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

March 2018

Contents

Foreword

Legal services matter to us all. They can help us at some of the most important and potentially vulnerable moments in our life - whether passing money onto loved ones, buying a house or handling a relationship breakdown. Most people are happy with the service they receive from solicitors and regulated law firms, but things can and do go wrong. It is crucial that the public can trust that when things go wrong the right protection is in place. The principle that all regulated law firms should have a minimum level of indemnity insurance, with an additional safety net of the Compensation Fund, has served the sector well.

Our analysis of 10 years of insurance claims against law firms suggests our current approach is too rigid. The legal sector is increasingly diverse, with solicitors and firms practising in many different ways. Our rules could mean some firms, particularly those working in low risks areas, are spending more on cover than is necessary. The evidence shows that this burden falls particularly heavily on small firms.

We also know that our insurance rules can put new firms off entering the market – a market that the Competition and Markets Authority (CMA) has concluded needs to be more open and competitive to better serve the public.

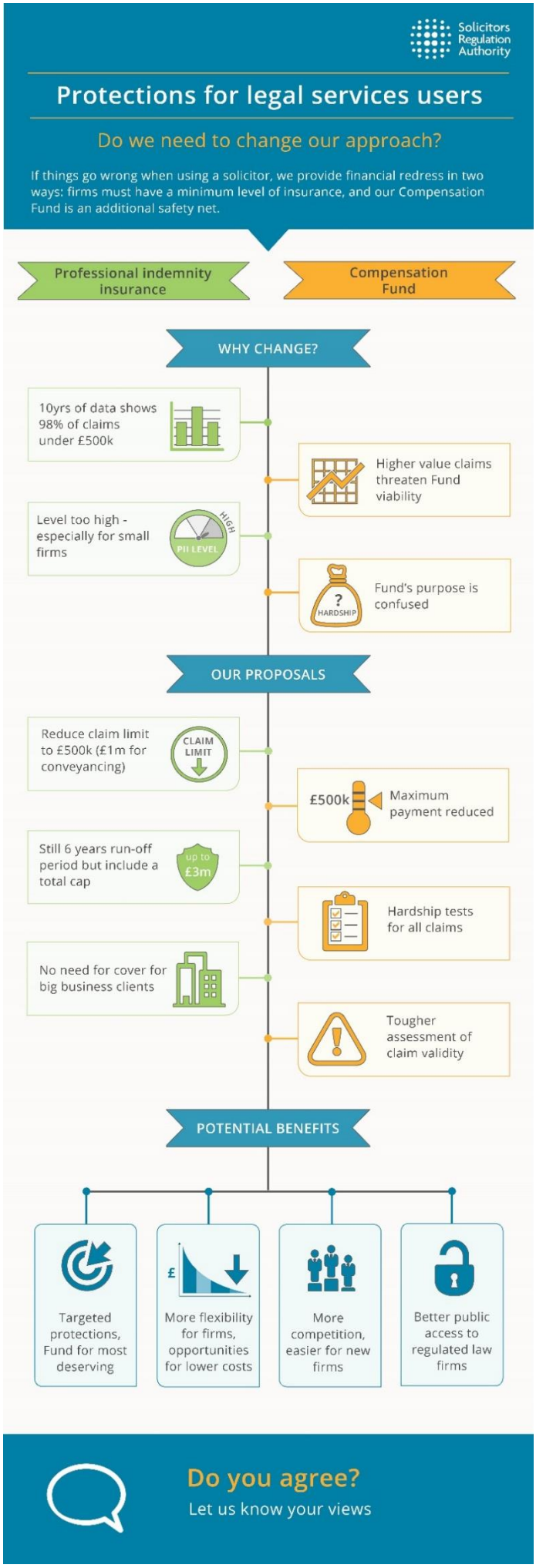
Our proposals aim to tackle these problems by taking a pragmatic approach that gives firms more flexibility to choose the right level of insurance cover to fit their business and its customers. There would be an opportunity for firms, particularly smaller ones working in low risk areas, to reduce their insurance costs. The public could still have confidence in a minimum yet appropriate level of protection, while potentially benefiting from lower costs and more choice.

A balance needs to be achieved. Many people struggle to afford legal services, with only one in ten making use of it when they experience a legal problem. When so many people are struggling to access solicitors' expertise, we need to be confident that the protection is set at the right level. The lower costs of insurance should, if the market is working well, ultimately flow though to lower prices for the users of legal services.

In the same spirit, we are also reviewing how, in a changing world, we are operating the Compensation Fund. We want to make sure it has a clear purpose as a hardship fund so that people who are vulnerable and deserve it the most continue to be protected. Nobody wants to see victims of dishonest solicitors out of pocket, losing

the home that they were buying or seeing a family member's hard earned savings lost. But should the Compensation Fund be there to 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 resources?

We realise this consultation deals with complex areas with no easy answers. That is why in recent years we have carried out extensive engagement and research to make sure our proposals are based on the best evidence available. Making sure we arrive at the right level of the appropriate protection will be a fine balance, so we are keen to hear a wide range of views to make sure we get it right.


Solicitors Regulation Authority
Protections for legal services users
Do we need to change our approach?
If things go wrong when using a solicitor, we provide financial redress in two ways: firms must have a minimum level of insurance, and our Compensation Fund is an additional safety net.
Professional indemnity insurance
Compensation Fund
WHY CHANGE?
10yrs of data shows 98% of claims under £500k
Higher value claims threaten Fund viability
Level too high - especially for small firms
HIGH
PII LEVEL
Fund's purpose is confused
?
HARDSHIP
OUR PROPOSALS
Reduce claim limit to £500k (£1m for conveyancing)
CLAIM LIMIT
£500k
Maximum payment reduced
Still 6 years run-off period but include a total cap
up to £3m
Hardship tests for all claims
No need for cover for big business clients
Tougher assessment of claim validity
POTENTIAL BENEFITS
Targeted protections, Fund for most deserving
£
More flexibility for firms, opportunities for lower costs
More competition, easier for new firms
Better public access to regulated law firms
Do you agree?
Let us know your views

Executive Summary

What are we consulting on

Whether moving house, passing on an inheritance or handling a relationship breakdown, people often use solicitors at critical moments in their life when they might be at their most vulnerable.

Most people are happy with the service they receive. Yet if things go wrong the financial and personal consequences can be far reaching. We make sure there is a minimum level of financial redress available if a solicitor or an individual working in a firm we regulate, is dishonest or incompetent. We protect the public's money in two ways by:

- requiring that all the firms we regulate have a minimum level of Professional Indemnity Insurance (PII). People who have suffered a loss may be able to claim if their law firm has, for instance, not acted carefully or looked after their money properly

- running the Compensation Fund, which is available to eligible applicants when other avenues of redress have been exhausted.

Access to these protections play a key role in maintaining public confidence in using regulated law firms. We are consulting on whether the rules around our PII and the Compensation Fund protections are appropriate.

Why consult now – the case for change

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.

In reviewing our approach to PII, we have analysed 10 years of insurance claims against law firms. It suggests that our current approach is disproportionate and not targeted for risks of different firms. In its current form it is:

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

- **Too costly for some**: PII is the single highest cost of regulation. The evidence shows that most claims relate to a few areas of work. Conveyancing makes up more than half of claims. Our rules mean that some firms currently spend more on cover than is necessary.

- **Particularly problematic for small firms**: The evidence shows that the cost of PII falls particularly heavily on small firms. The high premium for run-off insurance can stop solicitors retiring and closing their practices when they want to. This is a growing issue with small firms having an increasingly older profile. One-in-five of the firms we intervene into is the result of disorderly firm closures.

- **Dampens competition**: The legal sector faces a big challenge. Many people struggle to afford legal services. Most people and small businesses – nine out of ten – do not use solicitors when they have a legal problem. The CMA has concluded that the sector needs to become more open and competitive. Just as the issue of 'run-off' cover can make it hard for firms to exit the market, the cost of minimum cover can make it difficult for new firms, with potentially innovative ideas, to enter the market.

Last year, we asked law firms for an increased contribution to the Compensation Fund due to forecast changes in the type of claims made. We need to make sure the Fund is sustainable and has the right tools to use this money in an appropriate and targeted way to best protect the public and small businesses. We need to review how we operate the Fund in light of:

- **Potential confusion around its purpose**: The current rules and eligibility criteria are complex and lead to a lack of a clear purpose for the Fund. Is it there to provide support for everyone who has suffered losses in set circumstances? Or should it target only those who have faced particular hardship? Our current position is complex, simultaneously trying to offer wide support, while focusing on hardship in some instances.

- **Changing risks and higher value claims:** Historically, payments from the Fund have been for relatively small amounts, but we are now seeing new types of claim. In some instances, we are seeing the re-emergence of claims linked to solicitors' involvement in large scale dubious investment schemes,

offering very high returns. These could result in demands on the Fund that, if eligible for payment, could threaten its viability.

What are we proposing and the benefits: PII

PII protects users of legal services and solicitors from the financial consequences of claims. We plan to keep core terms in place to make sure people and small businesses are still covered when they most need it. However, we are proposing to introduce more flexible options for firms to get insurance that suits the risks of their business.

Key changes we propose include:

- **Reducing the claims limit**: Currently firms must have minimum 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. Some 98 percent of historic claims in our data set would have fallen within this limit.

- **Having a higher limit for conveyancing**: Those carrying out conveyancing services would need a minimum of £1m cover, reflecting the higher risks of working in that area and making sure the public are protected where problems are most likely.

- **Flexibility around who the cover should protect**: There would be no need for our minimum terms to include cover for financial institutions, corporate and other large business clients. We also propose to introduce a conveyancing component in insurance so that only firms that need cover for this work are required to buy it.

- **Make changes to run-off:** We would maintain a six-year run-off period, but aim to tackle the problem of how expensive this type of cover is by proposing caps of £3m for firms that need conveyancing services cover and £1.5m for other firms. This would make it easier for firms to close properly and reduce the risk that solicitors delay retirement unnecessarily.

What are we proposing and the benefits: Compensation Fund

The Compensation Fund is crucial in protecting the public and small businesses, while maintaining trust in the profession.

Key changes we propose include:

- **Greater focus on hardship:** Narrowing eligibility to only those people that need the most protection. This would mean that the very wealthy, or an organisation that cannot prove hardship, would not be able to make claims on the Fund. Barristers and other experts also could not claim.

- **Reducing the maximum payment:** Currently the maximum sum receivable from the Fund is £2m. We propose reducing this to £500,000.

- **More robust assessment of claims:** We want to strengthen our approach to making sure the Fund is not available to those whose own actions could have prevented a loss. For example, did the applicant, looking to make very high returns from a dubious investment take steps to check the legitimacy of the scheme and any products, as well as the solicitors' involvement in them. We do not believe that the Fund is intended to underwrite dubious investment schemes even if a solicitor is involved in some way.

We will retain the discretion to make sure that the users of legal services affected by the behaviour of solicitors in regulated firms in unique or very unusual circumstances are protected.

Overall benefit

Overall, our proposals aim to make sure people using solicitors continue to be well protected while providing opportunities for firms to have greater flexibility to buy insurance that best suits their business and clients and, if appropriate, lowers costs.

Key benefits of our proposals include:

- A clear focus on meeting the needs of those who deserve the most protection, while ensuring the longer-term sustainability of the Compensation Fund.

- Reducing the costs of PII where appropriate, particularly for law firms working in low risk areas of work.

- Tackling the problem of firms having difficulty closing down due to high run-off costs, which can negatively affect users of legal services.

- Helping remove barriers for new firms wishing to enter the market, potentially helping improve choice for the public.

There is no single barrier to accessing legal services. Individuals and small businesses often face complex and combined obstacles. However, a major barrier is affordability. These changes may help reduce costs for some firms. So long as the legal services market is competitive and firms pass savings on, this may make it easier for more people to be able to access legal services.

Next steps

We realise this consultation deals with complex areas, with no easy answers. In recent years we have carried out extensive engagement and research to make sure our proposals are based on the best evidence. There is a careful balance to be achieved in getting the level of public protection right.

These are proposals and not a fixed set of reforms. We welcome all additional evidence to help us reach a final decision.

