be protected, as well as their clients, and this obvious point seems to be overlooked in the SRA paper, which largely seeks to reduce the cost of PII by reducing the protection for both lawyers and clients. Reducing the level of cover to £500,000 (£1m for conveyancing firms) will expose clients of 'low cost' firms to uninsured loss claims. The SRA figure of £500,000 is based on settlements achieved (ie payments) and not the amounts actually claimed at the outset. It is not hard to envisage a scenario where a claim is for £1m and the insurer (wishing to limit its costs outlay + time exposure) agrees to pay £500,000 early on in order to avoid involvement in litigation. It is the 'under insurance' potential which is of great concern to us. 2. We understand that the figure of £500,000 has been arrived at on the basis of numbers of claims settled at £500,000 or less (96%), whereas that amount by reference to amounts actually paid out by PI insurers the figure represents 56% of the total value paid, a rather different and disturbing statistic. Obviously this is an aspect which the SRA must check before proceeding with the minimum £500,000 indemnity figure. 3. We question the evidence that the SRA has that the proposals will encourage the insurance market significantly to lower premiums. Our enquiries suggest that whilst there may be some minor saving initially the insurers will make up any perceived 'shortfall' by

increasing premiums for top up insurance (which is likely to be required by most (if not all) well run competent law firms). During the past 18 months (ie after the SRA's analysis) the cost of excess layer cover has increased, largely because of several large losses which breached the current mandatory levels of cover. As a consequence some top up insurers have left the solicitors' market, including Brit Insurance and Channel Syndicate, while others have raised their premiums. Only a handful of PI insurers now offer cover for £3m over £2m or £2m over £3m, ie up to £5m maximum. It is therefore fanciful to assume that lowering the primary level of insurance will result in overall premium reductions. The reality is that most (prudent) firms will need cover considerably higher than the suggested £500,000 minimum cover and that by implementing its current proposals the SRA will cause increased costs to law firms and not reduced cost as its Consultation Paper suggests. There is also the danger of 'dodgy' PI insurers entering the 'low cost' market with obvious unwanted outcomes – see Quinn and Enterprise …… 4. In our view a better proposal is for the SRA to provide specific waivers on request from firms that want to conduct low risk work only, such as crime and housing claims. In this way a full and proper assessment can be made (as to waiver) and PI insurance cover + premium obtained as appropriate for that firm. 5. We should add that PI insurance is 'claims made' and so law firms with 'legacy' work will need run-off cover for any 'old discipline' work. We suggest that the SRA is looking the wrong way through the telescope by trying to develop a one-size-fits-all solution, when in fact a bespoke solution (for waiver applicants) is a better option. 6. As for under insurance / lack of cover, it is not difficult to imagine scenarios where law firms are inadvertently underinsured. The writer is aware of a property investment fund which had c.£5m stolen by a law firm partner where the firm's indemnity level was only £2m (ie under insured). Alternatively, a small law firm (sole proprietor ?) might take on a low value RTA injury claim which (through inexperience) is settled prematurely. Following settlement the client's medical condition deteriorates significantly, which would have been detected if the right discipline of medical adviser had been instructed …… such a claim could easily exceed the £500,000 limit. 7. Finally, we have seen data from JLT, specialist PI brokers which queries the extent to which savings may be achievable. Since January 2018 they have placed PI cover for 38 start-up law firms where the average annual premium has been £3,000. It has been suggested in the SRA paper that (1) PI premiums are stopping new entrants coming into the market and (2) that the proposals will result in premium reductions of c.10%. We do not think it credible that new entrants to the legal market would be dissuaded by a £300 differential. If they are then we question their financial model and suitability to practice as law firms..

