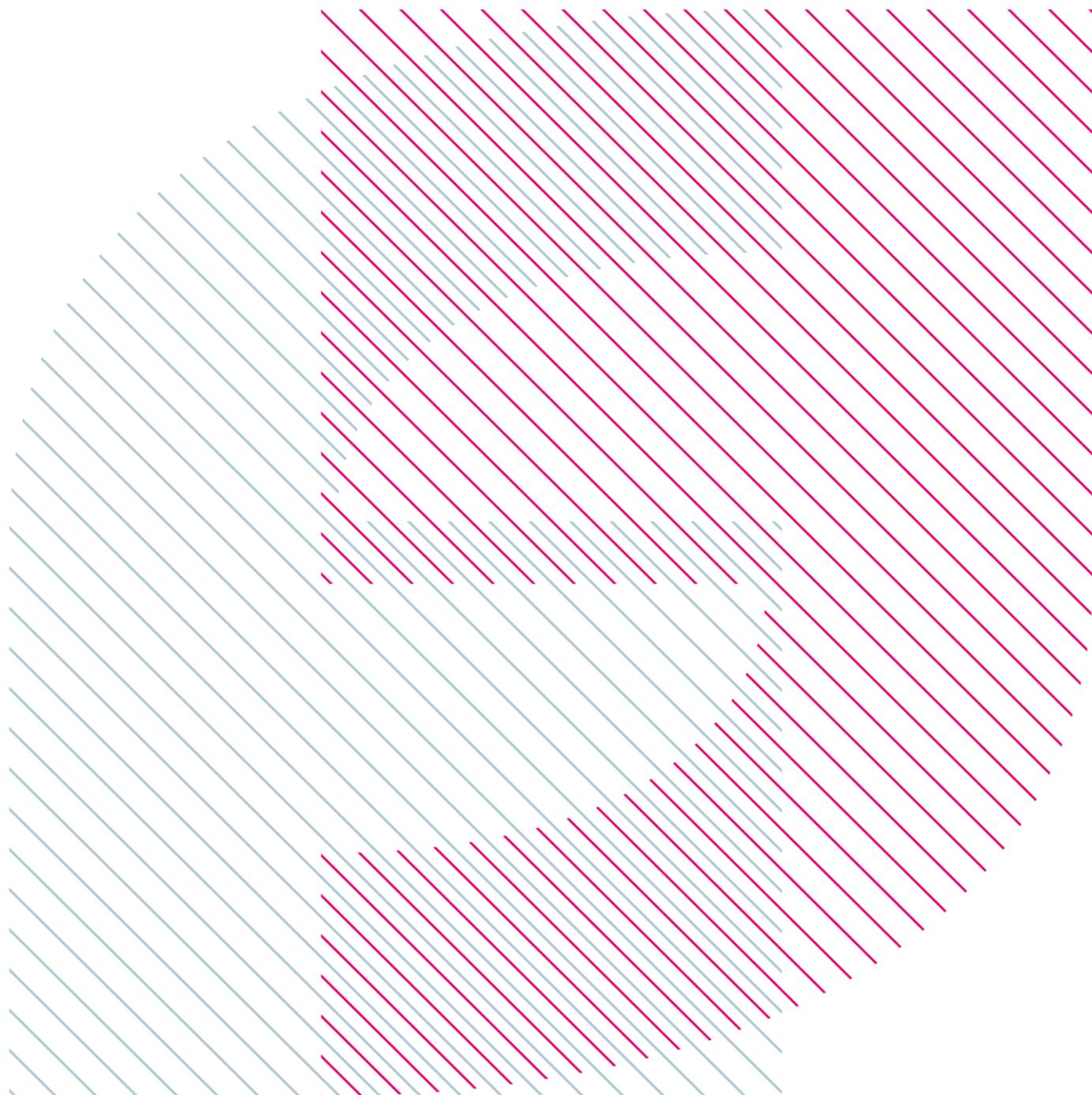




SRA discussion paper
response

Protecting client's financial interests



Introduction

Thank you for the opportunity to contribute to your discussions on protecting client's financial interests.

We are pleased that the Discussion Paper considers the impact the proposed changes to the Professional Indemnity Insurance (PII) arrangements might have on the Compensation Fund (CF). As we stated in our responses to earlier consultations in June 2014, we consider these to be important and connected consumer protection regulatory arrangements.

What are your overall views of the impact of the current financial protection regime, and what protections do you think are necessary for consumers?

What are the potential consumer impacts from changing the current arrangements?

Our experience in investigating complaints has highlighted that consumers find the current regime confusing. Moreover, it is clear that consumers cannot always receive redress when something goes wrong. To seek such redress in cases where, for example, a problem with a firm's service comes to light once it has closed, consumers may have to seek assistance from the Legal Ombudsman, a firm's PII and the CF.

When consumers have to approach an insurer, our investigation can help, but the insurers are under no obligation to accept our decision. These are both areas where we would welcome discussion with the SRA and insurers to identify whether a more effective and streamlined approach can be identified.

What further issues should we consider in relation to run off cover?

We stated in our response of June 2014 that we believe any reductions to the run off cover could be detrimental to consumers as they are often not aware of problems for many years – particularly in, for example, conveyancing, litigation and personal injury matters.

Our data shows that we receive a significant number of complaints about problems which happened more than 3 years ago (597 complaints were accepted for investigation in 2014/15). In addition, during 2014-15, we received significantly more enquiries about older issues which we were unable to investigate at the time (for example: premature complaints).