The consultation is open from 23 March to 15 June 2018.

About this consultation

We make sure the public is protected by taking action when things go wrong. We set and monitor the minimum level of PII cover for the law firms we regulate. Insurance must therefore meet the Minimum Terms and Conditions (MTCs) we set out in our rules. We also operate a compensation scheme to provide a long stop protection for users of legal servces. This is a discretionary fund that will in some circumstances, replace money lost by people because of the dishonesty or incompetence of an individual or law firm that we regulate. Law firms and solicitors pay an annual levy towards the Compensation Fund, and we consider claims and make payments.

Minimum level of insurance

We have reviewed the levels of insurance claims paid to people covering a large part part of the market for more than 10 years. Our findings indicate that our current minimum requirements are substantially more than is needed to protect almost all people when things go wrong. Therefore, our regulations are not proportionate and could be imposing higher costs on firms than is necessary. We are proposing to allow more flexible options for firms to get insurance that better suits the risks of the services they offer, while retaining some core terms to properly protect people and small businesses.

Compensation Fund

The Compensation Fund has been operating for nearly 70 years. We need to make sure we are managing it in as effective way as possible, taking into consideration our regulatory objectives and people's expectations. So we are also asking important questions about whether, as the legal services market and the risks that give rise to potential claims change, we are operating the Compensation Fund with a clear purpose. We do not think that we should manage it in a way to guarantee that all users of legal services are covered for any losses caused by a solicitor or a firm. Instead we are proposing changes that reflect the purpose as a hardship fund to make sure that it is focused on vulnerable people that deserve it the most.

Protecting the users of legal services

Making sure people are financially protected when they use legal services is a priority for us. Access to these protections play a key role in maintaining public confidence in using legal services. Our proposals reflect a carefully balanced view, that while still making sure people using solicitors are well protected, they provide opportunities for firms, particularly small firms, to lower their cost of insurance. We also include in this paper a range of options for PII that we are not proposing to take forward. We would like your views on these as well as our proposals and whether you have any additional evidence we should consider in reaching our final decisions.

Looking to the Future

These changes are part of our "Looking to the Future" regulatory reform programme. It has a sharp focus on high professional standards and the reduction of unnecessary bureaucracy, reducing costs and removing constraints on an open and competitive legal sector. We have already made several key decisions, including allowing solicitors to provide some legal services outside of regulated firms. We have also presented our new Principles, Codes of Conduct and Accounts Rules. We have also consulted on how to make information more accessible to potential users of legal services, to help them find services they need and information on prices.

Research

We have already published our PII market trends and claims analysis. This provides us with evidence on the type and level of claims made by people covered by firms' PII policies over the period 2004 to 2014. Our findings from this analysis are summarised in this consultation paper and also in more detail in our initial impact assessment. We also encourage you to consider the evidence set out in the external economic review, EPC Potential options for SRA PII requirements, we commissioned on the options to reform the scope of PII cover. This report evaluates these against the principles we have established for our financial protection arrangements and identifies likely impacts. We have also commissioned external research on peoples' appreciation of of the risks involved in legal services and how they value the protections available to them.

Dates and contact

This consultation will run from 23 March to 15 June 2018.

After this consultation closes, we will collate and analyse all the responses. We will then decide what proposals to take forward.

How to respond

Our online consultation questionnaire is a convenient, flexible way to respond. You can save a partial response online and complete it later. You can download a copy of your response before you submit it.

Start your response now

Reasonable adjustment requests and questions

Contact us if you need to respond to this consultation using a different format or if you have any questions.

Read our reasonable adjustments policy

Publishing responses

We will publish and attribute your response unless you request otherwise.

Our proposals in brief

Minimum PII requirements

1. The data shows that over a 10 year period, around £1.6 billion was paid to users of legal services from the MTCs layer of insurance cover. This figure includes the actual value of the settled claims and claimants' costs. An additional £400m was paid under the policies for firms' defence costs. Most claims have been paid as a result of problems in a limited range of legal work. Commercial legal work, such as mergers and acquisitions, and conveyancing stand out as giving rise to the most high value payments. Other areas of law rarely give rise to high value payments. The analysis is summarised below.

Legal service	Claims total value (where area specified)	Settled claim average payment	Claims value where 98% claims paid	Claims value at risk if new imits	Claims total value at risk if new limits	No. of claims at risk if new limits
Conveyancing	51%	£69,600	£520,000	£53m	3%	79
Commercial	15%	£261,900	£2,620,000	£51m	3%	85
Landlord and Letting	8%	£56,900	£480,000	£25m	1%	43
Pensions,Tax,Trusts, Wills and Probate	8%	£66,100	£460,000	£18m	1%	34
Injury and Medical negligence	8%	£44,000	£340,000	£14m	1%	29
Litigation	6%	£49,100	£440,000	£16m	1%	36
Employment, Family and other	4%	£31,700	£250,000	£6m	0.3%	12
Block claims or Unspecified	-	-	-	£77m	4%	124

2. We think the current ‘one size fits all’ approach to minimum insurance cover means our regulations are not proportionate or targeted and could be imposing higher costs on firms than is necessary. We want to allow more flexible options for firms to get insurance that suits the risks of their business and its clients so people remain properly protected. Our proposals are to:

    - reduce the minimum level of cover required for each claim to £500,000 apart from claims for conveyancing services

    - establish a separate minimum level of cover for each claim for firms providing conveyancing services to £1m

    - introduce a separate component in the insurance arrangements for conveyancing services (firms that need cover for conveyancing services would be required to include this component and if they did not, then conveyancing claims would not be covered by the insurance policy)

    - to 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)

    - give firms and insurers more flexibility in their arrangements for defence costs (to maintain consumer protection, defence costs would continue to be excluded from the calculation when an indemnity limit has been reached)

    - introduce a total cap for the level of cover over the six-year run-off period (we are proposing a cap of £3m for firms that need cover for conveyancing services and a cap of £1.5m for other firms).

3. We explain these in more detail in **Section One**.

4. Firms will still need to make sure they have adequate and appropriate insurance for all the work they do. As is the case now, they will have to assess their clients’ needs and buy additional cover where necessary. These changes should help to lower some firm’s 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 onto their customers. We know new firms, often with potential to provide legal services in innovative ways, find the costs of insurance a very significant hurdle to starting their businesses. We think the changes to run-off insurance cover will make it easier for firms to close properly. The profession has an increasingly ageing profile and it is important for public protection that solicitors can retire and close their practices when they want to.

Compensation Fund rules

5. The legal services market and the risks to people that use the services of a solicitor has evolved. Individual solicitors and authorised firms pay a contribution each year to cover the cost of claims paid and other costs of operating the Compensation Fund. We have held down contribution levels over the last three years as the fund reserves were judged to be sufficient to cover the existing risks to people using legal services that could result in a claim. Emerging risks from solicitor involvement in dubious investment schemes has led to contribution levels returning to previous levels this year[1].

6. We propose to modernise the rules and eligibility criteria that reflect the purpose of the Fund as a proportionate and targeted fund to make sure that any loss does not lead hardship. The proposals are to:

- exclude claims from individuals with net household financial assets[2] above a threshold of £250,000

- exclude large charities and trusts from eligibility and simplify the test we use for assessing whether a payment should be made, so that all eligible businesses, charities and trusts must show hardship to receive a payment

[1] The total contribution for 2017 increased to £11.1m from £8.5m in 2016. The individual contribution was raised to £40 (compared to £32 in 2016) and the firm contribution became £778 (compared to £548 in 2016)
[2] We define this in paragraph 105 of this paper

- exclude applications for payment of unpaid fees from barristers and other experts

- for eligible applicants, limit payments to the direct financial losses caused by the actions of the solicitor

- tighten up the circumstances when we make a payment where a firm or solicitor has failed to get the insurance we ask for and extend our eligibility criteria to people that make these types of applications

- reduce the maximum payment from £2m to £500,000 and provide guidance setting out the circumstances when a higher payment might be considered

- apply a clearer and more robust approach to how we take account the applicant's behaviour when assessing claims, for example taking into account the steps a person has taken to confirm that the services being provided by their solicitor are genuine

- require a duty of full and frank disclosure by an applicant, and to equip us with direct investigatory powers that allow us to challenge evidence provided by an applicant.

7. We explain these in more detail in **Section Two**.

Wider changes to how we regulate

8. Our review has also highlighted areas where we need to make wider changes to how we regulate that could reduce the overall cost of our financial protection arrangements. This includes strengthening our response to firms that do not pay insurance premiums or are dishonest with their insurer. We explain these in **Section Three**.

9. You can find further information in support of our proposals in the Annexes to this consultation.

- Annex 1 shows how our current PII arrangements compare with other professions.

- Annex 2 is our initial impact assessment.

- Annex 3 includes drafts of the Compensation Fund Rules, Statutory Indemnity Insurance Rules and MTCs reflecting the proposals set out in this consultation paper.

Evaluation

10. We have identified some key benefits from the changes to make our requirements more proportionate. These include the flexibility for firms to lower insurance costs, tackling the problem of firms having difficulty closing down and improved choice for the public. These will be the starting point for how we evaluate these reforms. We also recognise that it will take some time for any impact on the legal services market may become apparent and there is some dependency on other reforms designed to encourage a more competitive legal services market. We plan to evaluate the reforms using CSES' evaluation framework in a post-implementation review. We will use the impact evaluation framework to for example, to revisit the rationale, aims and objectives of our reforms to help us evaluate whether they have been achieved and compare actual impacts against the current position and potential/predicted impacts. The review will be informed by a qualitive assessment of how the market is changing. This will involve us surveying and going out to talk to insurers and firms to understand how their behaviours have changed because of the reforms. Much of what we want to achieve, therefore, rests on them taking advantage of the flexibility offered by the proposed PII arrangements. We will also come back to the challenges we have identified with these reforms, to review whether they materialised and the success of the mitigations we identified.

Background to consultation

Our current requirements for PII

11. Our PII arrangements offer substantial consumer protection. A comparison of our current arrangements with other professions can be found at Annex 1. The areas that distinguish solicitors' PII from arrangements in other jurisdictions and other professions are:

- when a firm closes[3], insurers must provide the firm with an unlimited six-year run-off policy, even when the premium is not paid

- when arranging an insurance policy, firms and insurers may agree any level of excess on a claim settled under the policy. The insurer is liable for the value of the excess to the client if the firm does not pay

- the policy covers all the legal and professional services[4] offered by the insured firm, even where the firm may have not declared it provides a specific type of legal work on a proposal form

- the insurer must provide cover on a strict liability basis for claims which include losses of money arising out of any breach of the SRA Accounts Rules[5]

- insurers must provide unlimited cover for any legal costs and expenses incurred while defending a claim.

12. Some 42 insurers signed up to our Participating Insurers Agreement (PIA) in 2017/18 to provide Solicitors PII. Co-insurance and the increase in underwriting capacity from new "A rated" insurers has resulted in a slight decrease in premiums for all firms. Co-insurance is where insurers share the risk on a firm, is becoming increasingly prevalent, in particular for firms involved in high value commercial work.

[3] If there is a successor practice to the ceased practice, then the requirement to provide run-off cover does not apply unless the firm elects to be insured under the run-off cover
[4] For licenced bodies the policy covers only their regulated activities
[5] The duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm and extends to replacing missing client money from the principals own resources, even if the money has been misappropriated by an employee or another principal

13. The Law Society's PII research report provides us with information on premiums. The average costs of premiums for all firms reduced from £27,209 in 2015/16 to £26,853 in 2016/17. However, for smaller firms they increased from £29,049 to £32,470. Sole practitioners continue to pay the highest proportion of their turnover in premium costs at around 6 percent. The median cost of run-off cover in 2016 remains at 300 percent of a firm's annual premium. The absolute cost of run-off has increased for all firms, but particularly for small firms. Small firms face run-off premiums of on average of £25,000 (or over 20 percent of the annual turnover of their firms). Almost 20 percent of the firms we intervene into are because of poorly managed firm closures.

