Christopher Jones
Director of Legal and Market Services
International Underwriters Association

By email only

LSB
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5 April 2023

Dear Chris

LSB review of financial protection arrangements for consumers

Thank you for your email of 5 April 2023.

I thought it might be helpful to narrow down the debating points a little.

In your letter you mention deadlines as having created difficulties. As I set out in my letter of 29 March, we sent our joint formal data request to your members on 18 August 2022, asking for the provision of the datasets to the SRA in the week commencing 31 October 2022, and then extended this to December 2022 to afford your members more time to comply, yet we received very few responses and certainly far fewer than the initial enthusiasm about data sharing had led us to hope for.

You also cite issues with the broad scope of the data request. During the lifetime of this work, we have consistently offered the opportunity to help us shape and indeed narrow the scope of that data request, on the basis that you and your members have much better insights to the data you hold than we do. Those opportunities have regrettably not been taken.

However, in the interests of moving on, I have taken from the final paragraph of your letter a sense that you and your members may still be willing to collaborate. I understand that you have been contacted by Frontier Economics, whom we have jointly commissioned with the SRA to conduct the analysis of the datasets they have been provided with, and that you have agreed in principle to be interviewed by them. If you wish to offer collaboration on the data request, I will repeat that it is still open for you or your members to put forward tangible proposals although our data analysis phase is scheduled to complete by 14 April 2023.

In the meantime, Frontier Economics is proceeding with the analysis of the data and are confident that it will highlight a number of important policy issues.

Finally, I would also like to confirm that we have responded to all insurers that have approached us, and that we are very happy to put your letter in the public domain.

Yours sincerely

Matthew Hill

Chief Executive

Email: Matthew.Hill@legalservicesboard.org.uk

Cc: Chris Rogers, Director of Research and Analysis, SRA

6 February 2023

Sally Al-Saleem

Regulatory Policy Manager

The Legal Services Board

Letter sent via e-mail

Cc: Chris Rogers, Head of Research and Analysis, SRA

James Asher, Research and Analysis, SRA

LSB review of financial protection arrangements for consumers

Dear Sally,

We are writing at the request of our member companies underwriting SRA regulated firms and as a follow up to the engagement that IUA has had with the LSB throughout 2022 on the proposed PII data request, as part of your review of financial protection arrangements for consumers. Our members contributed to this letter to emphasise that the concerns noted remain widely held but also to make clear that we are willing to work with LSB to help deliver its core review objectives.

The early involvement that IUA had with the LSB on the review parameters was appreciated and welcomed by our members, who in the main felt a co-ordinated insurer response to the data request would be both efficient and most productive for the LSB in understanding what may be feasible at a macro level. However, considering the subsequent engagement that our members have had on an individual basis with the LSB, we have been asked to again contact you directly on some of the concerns that have been consistently raised by participating insurers, with the aim of encouraging a dialogue on whether there may be middle ground that may be achieved that allow more insurers than the very few at present to support this initiative more tangibly.

We have already outlined in correspondence (dated 11th April 2022) the core concerns that insurers hold on the provision of data as currently requested. Many of these are unchanged and unaddressed, which has led to most insurers, including we understand some of the largest providers of PII in the solicitors' market, indicating that they are unable to provide data.

Firstly, members have continued to express to us their concern over the scope of the LSB's data request, which is broadly unchanged despite market feedback on both an individual basis and through engagement with IUA that the granularity and breadth of data would be a barrier to engagement for some insurers. A practical example that has been highlighted to us from within the data request is information on heads of claim which, as we understand it, was requested in order to split out some of the higher risk areas of coverage. However, claims are rarely coded in this way by insurers and are also often submitted under multiple heads of claim which would make isolating a specific one challenging to establish and analyse. This leads to the wider concern that differing levels and interpretations of information being provided by markets could lead to inconsistencies in the outcomes of the study. We would encourage the LSB to consider a more collaborative approach in developing their understanding of the way that insurer data is stored before pressing ahead with their review and are happy to again offer our assistance to attempt to coordinate any such collaboration with the market.

