

Dawn Reid  
Head of Statutory Decisions  
Legal Services Board  
One Kemble Street  
London  
WC2B 4AN  
By email: [dawn.reid@legalservicesboard.org.uk](mailto:dawn.reid@legalservicesboard.org.uk)

The Cube  
199 Wharfside Street  
Birmingham B1 1RN

DX: 720293 BIRMINGHAM 47

UK 0370 606 2555  
Int + 44 (0)121 329 6800

[www.sra.org.uk](http://www.sra.org.uk)

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Dear Dawn

### **SRA Professional Indemnity Insurance - application to the Legal Services Board**

Thank you for giving us the opportunity to comment on the submissions from The Law Society (TLS), the Council of Mortgage Lenders (CML), the Building Societies Association (BSA), Zurich and Legal Risk LLP (Legal Risk). We have also received copies of correspondence from the Legal Services Consumer Panel and from a number of firms which have submitted the same, or very similar, letters.

Most of the issues being raised are not new and have been addressed at length in our application. However, we note that many submissions continue to focus on the proposal to reduce the minimum requirement for professional indemnity insurance (PII) cover to £500,000 for any one claim, without acknowledging that the principal change we are proposing is the introduction of a new Outcome in the SRA Code of Conduct, which requires firms to assess and purchase an appropriate level of PII. It is this new Outcome which will deliver more appropriate, targeted and proportionate protection for all consumers.

We hope it will also be helpful to make the following points:

- Some of the submissions have suggested that the proposed changes should be introduced more slowly. While we understand the need for reform to be managed carefully, we also recognise that there is an opportunity cost of delaying unnecessarily, if potential benefits are not realised as quickly as they might. We consider that the proposed timing strikes the right balance.
- We understand why the Legal Services Consumer Panel is concerned to avoid the transfer of risk to consumers, but we do not agree that the proposals will have this effect. Rather, the proposals will remove the risk which currently exists in respect of claims in excess of the current minimum, by replacing it with an overall

requirement for appropriate cover. In our application we noted that, in circumstances where firms do not maintain appropriate cover, the impact is likely to be relatively small because those affected will be the subset of clients whose circumstances give rise to a claim and where the value of that claim falls between £500,000 and £2/3m.

- The Consumer Panel suggests that consumers value PII and are willing to pay for it, but are unlikely to shop around or make sure that a higher level of PII is in place if needed. We don't disagree that PII is valued, but requiring firms to have in place a level of cover which is appropriate, will mean that consumers will not have to pay for a level of cover which is not necessary, as some are doing currently, nor be underinsured because of an arbitrary limit without responsibility for higher cover where appropriate.
- It has been suggested that we should have used more up to date data. We used the best available data and consulted upon our proposals. No-one arguing against the proposals offered better data to support that case.
- It is suggested that the proposed minimum requirement will be inadequate for the conveyancing market and that firms will need to obtain higher levels of cover. We accept that many, although not all, firms that engage (or have engaged) in conveyancing, will need to maintain a higher limit in order to satisfy the new Outcome. While average house prices are far below £500k, several lenders and insurers make clear that lenders will require cover at a level similar to what is currently in place. That confirms our view that sophisticated consumers are well placed to drive the market to provide the level of cover that they consider appropriate.
- The BSA suggests that there has been insufficient consultation with the insurance industry about the availability and price of top-up cover. Our indemnity insurance advisers, Marsh, advise that at present it would appear the market will provide firms with quotations based on the existing minimum terms and conditions (MTC), incorporating the minimum levels of cover of £2,000,000 and £3,000,000. Where requested certain insurers will, in addition, provide terms based on the proposed sum insured of £500,000 for comparison purpose. Current indications are that the reduced sum insured will attract a discount in premiums. Of course, going forward, we are mindful of the difficulty of isolating the effect of the proposed change as premiums are affected by a wide range of other factors, but it is reasonable to assume that in a competitive insurance market, there will be a downward pressure on premiums.
- We disagree with Legal Risks' suggestion that reduced PII premiums will not benefit consumers. While we acknowledge that insurance is but one of a number of overheads, a reduction in premiums will make a positive contribution to the overall price of legal services - even if that is to mitigate other upward pressures. Legal Risks' argument could only be true if there was no competition in the legal services market and if demand was price inelastic.

- The CML refers to the potential impact on the composition of lender panels. We do not accept that the proposed changes will necessarily have a significant impact on the size of lenders' panels, as firms that have been engaged in conveyancing will still need to maintain appropriate cover. The CML and BSA have also suggested a detrimental effect on competition for conveyancing services. However, we think it highly unlikely that lenders will restrict the size of their panels to such an extent that it gives rise to competition concerns. Of course, even if the proposals were to result in smaller panels, that would not prevent purchasers from being separately represented by a solicitor of their choosing. We have seen no evidence to justify expecting consumers to pay higher prices because of PII requirements in order to support any particular market structure.
- The Law Society claims that the proposal will result in additional cost due to the loss of economies of scale which derive from "bulk purchasing" higher levels of cover, however, Marsh has advised that this is unlikely to be the case. The minimum terms and conditions will also be reviewed over the coming months.
- Our estimate is that a large proportion of firms with over four partners do already purchase additional layers of cover, as do a small minority of very small firms. This suggests that firms can assess the risk, and it is hard to see how a firm can act in the best interests of its clients if it cannot assess risk within any transaction. Many firms may take their time to change, keeping the current level of cover initially as they develop a better understanding of the choices available.

Yours sincerely



Crispin Passmore  
Executive Director