14. The cost of claims has reduced as those generated in the recession-driven post 2008 period have now been settled. However, insurers are now increasingly aware of cyber-related claims and the risk of more severe losses from commercial work. They are considering more closely the type and size of practice they are willing to insure, as well as needing more evidence of strong risk management procedures and IT systems before providing firms with insurance.

Our current Compensation Fund rules

15. The Compensation Fund is already a discretionary fund. Our rules set out the circumstances where we will replace money lost by people because of the dishonesty or incompetence of an individual or law firmthat we regulate. They already mean that some payments are prioritised over others and we have a hardship test for some routes to pay out. The current scope of possible payments from the Fund is wide. The current rules mean that eligible claims are not limited to losses incurred by only the client of a firm. For example, barristers instructed on behalf of a client can make a claim for unpaid fees. It can also be used for other purposes, such as:

    - paying grants for litigation costs people have incurred in trying to recover losses from other sources for example the firm itself

- providing access to financial redress where a firm fails to have a valid policy of indemnity insurance in place (which otherwise would have paid the claim).

16. There is no automatic right to a payment. In exercising our discretion, we consider a range of factors, including whether the:

    - loss can be made good by some other means[6]

    - activities, omissions or behaviour of the applicant has contributed to the loss being claimed from the Fund

    - loss results from the combined activities of more than one party (for example a solicitor conspires with a surveyor to conduct mortgage fraud).

17. This means that every claim is considered on its merits and we can reject or reduce a payment. For example, a payment will only reflect the proportion of the loss that is directly attributable to the acts of the solicitor or firm. We also expect that claimants are honest when requesting a payment. Where they fail to provide complete information, this can result in lengthy investigations and costly legal challenges.

18. The methodology used to allocate the cost of the Fund across the regulated community has remained static for many years. Some 50 percent of the funding requirement is met by a fixed contribution from regulated individuals. The other 50 percent comes from a fixed contribution on regulated firms holding client money. Contributions collected from firms and individuals are also used to cover the cost of interventions into firms[7]. This includes the cost of:

    - our team of intervention officers

[6] The Compensation Fund has the option of seeking redress from the individual at fault, but this is often impractical due to the costs of legal action and the limited chances of a successful recovery
[7] For 2017/18 we have estimated that intervention costs will be in the region of £6.9m

- external services of intervention agents (solicitors' firms on a panel) and for service providers that undertake immediate management of client files on intervention

- archiving, repatriation and ultimate destruction of closed client files taken into our possession at the point of intervention.

Claims made on the Compensation Fund

19. Traditionally, payments from the Comensation Fund have been made against a relatively limited range of legal services transactions, including conveyancing, probate and personal injury. This correlates with the most common areas where people seek legal advice[8]. They are also areas of work where solicitors will hold or receive substantial sums of money, most of which belongs to the client and has to be kept in the firm's client account[9].

20. Sometimes, it can be difficult to allocate a shortfall in a firm's business or client account to a person's specific legal transaction. This may be because there has been a general failure to account by the firm, resulting in partial losses to all the firms' clients. In some cases, the solicitor may have access to their client's money and assets, but these are held outside of the firm's client account. For example, the solicitor may have access to money held in a personal bank account when acting as an executor to the estate.

21. The risks people face when using legal services from a solicitor and the expected pattern of claims have a direct impact on the level of contributions we collect from the profession. There is a wide range in the value of individual payments from the Fund. This reflects variations in the value and nature of the transactions that ultimately caused the loss. The average payment from the Compensation Fund has historically been relatively small. The highest average payments[10] are linked to problems with mortgage and other fraud and gross overcharging. But these only represent 4 percent of the number of claims paid

[8] According to the Legal Services Consumer Panel Tracker Survey 2017, 31 percent of respondents had sought legal advice for conveyancing, 13 percent for probate and 7 percent for accident or injury claims.
[9] A "client account" is an account of a practice kept at a bank or building society for holding client money, in accordance with the requirements set out in the SRA Accounts Rules 2011
[10] These are unredeemed mortgage, conveyancing fraud, gross over-charging and other fraud

out. There have only been a small number of cases since 2011 where the payment has been greater than £500,000. In some of these cases the payment was recovered from the firm when we completed the process of reconciling the firms' accounts.

22. More detail about historical claims paid by the Compensation Fund is provided in our initial impact assessment.

Stakeholder engagement

23. We recognise that this is a major area of reform, and we have shared our initial thinking and analysis with a range of stakeholders. This has helped us to develop our consultation position and test out ideas, and to shine a light on the benefits and possible pitfalls of various different approaches.

24. We discussed early ideas with the Legal Services Consumer Panel (LSCP), who recognise the need to balance the cost of financial protections with access to affordable legal services. The LSCP suggested that additional research was needed to understand consumer attitudes and what is people's knowledge of the potential risks when purchasing legal services. They felt that this would be helpful in achieving the right balance, and we have since commissioned external research.

25. Engagement with other legal services stakeholders has also been important in scoping out the proposals in this consultation paper. We have spoken to solicitors, law firms and compliance professionals, including early discussion at our annual compliance conferences and engagement with the Law Society's PII Committee. We have also been in discussion with financial services stakeholders, which has included insurers, lenders and brokers. Some of this has been through our Insurance Liaison Committee, as well as separate meetings with brokers and representative bodies. Our proposals have been informed by engagement with these groups.

26. We are taking forward a full schedule of engagement work during the consultation period, to make sure that we are not only discussing the proposals and their possible impacts, but also taking on board views and perspectives from as wide a range of people and organisations as possible. Our programme includes focus groups, roundtables, committee meetings and online channels,

and will cover discussions with members of the public, consumer groups, regulated professionals, insurers and lenders. We welcome views from as wide a range of people as possible, so our work will include talking to charities and Law Centres that support vulnerable groups, and organisations that represent different communities in the legal profession.

People's appreciation of risk when using legal services

27. There are several financial risks that exist for people when buying legal services. They include if they:

- are not able to access legal advice at all, resulting in a financial loss
- receive a poor service that is not value for money
- receive negligent advice
- their solicitor is dishonest and even takes their money.

28. Our changes, not only as part of this consultation but our Looking the Future programme and the introduction of the Solicitors Qualifying Examination, are aimed at reducing those risks to people.

29. Our initial consumer risk in legal services research has confirmed that we need to be realistic about people's current level of appreciation of the risks involved in purchasing legal services. Everyone is different so people's appreciation of potential problems and their risk appetite varies. That's why we set requirements for financial redress which need to be proportionate to the risks that people face.

Better information

30. Surveys of the users of legal services show that where people do shop around, they are much less likely to search on the basis of financial protections than other factors such as price and quality of service. People use legal services often a critical life moments. Thoughts about what might go wrong with a solicitor and how they are protected are often far from mind even though the

services they receive can have far-reaching financial and personal consequences. This is important when considering the information we think we and firms should make available about the protections that are available.

31. Our research has highlighted the distinction between information designed to:

- help people access and act on information about legal services so they can make infomed choices, drive competition for the supply of legal services

- help consumers understand what protections are in place, building confidence and helping regulated firms to access untapped demand for legal services.

32. The availability of information on redress could mitigate the risk to people that they choose a firm that does not have appropriate PII cover. Simple approaches such as comparing the level of cover to the value of their property transaction could provide them with information that indicates whether the firm is under or over-insured. This information should not be so complex that it distracts from other information that could help them choose providers that offer better value for money. We will explore how best to provide information for example through the use of regulatory logos and provision of checklists. This could help people better understand how they are protected when they choose a SRA regulated firm.

33. We recognise that information will need to be presented in different ways to meet the needs and preferences of different people. We will engage with members of the public and businesses about this, including through our wider work on better information. We will use the outcomes from this work to help inform people about how firms are regulated by us, the work they do and that they have PII in accordance with our MTCs and have access to the Compensation Fund.

Putting our proposals into practice – our approach to drafting the rules

Protecting users of legal services reforms

34. The draft rules at Annex 3 include the proposals we think are necessary to make sure we have proportionate requirements for public protection for the firms we regulate. The draft rules include changes to our MTCs for PII policies if the proposals go ahead. We have reviewed these more widely alongside the other obligations we put on insuers in our Participating Insueres Agreement (PIA). As a result of this review, we are proposing a number of changes to the MTCs to bring them up-to-date.

35. We also want to remove unnecessarily duplication between the MTCs and the PIA and to make them more relevant for both insurers and a modern legal services market. We explain this in paragraphs 62 to 64.

36. We have also looked at the 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. Our review has resulted in simpler rules and confirmation of which MTCs are varied when the the firm is given a partial expemption from the need to have qualifiying insurance.

LTTF reforms

37. As part of phase one the LTTF reforms, we have already confirmed the protections for clients of solicitors working in non-Legal Services Act (LSA) regulated firms. We have decided it is not proportionate to require the solicitors that work in these firms to have insurance that is equivalent to our MTCs. We have also confirmed the position that clients of solicitors working in non-LSA regulated firms would not be able to make a claim on the Compensation Fund.

38. Clients that use a solicitor in these firms will receive a range of standard consumer protections. Additional protections will also arise because the solicitor will be subject to our individual Code of Conduct and professional standards. When we lift the restrictions on solicitors working in firms outside our

regulation, we do not want to introduce requirements that unnecessarily reduce the availability of lower cost options for people that need such services.

39. In phase two of our LTTF reforms, we are proposing to allow individual self-employed solicitors to provide the full range of legal services without the need for the firm to be authorised by us. If this proposal goes ahead we will continue to allow clients of these individual solicitors to have access to the Fund. We have also decided that this should be the case for clients of solicitors working in special bodies.

40. The rule changes to reflect the above are also included in the draft rules included at Annex 3 of this consultation.

Timescale

41. Our aim is to make the rules so that they are in place for when we expect to implement the LTTF reforms. If, however it takes longer to get the wider reforms to our requirements for public protection right, we will implement the rule changes in stages.

Section One: Changes to our Professional Indemnity Insurance (PII) arrangements

Rationale

The current requirements are not proportionate

42. Our PII requirements have been in place for nearly 20 years with minimal changes. They are therefore due for a review to see if they remain appropriate. We think that the analysis of past claims data and other evidence suggests our requirements are neither proportionate nor targeted and could be imposing higher costs on firms than is necessary. Our view is that this means that they are not likely to support the delivery of our regulatory objectives. PII is the single highest cost of regulation with small firms particularly affected. The profession has an increasingly aging profile and the cost of run-off insurance can stop solicitors retiring and closing their practices when they want to. Our proposals could mean lower costs for firms and encourage new firms to enter the market. In the long run, so long as the legal market is competitive, this should lead to lower costs for users of legal services.

43. We have considered if insurers are likely to reduce premiums as a result of the proposals, and in turn if those lower costs will be passed on to consumers. We cannot guarantee either but that is not a justification for maintaining untargeted or disproportionate regulation. The evidence supports our view that the proposed changes to MTCs could lead to lower premiums. We estimate this could be in the range of 9 to 17 percent. We set out this analysis in more detail below and in the initial impact assessement. For example, when we consulted on a lower minimum level of cover previously, one insurance broker advertised a 10 percent reduction in premiums for £500,000 of cover, and some other insurers responded to the consultation saying that premiums would fall. Similarly work we are undertaking with a group of small legal services providers, so they can put in place lower and more proportionate insurance cover for the work they do, could result in a significant reductions of their PII premiums.

44. It is also important to consider these proposals as potential mitigations against premium increases should the insurance market return to less favourable conditions[11].

45. We do not expect firms to simply reduce their prices by the level of any lower insurance premiums. It is more likely that as firms consider and set their charges they will take account of their overall costs and margins as well as market share and competitive pressures. So it is important to consider these proposals alongside our wider reforms that are designed to promote a more competitive legal services market.

How might this improve choice to users of legal services?

46. In its recent review of the legal services market, the CMA concluded that regulatory costs may hinder entry and exit of small firms to the legal services market. The CMA specifically recommended that regulators continue their work to lower the costs of PII[12]. It is the single highest cost of regulation, with small firms particularly affected. The Law Society estimate that 4.8 percent of total turnover in the legal services market goes on purchasing PII cover. This rises to 6 percent for sole practitioners.

