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Legal Services Board  
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Dear Dawn

### **SRA rule change application: professional indemnity insurance (PII)**

I'm writing in relation to the SRA's application to change its Indemnity Insurance Rules and Minimum Terms and Conditions, in particular the proposal to reduce the minimum cover amount from £2m to £500,000. One of the justifications cited by the SRA relates to positions adopted by the Panel on other issues – namely, the ICAEW's insurance rules and fee-charging McKenzie Friends – which we wish to clarify. I also wish to restate our principal objections to the proposal.

The Panel did indeed accept the ICAEW proposal for £500,000 PII cover, however the circumstances are very different. ICAEW's arrangements apply to a small number of providers, are focused on a single activity (probate) and accountants have a low claims history. By contrast, the SRA's arrangements would apply to a large number of providers, who offer a wide range of services, and who have rather a different claims record. Further, following the Panel's feedback on its draft licensing authority application, ICAEW inserted guidance to the effect that firms must inform the client in cases where the value of the estate is likely to exceed the level of PII cover. We are disappointed that the SRA has rejected our suggestion that the same principle should apply to solicitors. The SRA is right to say that consumers currently do not make choices based on levels of cover, or that they don't check such cover, but this is the very reason why we consider solicitors should be required to inform clients when they are not protected. The SRA's proposals as they stand would transfer risk to the consumer, but without helping the consumer to mitigate such risk.

In relation to McKenzie Friends, the underlying point is that regulators have difficult choices to make about balancing regulatory protections and access to justice. On this we can agree with the SRA. However, each decision has to be made after carefully weighing up the costs and benefits based on the available evidence. The Panel's report demonstrated that we are prepared to make those difficult trade-offs, but this was based on some compelling benefits, weak evidence of consumer detriment and the scope for alternatives to regulation to manage the very real risks that exist. The

SRA has failed to convince us through their arguments or evidence that their PII proposal would work in the overall interests of consumers.

We consider it significant that the major representative bodies – covering consumers, lawyers, insurers and lenders – are opposed to the proposal, while the Legal Ombudsman has also come out against. We also find it hard to understand why the SRA has been unable to obtain current claims data from insurers, which would have given everyone more reliable data on which to make an informed judgement. Further, there are contradictory predictions about the likely impact on premiums and thus eventually the price that consumers pay for their legal services. The SRA appears to give a lot of weight to the views of two providers over the other views received. The six-week consultation – one of a package of four – has been rushed in order to meet the October renewal timetable, whereas more time would have allowed for measured debate grounded in a richer evidence base.

The Panel's full response to the SRA proposal is available on our [website](#). Our main objections are as follows:

- We are unconvinced the transfer of risk from firms to consumers is matched by at least commensurate benefit for consumers
- The general obligation for providers to obtain sufficient cover is welcome, but there is a risk that irresponsible firms will ignore this
- Current premiums will reflect claims history; if the SRA is correct that only a tiny minority of claims currently exceed £500,000, this suggests the vast majority of exposure to insurers currently falls within this bracket and premiums will continue to reflect this
- We note the risks of possible unintended consequences suggested by other stakeholders, for example lenders insisting that lawyers purchase top up cover or an increase in separate representation
- Our research suggests consumers value PII and are willing to pay for this. Further, consumers are unlikely to shop around or make sure their lawyer has a higher level of PII cover, if needed.

I hope this letter is helpful in assisting in your consideration of this proposal and we would of course be willing to discuss our views with you.

In the interests of transparency, we will publish this letter on our website.

Yours sincerely,



Elisabeth Davies  
Chair