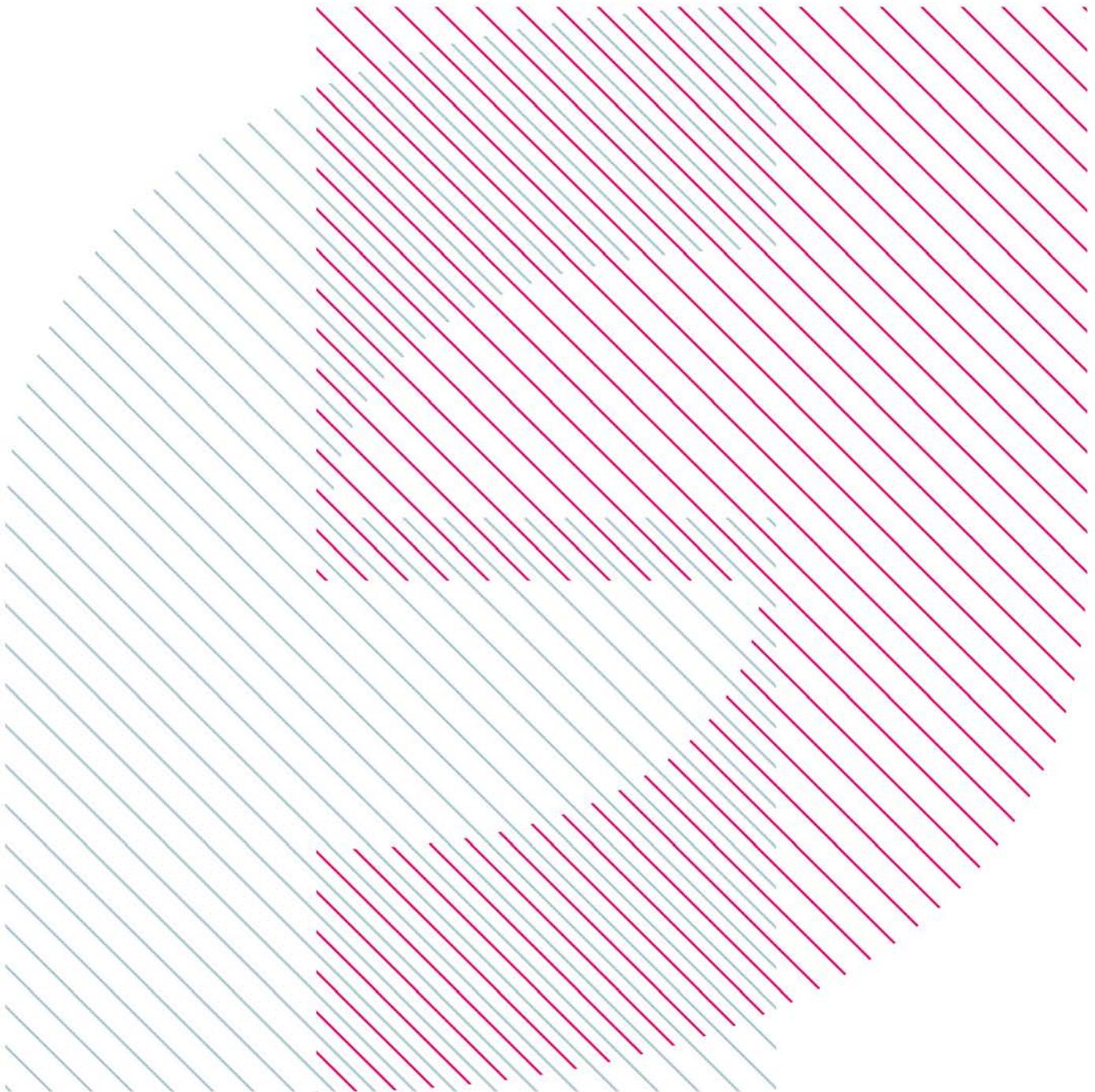




Consultation Response

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



Introduction

1. The Legal Ombudsman (LeO) was established by the Legal Services Act (2007). Our role is two-fold: to protect and promote the public interest by resolving complaints and providing redress when things go wrong in transactions within the legal services market, and also to feed the lessons we learn from complaints back to the profession, regulators and policy makers to allow the market to develop and improve.
2. We welcome the opportunity to respond to the Solicitors Regulation Authority (SRA) consultation on proposed changes to rules on Professional Indemnity Insurance (PII) and the Compensation Fund.
3. Our interest in this consultation is based on:
 - a) the use of PII and the Compensation Fund as alternative sources of redress. We provide redress for consumers of legal services and are supportive of other measures provided within the regulatory environment which offer alternative forms of redress in situations where we cannot help;
 - b) our commitment to consumer protection and professional standards in line with the regulatory objectives listed in the Legal Services Act;
 - c) the impact of our work on both PII and the Compensation Fund, and in turn the impact of any changes in the two on our operations; and
 - d) our desire to ensure that costs of legal services (a consistent area of complaint for consumers) are reasonable and clear.
4. At the Legal Ombudsman, we are not champions for the profession or consumers. We see our role as ensuring that there are reasonable options for redress open for consumers. While we very rarely see complaints which go over the proposed PII or Compensation Fund limits, we have looked at these proposals from the wider perspective of whether there is a reasonable path to redress when things go wrong.
5. We broadly support reducing regulatory burdens and allowing the legal profession to flourish with less onerous running costs. However we are concerned that this should not come at the price of consumer protection. We deal with a variety of complaints with a wide range of potential remedy levels; it is our view that minimum requirements should provide reassurance to a range of consumers in order to maintain confidence in the legal profession.
6. Our views are presented in greater detail below. These are based upon insight gained through our operational experience and standard feedback mechanisms. We look forward to discussing the proposals further with the SRA and considering how they might impact on the information we provide to those who contact us.

Balancing cost and access to legal services

Q.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?

Somewhat disagree

7. As noted above the types of complaints seen by the Legal Ombudsman rarely reach the financial levels being considered in this consultation, therefore we are commenting on this based on our experience of providing redress to consumers.
8. We agree that it is appropriate to tier the necessary level of cover based on the types of services provided by a firm rather than by its legal structure, as the evidence presented shows that this is largely where risks lie.
9. The consultation proposes to reduce the minimum cover because 98% of claims fall under the threshold of £500,000. We are concerned that this still excludes 2% of claims, and these are by their nature cases where the financial loss suffered is greatest. It would be useful to understand why the SRA is content to exclude these particular cases, and to clarify whether this 2% relate to investments in the dubious investment schemes referred to in the consultation.
10. The evidence presented in the proposal suggests that there were 442 claims which would not be covered under the new rules. It is not clear how far over the proposed new limit these claims might have been, and therefore the level of losses consumers would have to bear themselves.