47. Our discussions with several new entrants to the legal market confirm this assessment. For example, any business that wants to deliver limited scope legal services on line, meeting specific legal needs at low cost, would face a requirement for a level of cover that is many thousand times the fee paid or any reasonable or likely claim. Of course there are many more examples of firms needing more cover and the obligation remains for firms to assess and purchase the level of cover that is appropriate for their work. Many firms already do this and there is no reason to doubt that will continue.

48. Some people struggle to access legal services. More than half of UK adults faced a legal problem in the last three years[13]. But only one third of them got professional advice. And, only one in ten took advice from a solicitor or

[11] Recent observations that for future renewals some insurers will maintain current premiums or push for an increase because of losses that they have suffered in other markets, for example, following natural catastophies resulting in claims for huge losses
[12] See paragraph 51 of the CMA report
[13] Individual consumer legal needs (PDF 2 pages, 157KB), Legal Services Board, 2016

barrister. So it is important to remove unnecessary restrictions to firms starting up or remaining in the market where we can.

49. There is no single barrier to accessing legal services. Individuals and small businesses often face complex and combined obstacles. However, research undertaken by bodies such as the LSCP shows a major barrier to accessing legal services is affordability[14]. If the legal services market is working well we can expect firms to ultimately pass some savings in costs onto the users of legal services as lower prices.

Approach

50. Previous work conducted for the SRA in 2009 looked at different models for delivering PII. It compared the open market with alternative approaches, including using a single fund or a master policy. During that work, principles were developed that we think continue to be relevant to assess the impact of changes to our financial protections arrangements. These are that the arrangments should:

- be fair, transparent and accessible enabling those covered by the scheme who have suffered loss as a result of breach of duty by a law firm to be promptly and properly compensated
- be the minimum necessary to meet their objectives and cost effective in providing the public with protection in the most efficient manner
- not inhibit competition between different legal services providers or new entry and innovation by new business models
- encourage an independent, strong, diverse and effective legal profession
- be targeted, intervening only where there are clear problems that need to be resolved

[14] More detail on this research can be found in our paper Improving access: tackling unmet legal needs

- seek to avoid unintended consequences in terms of the impact on law firms, clients, insurers or the wider regulated community

- support, but not replace, regulatory supervision regarding professional standards

- provide appropriate incentives for lawyers to undertake risk management by incorporating an element of polluter pays into their design.

51. We have used these principles, along with the data and evidence we have gathered from stakeholders to identify the likely effects of a range of options for changing the current level and scope of cover provided by out MTCs. Drawing on this we set out our proposals in the next sections of this paper and a summary of the likely impacts as well as the challenges that we have identified. Our initial impact assessment contains further details.

52. We also explain in this consultation paper the other options that we have considered and explain why we have decided not to develop them into firm proposals. We ask for views on these and whether respondents have any additional evidence or you think we should consider before reaching our final decisions. Similarly, we are interested to understand any unintended consequences that could result from our proposals and any other ideas we may not have considered that you think would mean our requirements are more proportionate and targeted.

Our proposals

Current position	Proposal	Reason for change
Indemnity limits Relevant recognised and licensed bodies must have minimum cover of £3m, while other firms must have minimum cover of £2m. The dfferent limits originally reflected the variation of personal liability in different firm structures.	**Reduce the minimum level of cover required for each claim for eligible clients** To reduce the minimum level of cover required for each claim to £500,000 for claims apart from for conveyancing services. Establish a separate minimum level of cover required for conveyancing services of £1m. We propose to remove the current differential limits based on the legal structure of a firm, so these limits would apply for all types of firm.	We think this is a proportionate minimum requirement given the overall claims profile for the firms we regulate that provides targeted protection for users of legal services. If this results in lower insurance premiums, this could encourage new entrants into the market. This may increase competition and the opportunity for people to access more affordable legal services. It may reduce costs for small firms in particular, helping them to be more sustainable, supporting consumer choice and access to justice for peope needing legal services. There is little evidence of different claims patterns based on the legal structure of a firm.
Exclusions from cover Work for all types of clients must be covered by the MCTs.	**Flexibility in client coverage** To exclude compulsory cover for financial institutions, along with corporate and other large business clients with turnover of more than £2m (firms will still need to buy appropriate and adequate cover for these clients). These businesses are already excluded from being eligible to claim on the Compensation Fund.	This change should ensure more proportionate regulation. Large corporations are more sophisticated and should be able to assure themselves about the adequacy of insurance arrangements relating to legal services they prurchase. Insurance arrangements covering these clients could be offered on significantly more flexible terms, allowing the emergence of proportionate and more suitable arrangements.

Current position	Proposal	Reason for change
Exclusions from cover Insurers must provide cover for any claim that arises out of professional services provided by the firm. Even when it is from work that a firm has not declared on its proposal form.	**Introduce a specific component within the insurance arrangements for conveyancing services** 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.	This will provide insurers with certainty about which firms they are insuring for conveyancing services. We think this will enable even more accurate underwriting by insuers and pricing of premiums based on the actual risks of different law firms. It could also reveal information to firms about how much they are paying to be insured for conveyancing services. In some cases, firms may decide that it is more profitable to specialise in other areas of work. Users of legal services may benefit if the quality of conveyancing work improves.
Defence costs Insurance covers unlimited defence costs that are in addition to the indemnity limit.	**Change defence costs arrangements** To allow firms and insurers more flexibility in their arrangements for defence costs. To maintain consumer protection, defence costs would continue to be excluded from the calculation when an indemnity limit has been reached.	Insurers and firms have incentives to ensure defence costs are properly included in insurance cover. Removing a prescriptive uniform arrangement should allow firms and insurers to agree more flexible alternatives, including caps on defence costs or excess arrangements that cover defence costs. These could lower insurance premiums and the number of claims unnecessarily defended.

Current position	Proposal	Reason for change
Run-off cover Insurers are required to provide six-years run-off cover after a firm is closed.	**Run-off cover - introducing a total cap(s) for the level of claims made over the six-year period for run-off** We are proposing caps of £3m for firms that require conveyancing services cover and £1.5m for other firms. A single cap could be introduced over the six-year period or be phased based on the expected claims profile for run-off claims during the six-year period. We do not have robust data on the total settled claims for individual firms over the six-year run-off policies. The proposed cap is based on our proposed indemnity limits for a single claim and our understanding that run-off premiums are calculated as approximately three times the annual premium.	Our current arrangements are expensive. Run-off premiums are increasing for some firms even in favourable market conditions. This creates a barrier for firms wishing to leave the market, with a significant proportion of solicitors not closing their firms properly. This is a greater issue given the aging profile of solicitors especially those that practise as sole practitioners or in small patnerships[15]. Older sole practitioners are exposed to personal liability for all liabilities of their business and therefore present the highest risk of not being able to shut their firm when they want to. Around 60 per cent of sole practitioners that carry out will and probate and conveyancing are over 55. Both areas of work generate high volumes of claims. Insurers are required to provide run-off cover even when a firm does not pay the premium. This results in high levels of non- payment further increasing the cost to those that do pay. We recognise that there are challenges with caps and do not propose this option for current indemnity periods.

[15] 51 percent of sole practitioners are over 55 and are not set up as limited compabies or part of a limited liability partnership.

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

Drafting an exclusion - financial institutions and large businesses

53. It is important that we draft this exclusion from cover in a sufficiently clear way, so that firms and the users of legal services are clear which people would be covered by our MTCs. A firm that provides legal services for financial institutions and large corporate clients may then need to purchase additional cover covering work for these clients. Our proposed approach is to base the exclusion on the turnover (exceeds £2m) of the client in the financial year at the time the act giving rise to a claim occured.

54. We considered an alternative approach to base the exclusion on the capital assets of the organisation or business. We think this would exclude a narrower set of large businesses as not all will have a high level of capital but may still be sophisticated clients. We are also interested in views on whether this change should be an exclusion that the MTCs can never include these clients. This would give the most certainty as to which clients are always covered by the MTCs and which are not. Alternatively like some other exclusions, it could be drafted as a permitted exclusion. This would mean that firms could choose whether or not to exclude these clients. It would then be for the law firm and insurer to agree whether to include cover these clients.

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

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.

Definition of conveyancing services

55. We have reviewed the definition of conveyancing in Section 11 of the Administration of Justice Act 1985. We propose to define conveyancing services for the purposes of PII cover as:

> 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.

56. This proposed definition also goes beyond the definition used for reserved legal activities in the Legal Services Act 2007 since the reservation refers only to narrow specific elements of conveyancing. We think this is necessary because the claims data informs us that mistakes that give rise to conveyancing negligence claims are not limited to reserved instrument activities. For example, they may also arise from inadequate searches and mortgage fraud. Conveyancing cover needs to include a wider set of activities involved in buying, selling or remortgaging a property to transfer its legal title from one person to another. Firms will also need to consider prior work when deciding whether they need cover for conveyancing services. We will provide guidance on this.

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

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.

Successor practice rules

57. Our current PII arrangements allow for successor practices. When we introduced the open market model for insurance in 2000 we also made changes to permit an option where a merger with, or acquisition by, another firm, does not trigger run-off cover. Instead, cover for the prior (closed) firm is provided through the ongoing insurance of the (acquiring) successor practice. There are benefits in enabling as much takeover activity as possible as clients remain protected when a firm closes, without the closing firm needing to pay for run-off cover. It reduces the risk of firms exiting the market in a disorderly way and the need for costly intervention by us.

58. The rules are written in a way to actively seek a successor practice[16]. However we have been told that they are not easy to understand and, depending on their application, can result in inconsistent outcomes. We understand some firms

[16] Alternatively, our rules allow a firm to elect to acquire run-off cover for any liabilities of the firm provided cover complies with the MTCs and provided the premium is paid under the terms of the policy

structure themselves to avoid becoming a successor practice resulting in a gap in public protection. It is also possible for more than one firm to be a successor practice This can leave acquiring firms unknowingly at risk of a significant claim and multiple firms at risk of the same claim. This creates uncertainty for the users of legal services, firms and their insurers, causing costly disputes on identifying which policy should respond to specific claims. We also understand that this uncertainty can be a barrier to merger and takeover activity.

59. We would welcome views and evidence on whether there are any difficutlies in how our current successor practice rules are working in practice. We would like to understand whether there are alternative approaches that provide better clarity and therefore more consistent outcomes on successor practice whilst maintaining consumer protection when a firm closes.

60. An option might be to prohibit multiple successor practices so that only one firm confirms their position as a successor practice. Whilst creating greater certainty this would mean only one firm taking on the risk of future claims that is currently spread across multiple firms. Another option could be to allow the rules so the acquiring firm becomes the successor practice for only live matters when the merger or acquisition takes place. To maintain consumer protection this would require all firms that are closing, merging or being acquired to purchase run-off cover in respect of closed client matters.

61. Our proposals to reform run-off cover are therefore also relevant to the cost and benefits of alternative approaches to our successor practice rules. Firms can already elect to pay for run-off cover instead of passing the risk of future claims onto a successor firm. We are already making changes to our firm closure process to improve the information that is available when a firm closes including whether run-off cover has been purchased and about any successor practice. We are interested to hear views about whether we need to change our successor practice rules and if so how.

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

Our initial review of the MTCs and the PIA

62. We have also reviewed how our MTCs sit more broadly alongside the other obligations we put on insurers because they sign our PIA. We have identified and intend to remove overlapping or duplicated requirements between the MTCs and the PIA. We have also identified areas where they can both be bought up-to-date to reflect modern working practices.

63. By doing this we think we will achieve:

- a standalone set of MTCs that is focused on the scope of insurance cover we require participating insurers to provide

- a modern contract with insurers that focuses on our relationship with them, the information that we expect to receive and how disputes involving more than one insurer should be resolved.

64. The MTCs included at Annex 3 reflect the proposed changes to our PII requirements and the outcomes of this initial review. We have:

- simplified the terminology and definitions used the MTCs

- 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

- proposed a more up to date and cost effective method for a law firm and its insuer to resolve a coverage dispute, that a mutually agreed independent Queens Counsel (QC) is appointed to determine the

dispute. We understand that this is common practice in other industries and is an effective method of reaching agreement.