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: I strongly disagree that the proposed cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the needs for premiums to be more affordable. There is little evidence to show that premiums would be more affordable and it is my belief that in due course, the proposed changes are likely to lead to higher premiums for many who wish to remain insured at the current minimum level. Whilst it is appreciated that there will be some who are able to benefit from the lower cap, it is likely that those practitioners would have already had the benefit of significantly lower premiums in any event due to the low risk work undertaken. It is likely that those who have at some point been involved in the provision of higher risk services would see no reduction in a run-off premium.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: If PII premiums are potentially lower, it might encourage new firms to set up in practice. What is currently unclear, is an understanding of the number of solicitors who would be willing to set up a new practice because of the potential of lower premiums. We understand the cost of PII premiums is a factor taken into account by solicitors considering setting up in private practice, but it is one of a number of factors. However, a major insurance broker recently advised that the average cost of first year premium for a newly established law firm is around £3,000. If premiums are reduced by 10% then this saving of £300 is

highly unlikely to be a determining factor as to whether a new business enters the profession or not. The higher premiums likely to be faced by all due to these proposals is more of a factor in putting off new entrants than the currently low levels of entry premium. If the SRA's assumption is correct and new firms are encouraged to enter the legal services market, if any of the new set up's are in locations based in more rural areas, it would provide much needed access to justice. This is particularly an issue in Wales. As with a number of the suggested proposals, solicitors will need to be under a clear regulatory duty to ensure their clients are made fully aware of any limits to their indemnity protection.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

No

Please explain what you think these impacts are

25. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

The current proposals concern me, as it would appear that they do not serve the purpose of protecting the public or encouraging new entrants into the market. The public will have less protection and there is a danger that it will undermine public confidence in the profession. I also understand, from leading PII brokers, that there will only be marginal savings on premiums for those seeking the minimum insurance. Further, it would also penalise firms who choose to retain their current level of cover above the minimum figure, as their premiums are likely to rise.

With there being no persuasive case for change, I favour the option of no change at all to our PII requirements.

I believe that the way to achieve lower premiums is to have less claims. To do so, we must improve the claims record of all solicitors. SRA resources should be directed towards assisting law firms with risk management, as ultimately prevention has to be the best solution.

26. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Strongly disagree

Please explain your answer

: The proposed changes do not clarify the existing purpose they seek to reclassify it as a hardship fund. I do not believe the SRA has the power to change the purpose of the Fund. Its purpose is to be a fund of last resort, as a safety net for clients who are victims of dishonesty of solicitors or hardship due to a solicitor's failure to account for monies, or to provide compensation in respect of the civil liability of a defaulting practitioner who does not have a policy of qualifying insurance policy in place. I am concerned that the £250,000 household asset bar could have perverse and unintended consequences, which will lead to deserving victims not being eligible for the fund.

27. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

No

28. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Somewhat agree

Please explain your answer

: Ideally, the Compensation Fund would compensate all clients fully for uninsured losses or the fraud of someone regulated by the SRA. However, I accept that the claims made against the Fund may be unsustainable. The contributions required by solicitors to the Compensation Fund also have to be proportionate, and so I agree a balance should be struck between the losses suffered by the claimant and the need to maintain a viable, and affordable, Fund. One way of limiting calls on the Fund

would be to restrict claims from wealthy individuals and businesses of a certain size. However, the difficulty is in drawing the appropriate thresholds for eligibility.

6. Questions continued

29. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

30. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

If the Compensation Fund is to be re-purposed as a 'hardship fund', I do not believe the proposed measure of wealth is appropriate.

31. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

32. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

33. Please explain why.

I think it important to recognise that the SCF is intended to protect law firm clients from dishonesty and/or under/lack of PI insurance. I think the £500,000 cap is arbitrary and is unlikely to be accepted by the LSB, Parliament or the media, who will regard this as an attempt by 'fat cat' lawyers to avoid their responsibility to victims of unacceptable behaviour / incompetence by fellow members of their profession. As in insurance, the many pay for the few.
I also think it more likely that the SRA PII proposals will result in more claims (for under or no-cover insurance) than at present as the insurance protection for the vulnerable wronged client will be sharply reduced.
It is difficult to see (from the quoted examples) on what basis the clients should suffer losses of c.£500,000 (example 1), £300,000 (example 2), £500,000 (example 3) and £400,000 (example 5) when the losses were not caused or contributed to by the bona fide clients/beneficiaries. I think the SRA's time would be better spent educating vulnerable firms on business management and competence (cover and indemnity levels) and policing them for signs of possible dishonesty within the business.

34. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

No

35. Please explain you answer and any suggestions you have for alternative approaches

The Fund (as with insurance) operates on the basis that 'the many pay for the few' losses caused by dishonest or incompetent law firms. It is not possible to protect against dishonest acts by individuals which is usually prompted by greed or financial mishap, sometimes both. Either the profession as a whole accepts responsibility for the losses caused by the small number of dishonest/incompetent law firms or it does not. A 'half way house' as suggested by the SRA proposals is not satisfactory.
The Fund has considerable discretion at its disposal and I regard this as a better way of dealing with the problem than imposing arbitrary limits which are likely to cause public outrage.

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

In my view the claimant on the Fund should show that independent professional financial advice was obtained from an FCA regulated individual/firm before committing money to the investment scheme. In this way the Fund will be protected from cold calling scam claims and/or the investor will have rights of recovery from the IFA and/or FSCS. This is the level of discretion that the SCF can and should be adopting now.

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

: It seems to us that the SCF already has set out reasonably clear explanatory notes on the current SRA (SCF section) website. If these can be improved / enhanced by Guiding Principles for the benefit / better understanding of potential claimants then I see no downside to this approach

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

39. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

As regulator, it is clearly important that the SRA has an effective communication strategy in place to ensure the profession is updated in a timely manner on cybercrime issues. If there are any significant cybercrime updates the profession needs to be aware of, I would suggest timely emails are sent to COLP's of all firms to help ensure the messages are communicated. The SRA may also wish to consider seeking firm's agreement who have been the subject of a cybercrime attack to allow the SRA to share the relevant details with the profession for the benefit of all. This could of course be done on an anonymous basis, depending on the facts.

Protecting the users of legal services: balancing cost and access to legal

Response ID:324 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: They will have the opposite effect of what is said to be intended: they will decimate small firms: increase the cost of their insurance; assist in the current process of excluding them from lender panels on the pretext of insurance; add to the problems of relying on other forms for ID and undertakings; expose individuals to uninsured claims and retired solicitors to increased risk.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: It is the large firms and ABS who have gone under who have been the greatest burden and need the most cover.

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: This will add another layer of complexity and exacerbate the matters mentioned in response to Q1.

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

Please explain what you think should be an alternative definition.

4. Questions continued

17. 6) Do you think there are changes we should be making to our successor practice rules?

No

Please explain what these are and provide any evidence to support you view

18. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Neither disagree or agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

:

19. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: See reply to Q1. • They will make the process more complicated and expensive, particularly for small firms

20. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: Given the number of retired solicitors who will have personal liability they will again adversely affect small firms.

5. Questions continued

21. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Strongly disagree

Please explain your answer

: They will encourage all manner of unregulated firms to enter the market when it is good and disappear without trace when things become more difficult, leaving clients unprotected, but blaming solicitors generally for their plight.

22. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Please explain what you think these impacts are

23. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

24. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Neither disagree or agree

Please explain your answer

:

25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

26. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Neither disagree or agree

Please explain your answer

:

6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

28. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

Please set out your suggestions and reasons for the change

29. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Please explain why.

30. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

31. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

32. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

Yes

Please explain your answer

:

33. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

34. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

Protecting the users of legal services: balancing cost and access to legal

Response ID:327 Data

3. Consultation questions

11.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Strongly disagree
Please explain your answer
: I think that the consultation has a fatal flaw in not understanding how PI insurance is priced, or how a claims made insurance works (I think the longest time i have personally experienced between year of cover and year of claim is 18 years). I am very concerned about the most vulnerable consumers getting a raw deal (precisely those we want to protect the most). I am very concerned about the threat to ease of business (can we trust an undertaking, will we have to conduct due diligence on counterparties?). I have already had direct experience of a property transaction held up because an in house solicitor refused to explain how her work was insured. this sort of thing will become commonplace. The 98% figure is mathematically lazy. i have personally been a partner in a firm facing a claim that was potentially not completely covered and I have acted for professionals who were in the same position. I would want no-one to be in that position. Following Dreamvar the figure of £1m looks quixotic, and just plain wrong.

12. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly disagree
Please explain your answer
: most firms would have to purchase the cover and then have to explain themselves to these clients. currently we can just give a certificate of cover and no further questions are required.this simplicity is in direct contrast to the complex situation which would obtain if these proposals went through. there is an obvious problem with where the line is drawn.

13.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

No

14. Please provide an alternative way of drafting the exclusion definition.

i don't think it should exist so don't propose to suggest any drafting. in any event turnover is only a factor in establishing if a client is a sophisticated purchaser of legal services.

15. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly disagree
Please explain your answer
: after a career in PII (acting for both sides), the largest paying claims were not 'conveyancing', though a number had a real estate component. this definition takes a very high street approach but a significant number of solicitors are in firms which are involved in other high risk work (e.g. pensions)

16. 5) Do you think our proposed definition of conveyancing services is appropriate?

No

17. Please explain what you think should be an alternative definition.

see previous answers. I am also concerned about the double whammy of the proposal to remove two lnked consumer

protections - the MTC and the Compensation fund.

4. Questions continued

18. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

19. Please explain what these are and provide any evidence to support you view

This is a subject which has been kicked down the road too long and should be addressed. i only know one person (Frank Maher) who truly understands them. i have direct knowledge of a firm who took on 5 cases to help out a sole practitioner who was struggling, only to find that this was the majority of the SP's caseload and thus they incurred a hefty successor practice liability. so there is room for reform but without a proposal I feel I can't comment further.

20. 7) Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly disagree

Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

: curtailment of defence costs is a rotten idea. A long time ago it was explained to me that the uniquely generous provision was in fact to save insurance costs as it avoided firms marking the homework of the insurer's panel firm. I saw how this could operate when I acted for an insurer of other professionals. Although the consultation implies that the changes will make it easier to retire/close in an orderly fashion, i cannot see how that will occur and that the opposite is much more likely. i have already seen more than one merger founder on a differential in cover. Of even greater concern is the position of retired solicitors who have no control over the cover purchased in future years by their former firm. I was advising property professionals when the Oscar Faber v Pirelli case effectively extended the limitation period and saw the effect on retirees who had followed advice and purchased 6 years run off and, often, destroyed paper files (the only kind then). They were often quite desperate as they tried to recall events which had occurred a long time before; one wife of a retired architect phoned me one evening in tears, a conversation I still recall nearly 30 years later. i could not give her the assurances she sought. Again, for a highly questionable and, given the risk, small *potential* reduction in premiums, is it worth it? I can't see that it is. however, my main concern in all this is the clients but i have made my points in earlier responses

21. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly disagree

Please explain your answer

: I act as a consultant to a number of law firms. I am in a position to observe what i had always understood to be the case namely that the risk is priced. so a firm doing low risk work pays considerably less than a firm that is otherwise identical (turnover, staff numbers) who does high risk work. I won't labour this point because i am sure that insurance brokers will all be responding and can give actual evidence.

22. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly disagree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: i think the proposal is naive. Insurers will price the risk in the premium instead. even if, which i strongly doubt, premiums go down for MTC cover, the consultation does not cover the hard cost of e.g. top up (which is hardly mentioned) nor the admin costs in proving cover to clients, purchase of D&O for the people who make the assessment etc etc.

5. Questions continued

23. 10) To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Neither disagree or agree

Please explain your answer

: I don't know enough about this to comment sensibly. I would only comment that numerically such entrants are very small and this seems a very odd reason for a change in policy. the consumer protections are not robust enough. If this is intended to cover charities and advice centres (I have volunteered at both), then this can be addressed, as at present, by waivers rather than turning a mature and well understood system on its head.

24. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

Yes

25. Please explain what you think these impacts are

I am sure that there are as I consider that small firms *will* be adversely affected and as i understand it small firms have higher proportions of BAME solicitors and women. i was simply not convinced by the impact assessment but others who understand law firm economics will be able to explain why in far greater detail.

26. 12) Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further? Please explain why and provide any evidence that supports your view

run off and successor practices both could be looked at with advantage. particularly in cases where there are 'phoenix' firms arising from the still warm ashes of a failed firm. Again I speak from direct observation, fuming quietly that the whole profession is paying for their irresponsibility.