11. Finally, it is not clear to us that there will be a significant enough reduction in premiums for firms to justify reducing the protections available to consumers. As the paper acknowledges, evidence shows that insurers already factor in the likelihood of receiving a high claim when they set their premiums. Therefore we are not clear that these changes would encourage insurers to introduce a further drop in premiums.

Q.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?

Somewhat agree

12. Having a separate component for conveyancing appears sensible given the figures reported in the consultation. However, it is not clear why there will not be a similar increase in the minimum level of PII cover for commercial claims, which are also noted as being high value. It would be useful to understand the SRA's position on this, given that not all commercial legal services will be excluded on the basis of the large business exclusion.

13. We are pleased to see that measures have already been proposed for monitoring which firms purchase the conveyancing top-up. This will be important to ensure that consumers are given the correct information about the minimum cover they can expect from firms offering conveyancing services.

Q.5: Do you think our proposed definition of conveyancing services is appropriate?

14. Yes, we agree that it should be wider than the definition used for the reserved legal activity to ensure that all major claim areas are covered.

Q.6: Do you think there are changes we should be making to our successor practice rules?

15. While we are not proposing formal changes to the SRA's successor practice rules, we believe this is an appropriate place to note some potential divergence between our approach to successor practices and the SRA's. We are aware of situations where the SRA has not recorded a firm as a successor practice, when it has acquired a closing firm. However under our scheme we would regard them as a successor practice. This can create confusion for the firm, and challenges if enforcement actions are needed on our part.
16. We have agreed with you that we will discuss our mutual approaches to successor firms, and understanding differences in our approach and challenges this may create. It is important to ensure that we minimise any possible gaps in consumer protection in this area.

Q.7: Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

Strongly agree

17. We agree and are supportive of any measures which simplify terms and definitions.

Q.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?

Somewhat disagree

18. As noted above, while the headline measure of reducing minimum levels of cover clearly provides more flexibility, it does not guarantee lower insurance costs.
19. On this point, the consultation document also appears to be missing some data. Paragraph 70 notes that the previous increase in the level of cover from £1m to

£2m/£3m resulted in an increase in premiums but does not give a percentage figure. We would also be interested to see what the increase was, in order to see more clearly the way the SRA has reached their estimation of 5-10% reduction in premiums from these reforms.

20. We note that on page 52, the SRA has recognised that in practice, not all firms would reduce their level of cover because they would buy additional cover to ensure greater protection. It would be useful to have an indication of the proportion of firms that might reduce their cover if the rules were to be changed.
21. This might create an environment in which legal services are offered more cheaply where there is a lower level of protection, and PII cover at current levels would be available only to those who are able and willing to pay more. We would want to be sure that consumers understand the different levels of protection so that they can make an informed choice about how much they wish to spend.
22. We are supportive of the SRA's proposal regarding flexible defence costs arrangements as a better way of reducing premiums than measures that come at the expense of consumer protection.