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?

Impact on the cost of insurance

65. Overall, we expect these proposals to impose a downward pressure on the cost of PII. We present our estimated impacts as premium reductions, assuming favourable market conditions. It is equally important to view these as mitigating factors should premiums increase in less favourable market conditions. There is a market view that an upward trend in premiums is increasingly likely as cyber attacks and other criminals continue to target solicitors' client accounts.

Annual premiums

66. We think premiums will reduce because there is a narrowing of the scope of cover as a result of:

- a reduction in the minimum level of cover required for a single claim
- the exclusion of commercial clients from compulsory cover.

67. More flexible defence costs arrangements could also lower the costs to insurers without negatively affecting consumer protection. They might also

create a claims environment where the number of claims unnecessarily defended is reduced.

68. We think the inclusion of a specific component in the MTCs for conveyancing will enable even more accurate underwriting by insuers and pricing of premiums based on the actual risks of different law firms. This may lower premiums the most for firm that do work that has a lower risk of high values more frequent indemnity claims.

Reduction in the minimum level of cover required for each claim

69. We can expect this to result in a discount in premiums 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 individual claims. The lower limit would also apply to claims that be treated under the insurance policy as a single claim because they arise from 'similar acts or omissions in a series of related matter or transactions'. This is most common in conveyancing claims. It would also apply to claims arising from incidents that are not associated with a single area of work, for example acts of internal and external fraud that may result in loss of money from a firms' client account.

70. There are a range of views on what the size of this 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 of 5 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 and evidence of 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 percent.

71. Some insurers think the impact could be more modest than this range saying they already factor into premiums the likelihood that a firm will face a very high claim. We agree that the majority of the premiums that firms pay is to cover the risk of claims up to £500,000. However, our view remains that there is a premium value to provide a limit above this level. Therefore this proposal would reduce underwriting risk for the compulsory minimum 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.

72. Reflecting caution from insurers and because 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.

Defence costs

73. Allowing firms and insurers to have more flexible defence arrangements is likely to shift some costs back to firms. For example, if firm agreed with an insurer an excess arrangement that included defence costs then the value of the defence excess would switch from being paid by insurers to being directly incurred by firms. Unlike the current excess arrangements, a proportion of these costs would need to be paid by firms as soon as a claim starts to accrue defence costs. We expect this would alter firms' behaviour, leading to a reduction in the number of claims unnecessarily defended, leading to a further reduction in defence costs. This would also speed up compensation for clients.

74. We have calculated that based on the historic data, if it is assumed that all firms would have had a defence excess of £5,000 (this is around the average level for the usual excess on claims in current PII policies) then insurers share of defence costs would have been reduced by approximately £80m. This equates to around of 4 percent of claims value paid over the 2004-14 period. Some insurers and other specialist defence lawyers we have spoken to think the impact of allowing more flexible arrangements for defence costs could be higher than this. We estimate the impact of our proposed changes to defence cost arrangements could be in the range of a 4 to 7 percent reduction in premiums.

75. This gives a range of 9 to 17 percent premium savings from these changes.

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

Conveyancing

76. Insurers already identify conveyancing as a key risk factor with the potential to impact on the cost of premiums. However, under the current MTCs an insurer must cover any claims arising during legal practice. Therefore, insurers can never be certain that they will not face the risk of a conveyancing claim, even where a firm has stated when applying for cover that it does not do this type of work. This inevitably means there will be some cross-subsidy or an element of risk premium in insurers' pricing models.

77. We expect the option for insuers to quote prices without conveyancing cover will lead to even more accurate pricing and to unwind any remaining cross-subsidy in the pricing of insurance between conveyancing and other areas of law.

78. If the impact of this is significant this may mean that some firms delivering lower risk services that do not need to buy conveyancing cover could potentially achieve savings towards the top of the range or potentially above.

Small firms

79. More than half of firms we regulate have fewer than four partners. The benefit of reduced premiums for compulsory insurance will be greater for small firms because they pay proportionately higher premiums relative to turnover. The Law Society 2016-17 survey shows small firms are seeing premiums rise even

in relatively favourable market conditions. They are more likely to have a problem affording run-off cover.

80. There is also evidence that small firms find it more difficult to get competitive quotes for cover. We think the reforms will both increase existing insurers' appetite to provide cover to small firms and potentially encourage new insurers to enter the market. This may not have a significant further impact on premiums when the market is favourable but would sustain competitive premiums for firms in a less favourable market.

81. Small firms are also more likely to only need to buy the minimum level of cover. 93 percent of sole practitioners and 78 percent of 2-4 partner firms currently only purchase the compulsory indemnity limits. For larger firms the take up of top-up insurance increases significantly from 68 percent of 5-10 partner firms to 90 percent of 11-25 partner firms. The cost reduction will be particularly important for the small firms that provide services to people across England and Wales. If this mean they are more sustainable, this could make a vital contribution to access to justice for members of the public and small businesses.

82. The proposals to exclude large business clients from insurance cover and to limit the requirement to have conveyancing cover to firms involved in this work will give even more flexibility for firms. This will allow firms to have insurance cover better matched to the services they offer.

83. Nearly 60 percent of small firms generate no turnover from residential property work. This increases to nearly 65 percent for commercial property work. For firms that have a majority black, Asian and minority ethnic (BAME) diversity profile[17], the percentage of firms that generate no turnover from residential property increases to nearly 63 percent. It falls to 52 percent for firms with a majority white diversity profile[18]. Firms with a majority BAME diversity profile instead have a higher proportion of their work in areas of law where the likelihood and value of negligence claims is lower, such as criminal litigation and immigration work. They are therefore more likely to have the opportunity to

[17] Majority BAME: The majority of regulated individuals in a firm are BAME
[18] Majority white: The majority of regulated individuals in a firm are white

benefit from the potential for larger premium reductions and from the flexibility in the minimum requirements.

Other firms

84. Greater flexibility to agree different insurance terms with clients outside the compulsory coverage and for top-up cover above the compulsory indemnity limits could lower the total cost of insurance for larger firms. In some cases, the changes will make insurance arrangements more straightforward. It will remove tiers of insurance, allowing Multi-Disciplinary Partnerships (MDPs) the freedom to harmonise PII arrangements across the different arms of their business, without the need for waivers.

Run-off premiums

85. We anticipate the average reductions in premiums from the proposal to introduce a cap on run-off cover to be greater than the 9 to 17 percent we have estimated for annual premiums. This is because it sets an absolute limit to the risk insurers are exposed to. As run-off cover becomes more affordable, we can also expect this to result in a reduction in the non-payment of run-off premiums which could reduce premiums even further. We are asking for views from stakeholders during the consultation to help us better quantify this impact.

86. If run-off cover becomes more affordable, then solicitors nearing retirement or wanting to cease practising are more likely to pay for run-off cover and to close their firms properly. This will reduce the risk to the users of legal services that occasionally requires our intervention. The data suggests that nearly 20 percent of interventions by the SRA are caused by firm not closing properly. Our estimated intervention costs for 2017-18 are nearly £7m. If these were reduced by a fifth, then this would have meant a potential reduction in the firm contribution of nearly £50.

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.

Impact on users of legal services

Access to legal services

87. We believe these changes will permit more flexible options for firms, helping to lower their 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 onto the users of legal services.

88. Access to affordable services, combined with access to good information to make an informed choice, is essential to reduce inequality in access to legal advice. If these changes lead to lower prices then they will specifically assist older women, disabled people and some BAME groups as they are more likely to be on low incomes.

89. Vulnerable people are more likely to experience legal problems, but according to the MOJ survey 2014-15 often do not seek help from solicitors[19]. We know that levels of vulnerability can change depending on certain circumstances, for example a person's health, life events or the capability to manage affairs and access and process information about legal services. A consumer's

[19] The groups that were most likely to experience a high number of legal problems were those with a limiting illness or disability, were unemployed, a lone parent with dependent children, living in a household with an annual income below £15,000 or living in rented accommodation.

vulnerability may also determine the impact on the individual's ability to afford legal services. This leads to poor outcomes and hinders the proper administration of justice. According to the Law Works report 2016 there is also a risk that vulnerability is increased without the appropriate legal support.

90. The more flexible options for insurance arrangements could result in reduced premiums for firms that do lower risk work. These include social and mental welfare law, immigration, consumer debt, family mediation, residential care and arbitration work. Vulnerable groups of consumers are likely to be needing help in these areas and would benefit if more affordable services were available.

91. As well as reducing costs for existing firms, we can expect this to encourage new entrants into the market to provide these types of legal services. We have evidence that lower insurance costs have been a key driver of new businesses in our innovation space providing increased access for some vulnerable consumers to legal services.

Other impacts

92. The changes also have the potential to benefit commercial clients because they will be able to influence how they think the firm they are buying services from should be insured. This is because more sophisticated consumers may be able to understand better the risk trade-offs of different insurance arrangements when choosing a legal service provider.

93. The reforms will also provide firms with information on the true cost of conveyancing cover. We also expect this to lead to positive changes in firm behaviour, reducing the likelihood that a conveyancing claim will arise in the first place and potentially increasing the quality of conveyancing services provided by solicitors.

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

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

Acknowledging challenges

94. The potential impact on consumer protection makes this a challenging area of reform. Previous consultations on proposed changes to our arrangements have not progressed because the evidence on the likely impacts has been limited and contested.

95. We now have a comprehensive evidence base to support our reforms, including the analysis of historic insurance and compensation fund claims. We have worked with stakeholders and commissioned independent economic advice to identify the likely impacts of options to change our arrangements. Our analysis of the market and Equality, Diversity and Inclusion (EDI) impacts is informed by the data we hold on the existing work profile of firms and the EDI characteristics of solicitors that work in different types of firms.

96. We encourage stakeholders to comment on our analysis and conclusions and to provide any additional evidence that either that supports or does not support them.

97. We have identified what we think the risks and challenges and how we think they could be mitigated. We set this out in our initial impact assessment. In summary these are:

Challenge	Mitigating this challenge
A small number of users of legal services could lose out from the reduction in the level of compulsory indemnity limits. Given the value of these claims these are likely to have serious financial consequences even for consumers on higher incomes Policies that extend cover beyond the proposed minimum level of cover required may have different terms reducing the level of protection provided by 'top up cover'. There may also be some uncertainty for clients which are at, or close to, the definitional boundary of financial and business clients proposed to be excluded from compulsory cover.	Taken together the evidence suggests that members of the public and small businesses are extremely unlikely to experience a claim that would be above the new minimum limits. We already require firms to assess the level of appropriate insurance they need for their clients. In reality not all firms would reduce their level of cover because they would buy additional cover and others would have internal resources from which claims could be paid. We will strengthen our guidance on where firms might need to purchase additional cover. For example we would expect firms working in residential 'property hotspots' to make sure they have appropriate cover for their work. There is limited evidence that firms currently under-insure and we believe competition by insurers would maintain wide coverage where a firm needed to buy additional cover. We will uses a range of tools to monitor and identify firms that may be under-insured and then to take appropriate regulatory action. This will consist of thematic reviews informed by data sharing and matching across insurers and other agencies such as the Land Registry to spot where firms may be a risk of being under-insured. We will require firms to be clear in the information they provide to people about insurance when choosing a firm. We will also provide consumers with check lists to use to help them make the suitable choice for them.