27. 13) To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

Somewhat disagree

Please explain your answer

: Some reforms are required but I think the proposal goes too far. I felt the consultation does not provide sufficient evidence to make the changes proposed, which is odd as all the information is at the SRA's disposal. if there is a specific problem with fraudulent investment schemes then the proposal should focus on that. The hardship categories seem to me to be very low given house prices and other consumer costs. I would be excluded and I don't feel rich! The CF and PII go together. i think it is very risky to change both at the same time without a much stronger evidence base.

28. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Address intervention costs (e.g. why is so much more coming out of the CF? Why are files stored so expensively for so long?

Address investment schemes by having a cumulative limit. I have interviewed clients who were defrauded by such a scheme (indeed I witnessed the rather fiery meeting when they confronted the solicitor when they made it clear that he had assured them that if the scheme didn't pay out, the Law Society would...) My point is that even this would require publicity and better regulation. By better regulation I mean a closer eye on firms showing signs of distress.

29. 15) To what extent do you agree that we should exclude applications from people living in wealthy household?

Strongly disagree

Please explain your answer

: because it is unpleasantly discriminatory and egregiously unfair. clients should be treated the same and not punished for getting their choice of solicitor wrong.

6. Questions continued

30. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

No

31. Do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

i don't think it should exist so no i have no proposals. I can't see it surviving a judicial review.

32. 17) Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

No

Please set out your suggestions and reasons for the change

33. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

No

34. Please explain why.

see previous answers. there is a case to make a different case for institutions as against individuals. but individuals should not be further divided and discriminated against.

35. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

36. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

How can they tell? Apart from the 'sniff test', which in itself depends on experience, I am not sure what tools are available to a normal member of the public. I have seen a number of fraudulent schemes and can see exactly how people were drawn in. It may seem very obvious with 20/20 hindsight but that is not how it appears at the time. surely the point of the Fund is to protect clients from solicitors who are fraudulent - it isn't a guarantee of the scheme but of the ethics of the solicitor.

37. 21) Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

No

Please explain your answer

: I am sorry but a) the clients will probably not have other legal advisors (until it is too late), b) often solicitors don't understand the rules - how can one expect a client to do so? This is not something that can be transmitted by a catchy campaign. Take LeO who have a mission to explain and relatively simple scheme rules - even they struggle to pass the Sun Reader test. This is a much tougher proposition.

38. 22) Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

Please explain what you think these impacts are

39. 23) Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

This seems a rather dramatic change in subject. Yes there is plenty that can be done but the key point must be that cyber fraud is still fraud and it seems quixotic to even consider excluding one kind of fraud from cover. In a number of cases I am aware of it is not the firm but the client who has been the reason for the fraud (principally using unencrypted email and using unencrypted wifi). I think that some greater emphasis on Cyber Essentials as an entry level requirement would assist firms but it won't help their clients.

Protecting the users of legal services: balancing cost and access to legal

Response ID:333 Data

3. Consultation questions

10.
1) To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Please explain your answer
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11. 2) To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

Strongly agree
Please explain your answer
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12.
3) Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

Yes

Please provide an alternative way of drafting the exclusion definition.

13. 4) To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

Strongly agree
Please explain your answer
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14. 5) Do you think our proposed definition of conveyancing services is appropriate?

Yes

Please explain what you think should be an alternative definition.

4. Questions continued

15. 6) Do you think there are changes we should be making to our successor practice rules?

Yes

16. Please explain what these are and provide any evidence to support you view

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Strongly agree
Please explain your answer: Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

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18. 8) To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

Strongly agree

Please explain your answer

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19. 9) Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

Strongly agree

Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

: It is a Lord of draper

5. Questions continued

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Please explain your answer

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21. 11) Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

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22. Please explain what you think these impacts are

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Strongly agree

Please explain your answer

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25. 14) Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

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Somewhat disagree

Please explain your answer

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6. Questions continued

27. 16) Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

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30. Please set out your suggestions and reasons for the change

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31. 18) Do you think we have set out the right approach for assessing when a maximum payment has been reached?

Yes

Please explain why.

32. 19) Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

Yes

Please explain you answer and any suggestions you have for alternative approaches

7. Questions continued

33. 20) What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

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Please explain your answer

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