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EXPLORE SINGLE SCHEME FOR ALL FINANCIAL PROTECTION ARRANGEMENTS, SAYS PANEL

A single scheme joining up professional indemnity insurance and compensation funds across the whole legal services market should be actively explored. This is one of the main recommendations from the Legal Services Consumer Panel in a new report published today on whether the legal regulators' financial protection regimes are fit for purpose.

A single scheme would work by setting minimum terms and conditions for all lawyers' indemnity insurance and allowing premiums to be based on the type of legal work rather than professional title. Such a scheme would also deliver a single compensation fund.

The Panel has also encouraged the regulators to continue to explore options to slim down the need for lawyers to hold client money – such as escrow schemes – which could make things less risky for consumers. But it firmly rejected any suggestion that consumers should be invited to purchase insurance themselves, instead of requiring lawyers to source cover as now. The report concludes this would unfairly transfer risk to consumers and could prove counterproductive – clients would reject firms who didn't self-insure, while some consumers may risk not taking out insurance.

The report was published in response to a Legal Services Board request for advice on the system that compensates consumers as a result of fraud, negligent work and firms becoming insolvent. While these situations are relatively rare, the losses for individual consumers can be huge and so these schemes provide a vital safety net.

The Panel found that overall the existing financial protection regimes cover the key risks consumers face when buying legal services, but has highlighted a series of concerns and issues that the regulators need to address, including:

- Scenarios where consumers could lose out due to gaps in coverage, e.g. insurers aggregating claims which then exceed caps on maximum payouts;
- Compensation fund payouts are discretionary, but decision-making criteria are not published;
- Lack of information about the performance of compensation funds;
- A need for better information sharing between regulators and institutions such as insurers and banks, including resolving data protection issues;
- Little research with consumers about experience of accessing the schemes.

Today, the Panel also published a think-piece discussing the wider issue of how risk and responsibility should be divided between consumers and providers. The paper – the latest in the Panel’s consumer challenge series – looks at some fundamental and difficult questions that regulators must grapple with: how much freedom of choice consumers should have, what steps it is fair to ask consumers to take to protect themselves, what obligations providers should have towards consumers and what regulatory protections should overlay all this.

Elisabeth Davies, Chair of the Legal Services Consumer Panel, said:

“Consumers use financial protection regimes rarely, but the implications of not getting this right can be devastating. The current system covers most of the risks consumers face, but there’s still room for improvement – such as closing gaps in coverage, greater transparency and making the schemes easier for consumers to find and use.

“We think the same level of protection could be delivered at a lower cost if the different regimes were united under a single scheme covering all lawyers. The status quo is expensive for lawyers and consumers ultimately pay the price. The Government has signalled it wants to simplify the regulatory system – this is an obvious candidate and could be a win-win for consumers and lawyers.”

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Notes to editors

1. The Legal Services Consumer Panel was established under the Legal Services Act 2007 to provide independent advice to the Legal Services Board about the interests of consumers of legal services in England and Wales. We investigate issues that affect consumers and use this information to influence decisions about the regulation of legal services.
The Panel’s report can be accessed here:
<http://www.legalservicesconsumerpanel.org.uk/ourwork/Financial%20Protection/FPAs%202013%2006%2010%20final.pdf>
2. The Legal Services Board requested advice from the Consumer Panel on the adequacy of regulators’ financial protection arrangements.
<http://www.legalservicesconsumerpanel.org.uk/ourwork/Financial%20Protection/Advice%20Request%20Chris%20Kenny%20to%20ED.pdf>
3. Today the Panel also published a separate think-piece on the wider issue of risk and responsibility. It can be found here:
<http://www.legalservicesconsumerpanel.org.uk/ourwork/Financial%20Protection/2013%2006%2010%20riskandresponsibility.pdf>
4. In addition, Vanilla Research was commissioned to conduct research to explore consumers’ views on the division of risk and responsibility between consumers and businesses in the legal services market. Vanilla’s report can be found here:
http://www.legalservicesconsumerpanel.org.uk/publications/research_and_report/s/documents/Vanilla%20Research%20Risk%20and%20Regulation%20final.pdf