Challenge	Mitigating this challenge
An aggregation cap could result in different outcomes for consumers depending on when they make the claim Consumers will be unprotected once the cap is reached. There could be differential outcomes for the users of legal services according to the timing of a claim which consumers may not know about.	Phasing the level of cover over the six-year run-off period could reduce but not eliminate the risk of differential outcomes for consumers. Insurers may offer policies which provide for additional cover once a limit has been reached conditional on the firm paying an additional premium ("a reinstatement clause"). There is opportunity to develop an open market in run-off cover. This could lead to a competitive alternative to automatic cover provided by the current insurer when the firm closes without a successor practice. We also recognise that in certain circumstances, the partners, directors and members of a firm may be liable for claims if run-off cover is insufficient.
Some lenders may reduce the size of conveyancing panels because where there is more flexibility in policies they have limited resources to check the level of PII cover held by individual firms Mortgage lenders often rely on dual representation, where the same solicitor acts for both buyer (borrower) and lender. If the additional cost to lenders of checking the level and scope of cover for individual firms is disproportionate, they may respond by limiting the number of firms on their panels. This risk is higher for the proposal to exclude large financial and business clients from scope of mandatory insurance because there is not a guarantee that they are covered by the standard MTCs.	We will explore the best way for firms to provide information about the scope of their cover. This should mitigate the costs to lenders of checking this for individual firms. We do not have a role to intefer with the market outcome on conveyancing panels. Lenders already take a view on conveyancing and small firms, refusing access to some lender panels. The Law Society's Conveyancing Quality Scheme (CQS) has a similar impact and lenders require small firms especially to have the CQS mark.
Higher risk of firm failure if they under insure and then become liable for a high value claim and cannot pay for it from internal resources	Firms will still be obliged to have appropriate insurance for all their clients and we will strengthen our guidance on this and on the information we expect firms to provide to clients on the scope of their PII cover.

Challenge	Mitigating this challenge
Increased complexity in the process for firms to buy the cover they need Firms will need to assess their overall insurance requirements. They may need to opt-in to conveyancing cover or buy additional policies to cover lenders. This may increase the transactional costs to firms to buy the cover they need for all their clients. Separate additional policies could mean separate claims handling processes for different claims.	We still expect insurers to offer firms the option to 'top up' their insurance policy to include a level of cover for financial institutions on the same terms as our compulsory insurance.
A risk that some firms do not include the endorsement for conveyancing services and then continue to provide conveyancing services or face a claim for historic work This would mean that the firm would not be insured for conveyancing work. If the firm is negligent, it is still liable but may not have the financial resources to pay a high value claim.	To make sure we have a clear definition of conveyancing services and provide guidance to firms so they understand when they should to includethis component of insurance. 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. 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. 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. We will take firm regulatory action should a firm be identified as providing conveyancing services without being insured, to discourage this behaviour.

Options we are proposing not to take forward

Current position	Potential change	Reason we are not taking forward
Indemnity limits There is no current provision for a 'sideways aggregation cap' (ie an absolute cap on payments paid for a single indemnity period).	**Introducing a total cap(s) for level of claims made during a single indemnity period** To introduce a total cap with a single automatic reinstatement of the limit	This could lower insurance costs and encourage new insurers to enter the market, but could lead to arbitrary impacts on the users of legal services once the cap was reached. The availability of the indemnity for a specific matter would be determined by the extent and timing of other claims preceding them in the same policy year.
Exclusions from cover Insurers are obliged to replace money that has been dishonestly taken from the client account or where a firm's systems have been hacked.	**Cybercrime** To exclude coverage under PII policies for claims arising from external cyber fraud/crime activity that results in losses from solicitors' client accounts.	We do not think that we can rely on firms taking out adequate insurance if this is excluded from PII cover. Therefore, the impact on consumer protection of this option is too great. The need for monitoring to make sure firms have a suitable cybercrime policy could prove too burdensome. There is currently a lack of market consensus on what a 'cyber policy' is. We believe by strengthening our regulatory approach more broadly to the cybercrime risk we can offer an effective and proportionate response.

Current position	Potential change	Reason we are not taking forward
Exclusions from cover Currently the MTCs require that dishonesty must be covered wherever there is an innocent partner/principal in the firm, but can be excluded where all have committed or condoned the dishonesty.	**Widen exclusions for dishonesty** To extend exclusions for dishonesty so that innocent partner(s) are no longer able to make a claim on indemnity insurance for another person's dishonest actions. Any claim for compensation arising from a solicitor's dishonesty would then be covered by the Compensation Fund.	Insurers remain well placed to incentivise firms to invest in systems and controls that are likely to reduce the risks of fraud by offering differentiated premiums. Insurers could be expected to argue more cases involve dishonesty and refuse cover. This could lead an increase in the number of lengthy and costly disputes that delay prompt access to redress for consumers.
Excess arrangements Firms and insurers may agree any level of excess. If the firm does not pay the excess, the insurer becomes liable to pay the client. Insurers can seek repayment of the excess through the courts**.**	**Alter insurers obligations where firm do not pay the excess** Insurers will no longer be obliged to pay the excess when a firm does not pay. To stop disproportionate excesses being put in place we would introduce a maximum excess in respect of claims made in one indemnity period.	There does not appear to be a high proportion of zero excess policies, suggesting that firms do generally pay the excess agreed in their policies. We are strengthening our response when insurers tell us that an excess has not been paid which should lead to further reductions in the level of non-payment. Some firms might choose an unduly high excess and if the firm had insufficient internal resources, this would bring risks to consumers if either the firm had no intention or ability to pay it. Consumers are in a poorer position to prevent firms from arranging a high excess or to pursue firms for unpaid excess in comparison to insurers.

Current position	Potential change	Reason we are not taking forward
Insurer remedies when a firm has misrepresented or acted dishonestly Firms who misrepresent their business activities and pay a lower premium than they would otherwise pay do not suffer the consequences of their misrepresentation, since the insurer must still pay out any claims.	**Fair presentation of risk** To increase the remedies that are available to insurers where a firm fails to fulfil its duty to make a fair presentation of risk. We propose to allow a wider set of remedies in line with those in the Insurance Act 2015. This would include the right to avoid cover where this misrepresentation has been deliberate or reckless – or in other words the firm has been dishonest.	Allowing cover to be avoided for deliberate or reckless misrepresentation could have an adverse impact on the consumer protections available to clients. The insurer should continue to bear the risk as it has the greatest understanding of the impact. Ensuring the transparency of protection is vital in maintaining consumer protection. Even with the possibility of access to the Compensation Fund, there is a risk of a client finding they are excluded because they do not meet the eligibility criteria. We are strengthening our approach to enforcement against firms that have been dishonest with their insurer.
Run-off cover At the time of a firm closure, the insurer is required to provide six years of run-off cover, even if the premium is not paid.	**Reduce period of run-off cover** Reduce the length of time for run-off cover. We have previously consulted on an option to reduce the length of run-off cover to three years.	Our data analysis shows that significant proportions of run-off claims continue to arise until the sixth year and therefore we do not support reducing the length of cover.

Current position	Potential change	Reason we are not taking forward
Run-off cover At the time of a firm closure, the insurer is required to provide six years of run-off cover, even if the premium is not paid.	**Insurance only on payment of premiums** This would mean that unlike the current position, if a firm did not pay its run-off premium, it would not be insured.	We expect this to reduce the cost of run-off cover significantly because current default rates are so high. However, the negative impact on consumer protection would be too great. Our proposal to introduce a total cap on cover will make premiums more affordable especially for small firms. We will also focus on regulatory action, including preventing the 'Phoenix Firm' scenario[20] and taking enforcement action against solicitors that carry on in practice after closing a firm, without paying run-off cover for their closed firm. We are also working with insurers to provide them with timely information that puts them in a better position to recover premiums.

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.

[20] This is where solicitors or managers close their firms without paying run-off premiums and then re-appear in a new firm. We are tightening our firm closure and authorisation process so we can spot where this is happening and take appropriate action.

Section Two: Changes to our Compensation Fund

Rationale

98. The Compensation Fund is already a discretionary fund. Beyond its discretionary nature other limits include the eligibility criteria, a hardship test for certain applicants and a maximum payout (with discretion to exceed this).

99. Historically, payments have been made against a broad range of legal service transactions, including conveyancing, probate and personal injury. Payments are usually for relatively small amounts and this has allowed the fund to remain viable through affordable contributions from the profession. The highest risks that lead to claims by people are in areas of legal practice where firms have access to client money. Insurance will cover some of these losses, but not for example, where all partners in the firm are implicated in the dishonesty.

100. We want to make sure how we manage the Fund remains consistent with best regulatory practice, our regulatory objectives and people's expectations. It is right that we now ask ourselves, the profession and the public questions about the purpose of the Compensation Fund.

101. We think the purpose of the Fund has become more open to question as the legal market and the services provided by solicitors has evolved. This is partly because the risks that give rise to potential claims on the Fund are changing. For example we are seeing the re-emergence of solicitor involvement in large-scale dubious investment schemes that can be scams[21]. Although very few people buy the products of risky schemes compared to the number of people using conveyancling, probate or personal injury services, we are currently investigating some 50 firms involved in such schemes, with possible losses of well over £200m. This is because these schemes, which attract people by offering very high returns can be perpetrated on a massive scale giving rise to potential claims on the fund that, if eligible for payment, could threaten its

[21] This is not a new risk and we have issued warnings over several years. In the late 1990s to early 2000s, some US$500 million passed through law firms in relation to highly dubious investment schemes. These claims have led to large payments in the past

viability. The would mean that claims relating to widley used legal services could not be met.

Therefore, we do not think that the Fund can be a guarantee that all users of legal services are covered for any loss caused by solicitors or regulated firms. Nor do we think that those who take the risk of dubious investment schemes in pursuit of high percentage returns, should be prioritised over people that have been provided with routine conveyancing or probate services. The underlying rationale for any decision to prioritise certain claims is usefully summarised in a judgment of the Court of Appeal in the Mortgage Express[22] case which recognised the risks inherent in a discretionary Compensation Fund:

"It seems clear to us from the current legislation, the history of the fund and the mode of operating it that the solicitors' profession was never intended or required to assume an open-ended liability to meet any unsatisfied loss sustained by any party caused by the dishonesty of any solicitor."

102. This principle is reflected to some extent in the current rules. We think it is timely to modernise the rules and eligibility criteria to more clearly reflect the purpose of the Compensation Fund as a proportionate and targeted hardship fund, helping the vulnerable and those that need and deserve it the most. We propose to:

- narrow eligibility to only those people that need and deserve the most protection
- provide us with new tools and powers that allow us to make sure claims are assessed as robustly as possible
- emphasise that consumers need to take responsibility for their own financial decisions

[22] *R v Law Society ex p Mortgage Express* [1997] 2 All ER 348, Lord Bingham CJ delivered the judgment of the court

- retain the discretionary elements that allow us to make sure that the users of legal services and others affected by behaviour of solicitors of regulated firms in unique or very unusual circumstances are protected.

103. We recognise that other options may exist and welcome new evidence, ideas and analysis.

104. Because we are changing our rules about where solicitors can practise and the consumer potections that apply, we also need to consider how the Compensation Fund is financed. This issue is discussed in more detail later on in paragraphs 113 to 114.

Our proposals

Current position	Proposal	Reason for change
Eligibility to claim There is currently no provison in the rules which allows for claims from high-worth individuals to be excluded	**Exclude people living in households with net financial assets above a threshold from being eligible for a payment from the Fund.** We propose to include new eligibility criteria that would mean individuals from the wealthiest households would no longer be able to apply for a payment from the Fund. We propose a relatively straightforward measure used by the ONS to calculate net household financial wealth that excludes physical wealth, property and pension assets. Applicants with net household financial assets over £250,000 would not be eligible to make a claim. Data from the ONS indicates that it we set the threshold at this level individuals living in 5 percent of the wealthiest households in Great Britain (based on this measure) would be excluded.	To make sure the Compensation Fund is targeted at the people that need the most protection.
Eligibility to claim Business and charities with an income below £2m or trusts with assets below £2m can claim but must demonstrate hardship where there has been a failure to account Business with an income above £2m cannot claim. Charities with an income or trusts with assets above £2m can claim if they can demonstrate hardship	**Exclude all claims from charities and trusts with an income/assets of more than £2m from eligibility.** **Simplify the test we use for assessing whether a payment should be made so that all eligible businesses, charities and trusts must show hardship** The Fund retains its discretion to deal with applications from large charities and trusts where it can be demonstrated that individual beneficiaries would suffer hardship.	Large charities and trusts, like large businesses, are better placed to understand the risks of purchasing legal services and bear the impact if something goes wrong. Currently, there are differences depending on the applicant and the grounds for the claim, whether hardship must be demonstrated. We propose to simplify in line with the purpose of the Fund and that hardship must be demonstrated for all eligible claims.