While we do not currently record whether remedies were paid directly by the firm or via another mechanism, this does highlight that there are substantial numbers of consumers who could be affected by a reduction in the run-off cover.

This case example features a common complaint where a problem came to light four years after it happened and which would fall outside of the proposed time reduction.

Case Example: Mr P, Residential Conveyancing

Mr P instructed a firm of solicitors in 2011 to help him with the purchase of a property. The firm ceased trading in May 2013 and, in early 2015 when Mr P came to sell the property, it came to light that the firm had failed to register it at the Land Registry and failed to pay £2,100 Stamp Duty Land Tax to HM Revenue & Customs (HMRC).

Mr P incurred a fine from HMRC of £200 and had to instruct alternative solicitors to complete the work, incurring significant additional costs.

The ombudsman decided that Mr P should be refunded the additional costs that he incurred and that he should be paid £300 in compensation for the inconvenience that had been caused.

As the firm had closed we provided Mr P with the details of the firm's insurers, guidance and template letter for contacting them.

It also highlights a trend in complaints we reported in our October 2014 Complaints in Focus publication on lawyers failing to pay Stamp Duty Land Tax¹.

In 2013/14 a number of distressed people contacted our scheme after receiving demands from HMRC for thousands of pounds in unpaid fees plus interest because their lawyer hadn't made the necessary payments. In many of these cases, the problem took a number of years to come to light and, when a firm had closed, these consumers were reliant on the firm's insurance to cover the large sums that had to be repaid.

Are there any other arguments for or against the retention of cover for Ombudsman awards in the MTC?

The Legal Ombudsman would strongly oppose our removal from the MTC for insurers. As we have already indicated in this response, consumers' ability to access redress in certain circumstances can be difficult and complex, and removing the Legal Ombudsman from the MTC would increase uncertainty for them.

We also would encourage the Solicitors Regulation Authority to address insurance issues that affect consumer redress. For example, as covered in our June 2014 response, we believe that Ombudsman decisions concerning 'fee reductions' should be covered by the PII to ensure proper redress is available.

Finally, we understand from the complaints we handle that insurers can often take different approaches to complaints that are being dealt with by the Legal Ombudsman. We would like to explore any challenges and concerns in this area and to support the development of an approach which is consistent and efficient for all parties concerned.

We recognise that some firms deal with sophisticated clients (e.g. large corporate entities) who are not within our jurisdiction and therefore do not need cover in respect of Ombudsman awards.

We would be pleased to provide the SRA with data relating to the Legal Ombudsman to assist in identifying a proportionate system.

The CF, along with the PII, are vital elements of consumer protection. The two case studies below highlight situations where consumers would have been considerably disadvantaged financially if PII and the CF had not been available. They also show how sending consumers to the CF and PII for

¹ <http://www.legalombudsman.org.uk/downloads/documents/publications/stampduty-report-final-140429.pdf>

different elements of the same remedy can be confusing and time consuming for them.

Case Example: Ms Y, Wills and Probate

The firm was appointed to administer the estate of Ms Y's father, of which Ms Y was a beneficiary.

Ms Y complained that the firm did not carry out work efficiently, from the drafting of the will for her father to the administration, and failed to keep her sufficiently informed of costs to the estate. During this time, the firm went into administration and Ms Y was forced to seek alternative legal advice to finish off the probate – at a significant cost to the estate.

The ombudsman concluded that much of the work carried out by the firm had been required as a result of their initial failings when drafting the will and therefore the estate should not be charged for this. They advised that the firm should waive all of their fees for the work, pay Ms Y's new solicitor's costs and pay £500 compensation for the distress and inconvenience caused to Ms Y.

As the firm had closed, Ms Y was given instructions to contact the firm's insurers for the costs and compensation.

Case Example: Mrs E, Immigration

Mrs E instructed a solicitor in an immigration matter in May 2014. She was heavily pregnant and instructed them to lodge an urgent appeal on behalf of her husband. The firm agreed to act for Mrs E on a fixed fee of £2,000.

Between May and December 2014 Mrs E chased the firm numerous times for updates on progress, while little activity took place by them. In December 2014 they informed Mrs E that her appeal had not been lodged and, furthermore, ceased trading but failed to inform her of this.

The matter caused Mrs E a lot of additional stress during her pregnancy and the ombudsman awarded a refund of the £2,000 fees and £250 compensation.

As the firm had ceased trading the investigator tried to liaise with the former partner of the firm before signposting Mrs E to the firm's insurers for the £250 compensation, and the Compensation Fund for the £2,000 refund of fees.

Is there a case for a requirement to provide better information to clients about insurance cover and CF arrangements?

We believe the current information that firms provide about insurance cover and CF arrangements is adequate but emphasise the need for this information to be provided at the right time. From the complaints we investigate, we have found that often consumers do not refer back to their client care letter or have misplaced it by the time a problem occurs. If information is made available at the time it is needed this will reduce the risk of consumers feeling confused about where, and when, to access relevant redress.

Do you think there are areas where the Compensation Fund arrangements should be reformed in order to provide a better balance between the overall level of client financial protection for regulated legal services and the costs on firms and individuals?

One additional area you may wish to consider is third party complaints. As you know, the Legal Ombudsman cannot consider third party complaints but have a current strategic objective to explore whether we should consider doing this, and the circumstances in which it would be merited.

Thank you for the opportunity to contribute to your discussions. We look forward to contributing to your consultation in early 2016 and would be pleased to provide any supporting information we have that may assist you in developing your proposals.

If you have any queries about the points raised or would like any further information, please contact Katherine Wilson, Policy and Research Associate: katherine.wilson@legalombudsman.org.uk.