Furthermore, members expressed concerns over their ability to meet the October and then 1st December 2022 deadlines set by the LSB. The reasons for this have been articulated to the LSB through engagement on an individual insurer basis, but does include the size of the data request and the format of the data that is required, which will take significant manual intervention from practitioners. This includes practical issues with drawing data from multiple legacy systems, as well as some companies having to draw data from both a (Lloyd's) syndicate and (non-Lloyd's) company stamp. Engaging in such a time-consuming task, without clarity on the outcomes of the provision of the data, has been outlined to us as a concern that with more engagement and clarity could be addressed.

The potential for a significantly incomplete data set remains problematic. This includes firms that have exited the market in recent years due to poor performance, either placing business into run-off or entering into insolvency. As we understand it from discussions with members, many of these entities have not been approached to provide any data. We note that the LSB have explained that efforts will be made to fill in the gaps by the third party that they have engaged to complete the data analysis, however, it remains unclear to insurers how this will be done. Additionally, alternative sources such as brokers or service providers dealing with run-off claims do not appear to have been approached as yet and could provide useful insights on those gaps. Finally, not considering the impact of the last recession, either in this data request or by accessing the data provided in previous PII reviews, risks omitting crucial trends that would not only help explain the current state of the PII market but also provide a useful indicator of future trends. Pursuing this data to create a full picture of the market should be a priority for the LSB ahead of completing any review.

Carriers have also highlighted that there remain concerns from a compliance perspective about the GDPR implications of sharing certain aspects of the data, especially given there may be underlying information sharing agreements with clients in place. Furthermore, a large proportion of the information that has been requested by the LSB may be deemed commercially sensitive intellectual property which will require legal resource from each carrier to achieve sign-off. While we appreciate that the LSB has made efforts to articulate their intentions with the data outlined in the letter to IUA dated 28th April, and has a template NDA in place, further engagement is required with insurers to build trust with the regulator that the data will be suitably anonymised, stored and used appropriately in accordance with legal requirements.

Given the barriers outlined above and the resources required from insurers to comply with the LSB's request, we remain keen to understand what the potential outcomes of providing the data will be. So far, insurers have received assurances that "nothing is off the table" in reviewing the SRA minimum terms and conditions (MTC); however, recent engagement with the SRA has been unsatisfactory, which remains for many a key inhibitor to further engage. By way of an example, the market would value meaningful dialogue on the issues around the non-payment of premium and excesses outlined in letters to the SRA on 2nd June 2020 and 17th July 2020. Similarly, the recent intervention by SRA in *Baines v Dixon Coles & Gill 2021*, which we believe fundamentally changes the interpretation of the aggregation provisions in the MTC and which was subject of a letter to SRA on 13th October 2022, is a further example of insurer concerns. Appended are the aforementioned letters of engagement on those issues and the responses that have been received. Given the current and developing economic environment, and also the increasing claims inflation being experienced by solicitors and insurers, both of these issues remain at the forefront of insurers concerns over the provision of PII for solicitors moving forward.

Given the issues highlighted above, made previously by IUA and in individual insurer meetings with the LSB, it should be apparent that many insurers are unlikely to be able to provide anything tangible in response to the LSB's data request as currently drafted, while a number will be able to provide only limited information due to these issues. Our concern remains that a significantly incomplete data set will drive unverifiable and skewed results and will therefore not evidence or address the issues that insurers currently have in the provision of PII to solicitors, which in turn impacts the long-term availability and affordability of cover and ultimate provision of legal services to consumers and business.

We do not want this process to become a further unsatisfactory review of the PII sector, in which the need for much-needed reform is not properly assessed and implemented. The market remains keen to engage and collaborate further on the data request, the wider LSB review and issues that have been raised by insurers in order to ensure the long-term sustainability of the market for the provision of PII. As a representative trade body, IUA would be happy to lead on this by bringing together interested parties to discuss relevant issues.

Yours sincerely,

Christopher Jones

Director of Legal & Market Services, IUA