Current position	Proposal	Reason for change
Eligibilty to claim Claims from barristers and experts can currently be made.	**Exclude claims from barristers and experts**	To make sure the Compensation Fund is targeted at the people that need the most protection.
Range of payments Claims for costs incurred following an event can also be made in certain circumstances, for example, a claim for litigation costs.	**For eligible applicants limit payments to the direct financial loss caused by the actions of the solicitor or firm.** This would mean grants would no longer be paid to applicants to cover litigation costs incurred to pursue alternative means of redress or for paying someone to help with an application for a payment from the Fund.	The proposal aims to strengthen the purpose of the Fund to relieve hardship and provide redress for direct losses arising in the course of the 'usual business of a solicitor'. We are redesigning our process and the forms we use so to make it easier for vulnerable people to apply for a payment potentially assisted by friends, carers or organisations like Citizens Advice, rather than by paid professionals. Citizens Advice, for example, already help people make claims to the Criminal Injuries Compensation Scheme.
Range of payments Claims can be made for losses that arise from the actions of a 'firm/solicitor' that was not authorised by the SRA but could have been and does not have a valid PII policy There is scope for claims to be made where an insurer is insolvent and the firm does not have in place valid-run-off cover	**Tightening the circumstances when the Fund makes a payment where a firm or solicitor has failed to have PII cover in place and extend the eligibility criteria to these claims** To only permit claims where a firm has failed to get insurance to those firms that have has been authorised by us. The rules currently allow this type of claim where solicitors practising as a sole practitioner or in partnership could only have ever been authorised by the SRA, but have failed to get authorisation.	We think it needs to be clearer when the Compensation Fund will pay claims that should have been covered by an insurance policy. We do not think it is proportionate to offer the protection of the Fund to clients of firms could have been but are not regulated by us. This level of protection has never been provided for claims arising in a limited company or LLP which are subject to different legal

Current position	Proposal	Reason for change
	To exclude claims arising from an insurer's insolvency, for example, where run-off policies have been disclaimed by a liquidator as part of the winding up process.	requirements. This creates inconsistency. In the case of insurer insolvency, consumers will have alternative sources of redress including the Financial Services Compensation Scheme (FSCS), if available. They could pursue alternative remedies, including seeking to recover losses from former managers of a firm directly.
Conduct of the applicant The current provisions are broad and may not be clear about how we take account of applicant's conduct and contribution to loss.	**Apply a clearer and more robust approach to how we take account the applicant's behaviour when assessing claims** Our rules will explicity set out circumstances when the conduct of the applicant may warrant a refusal or reduction in the grant, for example the steps a person has taken to confirm that the services being provided by their solicitor are genuine	This is to strengthen our existing approach that the Fund should not be available where the applicants' own actions could have prevented the loss. Most people investing in high return dubious schemes have access to good information and should bear some responsibility for their actions. We will take into account where people are more vulnerable and this might not be the case. Other organisaitons for, example, the Financial Ombudsman have engaged with consumers to let them know that claims will be refused where the applicant has failed to take sufficient steps to prevent their loss. We will provide guidance for the users of legal services that sets out our expectations.

Current position	Proposal	Reason for change
Conduct of the applicant The rules do not impose any specifc requirments on applicants and we have no direct investigatory powers	**To require a duty of full and frank disclosure by an applicant when requesting a payment from the Fund and to provide us with direct investigatory powers that allow us to challenge evidence provided.** This is so we can strengthen how we examine the applicant's behaviour in making a claim and allow us to challenge their evidence. We will also expect applicant to provide us with all relevant information and documents in support of the claim.	This is to make sure that we have the right powers to challenge the behaviours and conduct of applicants in assessing whether a claim should be paid, resulting in a more rigourous claims process For dubious investment schemes it will enable us to investigate more robustly what reliance was placed on the advice/assistance of the SRA-authorised firm when an applicant chose to put money into the scheme.
Maximum payments from the Fund The Compensation Fund can provide grants of up to £2m per claim. This limit can be exceeded in exceptional circumstances.	**Reduce the maximum payment for a grant from £2m to £500,000 and provide clear criteria when a higher payment might be considered.** We think if we lower the limit for a maxiumum payment it is even more important to be clear about where we might treat applications as a "single claim" for the purposes of calculating whether the maximum grant has been reached. We will also develop our guidance to set out clear criteria for thecircumstances where a higher payment will be considered.	The payment limit should be set at a level that provides targeted consumer protection to relive hardship whilst securing the ongoing viability of the Fund. The current maximum was introduced to align with the level of mandatory cover for a single claim under our PII arrangements. Our data shows that the highest amount paid out has never reached the maximum. Only a few payments have been more than £500,000. These tend to be linked to fraudulent probate and conveyancing transactions. The data does not suggest that we should apply differential limits as we are proposing for PII claims.

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

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

Excluding claims from wealthy households

105. The ONS define total net household wealth as the sum of four components: property wealth (net), physical wealth, financial wealth (net)[23] and private pension wealth. It does not include business assets owned by household members, nor does it include rights to state pensions, which people accrue during their working lives and draw on in retirement.

106. We recognise that there there are a variety of assets that contribute to wealth and a diversity of methods that people use to save for their retirement. We propose to use a measure of wealth that is focused on net financial wealth. This is because we would not want include a person's main residence or pension savings in our assessment of eligibility. Our proposal is that applicants living in households with with net financial assets of more than £250,000 would not be eligible to make a claim on the Fund. Data from the ONS indicates that if we set the threshold at this level individuals living in 5 percentage of the wealthiest households in Great Britain (based on this measure) would be excluded from eligibility.

107. We have considered whether a definition based on total wealth[24] would be more appropriate because it does not distinguish between property, physical, financial or private pension wealth. The downside to this is that claimants would need to provide more information i.e. a valuation of total wealth rather than financial wealth which is relatively straightforward figure to calculate.

108. To determine eligibility, applicants will be asked to provide an estimate of their net financial wealth. If the claim is of high value, we will decide whether we ask the applicant to provide verification of the information provided. This approach also allows random sampling during the application process to be introduced whilst minimising the additional burden/cost of processing claims.

[23] Financial wealth comprises: formal financial assets (such as bank accounts, savings accounts, stocks and shares); informal financial assets (such as money saved at home); assets held by children in the household; and liabilities (such as formal borrowing, overdrafts and arrears on household bills)
[24] The top 5 percent of wealthiest households in Great Britain have net total wealth of £1.5m

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

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?

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

Maximum payment

109. We are proposing a maximum payment from the Fund of £500,000. Given the reduction in the maximum payment we think it is important that we set out how we would consider whether the limit has been reached in circumstances where there could be more than one person, in a single or related transaction, that is affected by the act/omission of the solicitor that results in a loss of money.

110. We think the general principle should be that where the loss of money relates to a single retainer that should be dealt with as a single claim on the Fund

regardless of the number of people affected. We would consider separate applications from more than one person where there are separate retainers or the transactions being undertaken are not connected.

111. We give examples of how this could apply to different scenarios giving rise to a single application or multiple applications to the Fund.

Scenario	Possible approach
Mr and Mrs A sell their jointly owned property for £1m which their solicitor takes.	This is one application and the Fund pays £500,000 in total
Persons B, C and D agree to sell their shares in a company to a third party for £400,000, £800,000 and £800,000 respectively. The same solicitor acts for all three but has sperate retainers with them. After completion the solicitor takes the whole £2m sale proceeds.	These are three applications and the Fund pays £400,000 to B and £500,000 to both C and D (£1.4m in total)
J, K and L are beneficiaries of H's Estate and are entitled to one third each when they reach 25 years old. A solicitor is appointed as the sole executor of the Estate which realises £4.5m. £1.5m is paid to J when they reach 25. The remaining £3m is taken by the solicitor.	This is one application (by the Estate) and the Fund pays £250,000 to K and L (£500,000 in total)
M sells their portfolio of four properties to four separate buyers for £200,000, £300,000, £600,000 and £900,000 respectively. The sales were not connected but did complete in the same week. The solicitor took the whole £2m.	These are four applications and the Fund pays £1m to M in total (£200,000, £300,000, £500,000 and £500,000 respectively)

112. We would be interested to hear views on possible approaches and whether we should include in the Compensation Fund rules the concept of a 'single claim'

for the purposes of calculating whether the maximum payment has been reached and how it could be defined. This will then impact on how applications to the Fund are dealt with and the maximum payment made.

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.

Contributions to the Compensation Fund

113. We need to consider whether the existing methodology remains the fairest and most appropriate way to calculate contributions to the Compensation Fund. Some firms we regulate have suggested that if they implement effective internal controls and procedures to protect client money and therefore present a reduced risk of creating claims against the Fund, they should benefit from a reduced level of contributions.

114. Our future approach must also reflect the changes we are making to where solicitors can practice. As an example, clients of solicitors working in a firm not authorised by a regulator under the Legal Service Act will not be able to make a claim on the Compensation Fund. We are therefore need to collect views on what is the fairest way for firms and individuals to contribute to the Fund. This includes recovering the cost of interventions that are funded by the Compensation Fund contribution.

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

Dubious investment schemes

What is the usual business of a solicitor?

115. There has been an increase in contributions to the Fund required from the profession because of the recent re-emergence of solicitor involvement in dubious investment schemes. The involvement of a law firm is used to give an impression of credibility or security.

116. In response to this risk, we have taken a series of steps to alert members of the public and firms about what they should be looking out for and how we expect firms to comply with our rules. For many years, we have made it clear and reminded solicitors that they would be in breach of the SRA Principles if they do become involved in dubious schemes. We have warned them that if they fail to observe our warnings this could lead to disciplinary action or criminal prosecution. We have also taken robust enforcement action against both individual solicitors and firms when we have identified involvement in questionable investment schemes.

117. Payments from the Fund can be made for losses in consequence of the provable dishonesty by the solicitor[25] or where the solicitor or firm has failed to look after money properly. Our rules also already already limit payments to the losses that arise out of the ‘usual business of a solicitor’

118. Case law has examined what is classed as the 'usual business' of a solicitor and the Court of Appeal has also provided guidance on what factors need to be considered in deciding whether a solicitor has been acting in the course of the 'usual business' of a solicitor[26]. We have excluded claims arising from some dubious investment schemes on these grounds.

[25] The category is wider than just solicitors eg employees, managers of licensed bodies, but for simplicity only solicitors will be mentioned.

[26] Factors include the person dealing with the solicitor (i.e. the client) must honestly believe that what the solicitor was doing was usual business. The Court stated that where the activities carried on were "preposterous", "abnormal" and "incredible" then they could not be part of a firm's usual business.

119. We can also exercise discretion around, for example, whether the applicant has other ways they can cover their losses or to what extent their own behaviour has contributed to their losses.

120. To provide greater certainty about the situations where the Fund would consider making a payment, we have considered whether it would be practical to try to explicitly define in the Compensation Fund rules what is and what is not the 'usual business of a solicitor'. This has been driven by ongoing concerns around solicitor client accounts being used as a banking facility as well as the re-emergence of the risk of solicitor involvement in dubious investment schemes.

121. Our view is that it is not practicial to proceed with this option. The activities of a firm that constitute their 'usual business' will constantly change as the market develops and so does then the scope of the work firms might become involved in to meet the needs of their clients. This then becomes very subjective.

Buyer beware

122. We think the purpose of the Compensation Fund is as a proportionate and targeted hardship fund, helping the vulnerable and those that need and deserve it the most. Our view is that the small numbers 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. The Fund cannot underwrite investments.

123. We think it is reasonable to expect people to take responsibility for their choices and decisions when they engage in legal services and to protect themselves where they can. This echoes the Financial Conduct Authority (FCA) consumer protection objective which refers to:

- an "appropriate" level of protection
- the relevance of levels of risk and
- "the general principle that consumers should take responsibility for their decisions".

124. Examples of taking responsibility could be carrying out research, reading our warnings and those issued by Action Fraud and the FCA, taking time to consider the investment and taking steps to check whether the scheme has been reported on Scam Alert websites or is subject to any other warnings from the FCA. We and other regulators have made sure there are widespread warning notices in all forms of media about dubious investment schemes and scams.