Q.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?

Somewhat disagree

23. We appreciate that the same rationale has been used here as with the limits on minimum PII cover, and so we have the same concerns in relation to claims which fall outside of the minimum limit. The SRA may wish to consider how the data in the consultation specifically supports this proposal and it is unclear from the documentation. It is not clear why run-off cover would be comparable to general PII cover, especially as there may be extra risks related to firms closing poorly.

We are concerned that the firms expected to be impacted by this (ie sole practitioners and small firms in high-volume claim areas) are those where consumer protection is most needed. We recognise the importance of allowing solicitors to retire and firms to close when they want. It is undesirable for them to be prevented from doing so by high run-off costs. However it would be helpful to ensure that there is a balance between this and consumer protections.

24. As identified on page 53 of the consultation, the challenge with this proposal is the potential for differential outcomes according to the timing of claims. The mitigation of phasing cover over six years does not address this fully as there is no way of knowing that claims will be staggered evenly across the years.

25. If indeed consumers are expected to rely on firms paying an additional top-up premium to provide additional cover then it follows that the proposal would not in itself help to reduce the cost burden on firms.

Q.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?

Neither disagree nor agree

26. Generally we think a competitive environment which could allow for this would be positive, but we have no evidence to say that these proposals will make a difference to the number of new firms emerging.

Q.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?

Neither disagree nor agree

27. These changes do clarify that it is a fund available to those in situations of hardship but it is unclear how we can decide who is most 'deserving' of their money. Regardless of the consumer's level of income, all of these claims arise from situations where a consumer has suffered a quantifiable loss.
28. We would also be keen to ensure that there is appropriate communication with consumers about how to apply to the Compensation Fund and who can help them with this. It is important to ensure that they have a good understanding of varying regulatory protections and how this relates to access to the Compensation Fund as well.

Q.15: To what extent do you agree that we should exclude applications from people living in wealthy households?

Somewhat agree

29. On the face of it, it seems appropriate that the Compensation Fund should be made available to those who are less able to sustain financial losses, especially as the SRA wishes to strengthen the Fund as a source for those in hardship. However it should still be acknowledged that if all of these proposals go forward, the high value claims which would be excluded from the minimum PII cover would potentially come from people who are then also excluded from the Compensation Fund.
30. We hope that the proposed measure for creating a threshold is robust enough to provide assurance that only those who have the capability of pursuing losses through the court system would be in this position. The central issues here should be access to redress and impact of a loss on any given consumer, rather than an objective measure of financial assets.

Q.18: Do you think we have set out the right approach for assessing when a maximum payment has been reached?

31. No, as in the scenarios provided, the beneficiaries are disadvantaged by being treated with a singular cap. They may have no connection with each other.
32. It is also unclear what the process might be if a beneficiary made a claim, was awarded a maximum payment of £500,000, and then another beneficiary attempts to make a claim at a later date. Would they be precluded from claiming because the full amount had already been paid out? If so, we would be keen to understand what initial steps the SRA might take to identify any other people affected by a particular solicitor's actions before making a payment.
33. If they would not be precluded from claiming, it would then seem that beneficiaries were disadvantaged by claiming together.
34. In general, we would provide the same comment on this proposal as on the suggestion to lower the minimum PII cover: it may be that historically the claims have not been this high, but this does not necessarily justify lowering the cap. There will be still be a number of consumers losing out, and these will be the people who have suffered the greatest financial loss. There is already a suggested measure to ensure that help is targeted at the most financially needy, so this could potentially affect those who have lost a lot of money all at once and do not have the financial cushion to sustain it.

Q.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?

35. The steps laid out in the consultation appear reasonable and we are supportive of the proposal to exclude these kinds of claims from the Compensation Fund.

Q.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?

36. Yes, on the whole these are clearly expressed and seem appropriate.
37. Our joint Better Information research indicates that there needs to be clearer explanations about which firms are regulated and what protections they offer – including access to the Compensation Fund. It is therefore vital that there is clear guidance available to show the criteria applied in determining eligibility and payments.

Conclusion

38. Thank you for the opportunity to comment on the Solicitors Regulation Authority's proposals for reforming PII requirements and access to the Compensation Fund.
39. Overall, we are supportive of policies that aim to reduce regulatory burdens on the profession and allow competition to flourish, but we are concerned that some proposals may create a gap in consumer protection in certain areas. We urge the SRA to ensure that there is a balance between consumer protection and benefits for the profession. In particular we are concerned about the lowering of minimum PII cover and the cap on claims from the Compensation Fund.
40. We look forward to working with the SRA on these matters to identify ways to overcome new challenges, in order to ensure that consumer protection is maintained and that the profession remains strong, diverse and effective.

For any questions about our response please contact our Parliamentary and Policy Officer at sarah.ritzenhaler@legalombudsman.org.uk.
