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LEGAL
SERVICES
CONSUMER
PANEL

Assigned Risk Pool Consultation

Dear Ms Sheffield

I am writing in response to your consultation on the Assigned Risk Pool review. The Assigned Risk Pool (the ARP) is a part of the solicitor's professional indemnity insurance scheme. In particular, if a firm cannot obtain insurance on the open market, they can then apply to get insurance from the ARP, which is underwritten jointly by all 'qualifying insurance firms'. The SRA's preferred approach is to cease operation of the ARP from 1 October 2010.

Based on the Consultation Paper, the Panel recognises that the operation of the ARP faces a number of challenges. These include qualifying insurers being unhappy about the increasing costs and risk exposure, firms which have applied to the ARP failing to pay premiums, and concern as to whether the ARP is allowing failing firms to continue. However, the ARP was established as an integral part of the professional indemnity scheme and provides a number of important consumer protection functions. In particular, the ARP:

- provides insurance cover at times when claims are disputed by insurers; and
- ensures protection for consumers who have previously obtained, or are obtaining, legal services from firms which are unable to obtain insurance on the open market.

It is unclear from the Paper how such protection would be provided should the ARP be discontinued. The paper fails to say whether any alternative processes would be put in place, nor does it discuss the likely consumer impact of such a change. In the absence of such information, it is difficult to support the closure of the ARP. Whilst we recognise that the ARP is not the only way to protect consumers, it is essential that alternative mechanisms are in place in advance of removing existing protection.

The Panel notes that protection for customers of ‘non-applied firms’ (that is, those operating without insurance) is provided by ‘side arrangements’ which work essentially in the same way as the ARP. Should the ARP cease to exist, and these ‘side-arrangements’ also be discontinued, we assume such ‘non-applied’ firms will be covered by their most recent qualifying insurer. We would be grateful if you could confirm that this understanding is correct, and also indicate whether you anticipate the number of firms in this situation increasing with the removal of the ARP, when there could be significantly more firms facing the option of either closing or operating without insurance.

Another key issue for the Panel is whether the ARP helps ‘good’ firms to get through temporary problems or supports ‘bad’ firms that should otherwise close. The Consultation Paper does not explain the reasons why ‘applied’ firms cannot access PII on the open market and it appears that applicants to the ARP are not vetted by the ARP manager. The paper does not explore why so few applied firms are able to leave the ARP and get cover on the open market at a later stage. It would be helpful to know whether this is due to financial pressures caused by the high ARP premiums, subsequent decisions by insurers, or other reasons. Such information would assist in ascertaining whether the ARP was of benefit to consumers and, if so, whether it could be reformed to meet the current problems.

The Consultation Paper raises a broader question of whether it should be the regulator or the insurer which determines whether a firm should continue in practice. Without the ARP, this role would fall to the insurer, given that if a firm cannot find an insurer, it would automatically have to close. This would appear to be in conflict with one of the primary features identified in the Consultation Paper for an insurance scheme - namely that *‘the decision whether a firm should continue in practice should be that of the regulator, not the insurance market’* (Paragraph 1.12 (ii)). It is not clear whether there are circumstances where a firm is unable to obtain insurance, yet the regulator would support its continued operation. Should this be the case, an additional mechanism will be needed, such as a limited entry ARP, to address this occurrence.

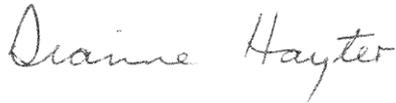
There is, furthermore, scope for the SRA to intervene at an earlier stage. If the SRA could be made aware of firms which were ‘at risk’ of not getting insurance, it could take a proactive role in working with these firms to ensure client protection and to limit the risk of firms having to enter the ARP. The Panel notes that the SRA’s own proposals on outcome-based regulation include a requirement for firms to provide more information on their financial status. This may help facilitate early engagement and allow the SRA to see ‘early warning signs’ of those in need of regulatory attention.

Finally, the Panel notes that the Legal Services Board’s recent Consultation Paper on Alternative Business Structures (ABS) indicates that a Taskforce will be established to look at professional indemnity arrangements across the legal sector in the context of ABS. It will be

important to ensure joined up regulation and reform to deliver coherent consumer protection.

Thank you for the opportunity to comment on this consultation. Should you have any questions about our comments, please contact Alanna Linn, Consumer Panel Associate, on 020 7271 0076.

Yours sincerely

A handwritten signature in cursive script that reads "Dianne Hayter". The signature is written in black ink and is positioned above the printed name.

Dr. Dianne Hayter
Chair