125. As discussed above we are modernising the Compensation Fund rules to allow us to apply a clearer and more robust approach to how we take account the applicant's behaviour when assessing claims. Applicants will be required to act honestly when applying for a payment, and to promptly provide all information in support of an application. The rules will explicity allow us to refuse or reduce a payment to take account of any conduct of the applicant that has contributed to the loss.

126. This approach 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 some people will be vulnerable due to certain events or factors which means they may not make the best decision for their needs.

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?

Guiding Principles

127. We are also interested in views on whether 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. Our suggested Principles are as below:

- 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 does not pay grants for additional or consequential losses.
- The Fund helps people who have lost money because a person or firm we authorise did not have insurance when they should have.
- The Fund cannot underwrite investment schemes.
- Any payment is at the discretion of the Fund (no-one has a legal right to a grant).
- The Fund takes account of the general principle that people are responsible for their own decisions about their money and that they must act carefully.
- Grants should only be paid to people who have acted fairly, honestly and properly at all times.
- Grants should only be paid to people who have no other way to recover their losses.
- 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.

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

Impact on public protection

128. The Fund will remain viable and continue to act as a safety net for those affected by authorised individuals or firms who have misappropriated or failed to account for client money. Although the changes would narrow eligibility, people that need and deserve the most protection will remain protected. There is significant evidence that indicates those with protected characteristics find their ability to achieve a high income is limited. This means that the introduction of the eligibility criteria to exclude applicants from wealthy households is unlikely to impact on applicants with protected characteristics. The changes we are making should also make sure that payments we make reflect more robustly how an applicant has behaved in the period leading to the claim and during the application itself.

129. These impacts are set out in more detail in the initial impact assessment.

Impact on firms

130. All firms, particularly small firms, are likely to see value in a more robust approach to assessing claims. We want to make sure that the right people benefit from the Fund. This will mean adopting a more robust approach to assess applications so that we make sure payments are justified. This will help in making sure that the Fund remains viable.

Acknowledging challenges

131. We encourage stakeholders to comment on our analysis and conclusions and to provide any additional evidence that either that supports or does not support them.

132. We have identified the risks and challenges and mitigations associated with the proposals in our initial impact assessment. In summary these are:

Challenge	Mitigating this challenge
Tighten the eligibility criteria limits who can make a claim on the Compensation Fund A tighter eligibility criteria and narrower range of grants means that certain types of people may not get the benefit that they may historically have received. In addition, how wealth is determined can be different depending on various sources of income.	Most consumers will remain protected by the Fund. We believe that those excluded, such as barristers, experts and wealthy individuals, are more likely to be able to access other avenues of redress. Also, where appropriate, they will have the skills to access legal remedies to recover losses or bear losses incurred. Where we are excluding claims because a firms' insurer is insolvent, this is mitigated by access to alternative redress. It might be from the FSCS if the firm meets the eligibility criteria. In certain circumstances, partners, directors of a firm may remain personally liable. A refund of the premium, from the FSCS, to the firm should allow them to buy new cover. This is also linked to the implications of the closure of the Solicitors Indemnity Fund after 2020. A viable market for post six-year run-off cover may also create an alternative option or product to address this situation.
There is an increased information requirement for individuals to confirm they are eligible and to provide information to support their claims All applicants will be required to provide information about income and assets to determine if they are eligible to claim. If eligible, in somes cases applicants will be required to provide more robust information in support of their application.	Our assessment is that these are necessary in order to protect the right people and assess claims robustly. We will adopt a proportionate approach. All applicants will be asked to state their income and assets. Where this claim is of high value, we will decide whether we ask applicants to provide verification of the information provided. We do not expect there to be any disproportionate impact on applicants in confirming their income/wealth. We will provide clear guidance and easy to use forms for applicant to provide this information. The type of information is no more onerous than information requested for care allowances and other means tested funds. Seeking information in support of an application will help process applications quicker and help determine whether the applicant contributed to the loss by, for example failing to take reasonable steps before giving the solicitor access to monies.

By not paying application costs we might disadvantage applicants that find it difficult to understand and complete the application form themselves	We are implementing a more streamlined and easy to use application process. Where support is needed to complete an application, we will engage with consumer organisations, including Citizens Advice and Which? to support the development of guides and offer free help.
Higher risk of firm failure could occur if firms are pursued for losses that are no longer covered by the Fund. There is also a risk to individual solicitor manager/owners if they become personally liable	The Fund does not provide residual cover where insurance protection is not available. We envisage that events leading to losses (not covered by the Fund) should reduce if firms implement good systems and controls. Our new Code of Conduct highlights the need to have systems and controls in place.

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

Section Three: wider changes to how we regulate

133. Our arrangements should support, but not replace, regulatory oversight of professional standards. Our review has highlighted areas where we are making wider changes to how we regulate that could potentially reduce the cost of financial protection.

Acting on insuer information

134. Information provided by insurers about poor practice by individual firms, relating to their insurance, can be combined with other information we hold to target supervision and enforcement action towards firms most likely to cause harm.

135. Insurers are required to notify us about firms poor practice. This includes failure to pay the excess, failure to pay run-off premiums, misrepresentation and dishonesty. While in some cases this may reflect genuine commercial disputes between firms and insurers, they may also be linked to wider regulatory failings in the firm, including dishonesty, financial instability or poor systems and controls.

136. Early provision of this information not only helps us take decisions about what to investigate, but allows us to advance our investigations more quickly by focussing on key areas of concern. We have made improvements to how we record and respond to this information and how it is used in our risk taxonomy to target enforcement.

137. Depending on the information provided, we may take different types of action, including:

- keeping the information for future use in deciding whether the firm poses a risk to the public - we review this information each time any further matters are reported and where we see a pattern we can reopen any matters as part of a larger investigation

- using the information as part of a formal investigation into a firm or regulated individual

- using the information to supervise a law firm more closely or take formal enforcement action.

138. We are moving towards a principles-based, flexible, approach to enforcement which will help us to focus more effectively on serious breaches of our rules and where there is a serious risk to the users of legal services. We consider non payment of run-off premiums and incidences where firms have acted dishonestly towards their insurer as a serious regulatory breach and take action accordingly.

Insurer refusals to pay a claim under an insurance policy

139. We are also reviewing the steps we currently take when an insurer notifies us that they are refusing to provide cover under the terms of the insurance policy. The most common reason why an insuers can refuse cover is if a person covered by the insurance policy has acted dishonestly. If the partners have "condoned" the dishonesty then the insurers may refuse to consider the claim. The value of the claims can frequently be very high.

140. The positions taken by insurers can be controversial, but it is difficult for us to challenge them because the dispute over coverage between the law firm and the insurer.

141. If these claims are not managed it could leave consumers without a remedy. This is because:

- the Compensation Fund may refuse grants on various grounds

- the scope of the Compensation Fund is not as wide as PII.

142. There are a range of options that could allow for closer engagement between us, firms and the insurers in these cases. For example:

- allowing us to become involved in an arbitration between a firm and an insurer or changes to allow us to more easily access arbitration decisions

- allowing us to attend conferences with Counsel/experts that examine cases where dishonesty is alleged and cover has been declined.

143. We would be interested to hear views on whether we should become involved at an ealier stage when an insurer is considering/decides not to provide cover for a claim.

Improving our firm closure process

144. We are improving the process for firm closures by asking for better (and more useful) information when a firm completes our firm closure notification form. This will include seeking verification of information provided from firms and other third parties. We want to be sure that the firm has genuinely closed in an orderly way and these improvements will help meet that objective. We will seek verification that a firm has paid run-off premiums, the status of a successor practice and that client money and files have been dealt with properly.

145. Improvements in how we manage this information will also help establish any possible links to an application for a new firm to be authorised. Where we can identify that a solicitor has not paid run-off premium or not closed properly we will not want them to be setting up new firms, so-called 'phoenix firms'. In cases where we see poor behaviour, we will consider regulatory action against individuals and the firm and using tools such as regulatory conditions to control how individuals practise. An important point to note is that a firm will remain authorised until we have decided to revoke authorisation – and will therefore, remain subject to our regulation.

146. We are also changing how we can share information with insurers about firm closures so they are in a better position at an earlier stage to check whether a run-off premium has been paid and if not, to take earlier steps to recover the premium. This should reduce default rates.

Reducing losses from "Friday fraud"[27]

147. We do not think it is appropriate at this point to exclude this risk from being covered by PII policies.

148. 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. Members of the public are also likely to face considerable associated distress due to failing to complete their house

[27] Friday afternoon fraud, the practice by which law firms are tricked into giving bank details to fraudsters as conveyancing transactions are being completed.

purchase. As such it is not reasonable to leave these consumers unprotected. Excluding cybercrime from PII cover would leave clients at risk in the event of suffering harm from such crimes unless similar cover is required through specialist cyber policies. These products do not seem to be available in the market although we recognise that this is partly because this risk is covered by PII policies.

149. If we treat cybercrime differently to other risks this creates uncertainty for people about how they are protected.

150. The Law Society Gazette recently reported that the number of cyber attacks is falling partly due to simple awareness campaigns. However, we recognise this remains as an area of risk and a significant issue for insurers. If unchecked, it could lead to significant premium rises if the profession does not respond in a determined way.

151. We expect firms to notify us when they have suffered a cyber-attack (including near misses). We are focused on taking regulatory action in instances where the firm have either been involved in the fraudulent act or have demonstrated that they have no systems and controls to prevent situations arising. Or where they have not replaced the money or reported the loss to us.

152. There is no single 'magic bullet' to address this type of crime. We believe a portfolio of measures are necessary. These include increasing overall education and awareness of the risks, in parallel with guidance and enforcement activities.

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

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.

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

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

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.

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

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.

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

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?

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

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.

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

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

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?

Strongly agree

Somewhat agree

Neither disagree or agree

Somewhat disagree

Strongly disagree

Please explain your answer

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

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

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?

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

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 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?

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

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?

Our next steps

Consultation dates

This consultation is running from 23 March until 15 June 2018.

Our decision

Once the consultation period closes, we will read and analyse responses. We will then decide what proposals we need to take forward.

Publishing responses

Please note that, unless otherwise stated, we will publish responses to our consultations.

Annexes

Annex 1 shows how our current PII arrangements compares to others.

Annex 2 is our initial impact assessment.

Annex 3 is our draft Compensation Fund Rules and draft Indemnity Insurance Rules, including draft Minimum Terms and Conditions reflecting the proposals set out in this consultation paper.

Get involved

Your views matter, which is why we are keen to engage with you outside of formal consultations.

Attend one of our events

To attend one of our events, or to see us at an event we are participating in, keep an eye on all our upcoming events by visiting our website.

Invite us to speak at your event

If you would like to invite an SRA speaker to your event, please fill in our speaker request form.

Follow us on social media

Join a virtual reference group

Our virtual reference groups allow you to stay in touch and learn more about what we are working on.

Small firms

We want to make sure that thinking about how our work affects sole practitioners and other small firms is embedded in our operations and our regulatory reform programme.

SRA Innovate

We want to make sure that thinking about how regulation affects innovation and growth in legal services is embedded in our operations and regulatory reform programme.

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

SRA Evolve

We recognise good user experiences are essential. That is why we need you at the heart of our work to modernise our IT and simplify what we do. SRA Evolve is one of the ways we are making sure that users call the shots in our IT change programme.

Diversity matters

Members of our Diversity matters reference group are helping us to think about how we can progress our work on equality, diversity and inclusion.

Contact us

Telephone:

0370 606 2555

International:

+44 (0) 121 329 6800

Contact Centre opening times:

Monday	08:00 –18:00
Tuesday	09:30 –18:00
Wednesday	08:00 –18:00
Thursday	08:00 –18:00
Friday	08:00 –18:00

Calls may be monitored or recorded for quality and training purposes.

Email:

contactcentre@sra.org.uk

Visit us online:

www.sra.org.uk

Solicitors Regulation Authority

The Cube

199 Wharfside Street

Birmingham

BN1 1RN

London

Solicitors Regulation Authority

2nd Floor

24 Martin Lane

London EC4R 0DR