

Andrew Darby  
Solicitors Regulation Authority  
Ipsley Court  
Berrington Close  
Redditch B98 0TD



23 July 2010

Dear Mr Darby,

**Professional indemnity insurance: Application to LSB**

The Panel wishes to comment on one particular issue of the application, relating to awards made by the Legal Ombudsman.

It was concerning to learn that two-thirds of insurers do not pay awards made by the Legal Complaints Service to return fees, apparently due to a lack of clarity over the wording of the Minimum Terms and Conditions of cover (MTC). However, the Panel is greatly disturbed that the SRA is proposing to resolve this uncertainty by choosing not to require insurers to return fees from 1 October 2010. This decision runs contrary to the advice provided by the Legal Ombudsman and contrary to current practice in the more progressive part of the insurance industry, putting some consumers in a worse position than they are now.

This can remain an issue between solicitors and their insurer in cases where the solicitor has returned fees to the consumer following an ombudsman award and seeks to recover this money through their policy. However, the issue becomes of direct interest to consumers should the solicitor fail to honour the ombudsman award or has ceased trading. In these circumstances, consumers may pursue the insurance route.

The SRA's justification for this stance is that requiring insurers to return fees would put clients with such an award in a better position than those with a court judgment (as there is no certainty that insurers will pay this element of any judgment). The Panel does not agree with this reasoning on the simple grounds that there is little point in giving consumers rights they cannot enforce. Consumers have a reasonable expectation that all remedies awarded by the Legal Ombudsman will be honoured, including through the solicitor's insurance policy as a last resort. Not only is the SRA's policy unfair to consumers who have been let down by their solicitor, it also undermines the authority of the Legal Ombudsman,

potentially sowing a seed of doubt in the minds of all consumers about the prospects of securing redress.

The Panel briefly discussed this issue with representatives of the Association of British Insurers earlier this week. Interestingly, this issue was not one they were aware of as being particularly important for their members. Indeed, in the overall scheme of things payouts for return of fees are likely to be a tiny fraction of insurers' liabilities.

The Panel appreciates that the October renewal date is fast approaching, putting the onus on all stakeholders to reach agreement on the next MTC. We also understand that insurers make a commercial decision to offer insurance, so the SRA must ensure terms that are sufficiently attractive. Nevertheless, we hope there is still time for the SRA to reopen discussion with insurers on this single point. The ABI undertook to consider the issue following our meeting, so we are hopeful that they will be receptive to our views once having had the opportunity to reflect further.

More broadly, the Panel welcomes the SRA's decision to conduct a root and branch review of client financial protection by October 2011. Events have shown that the professional indemnity insurance arrangements for solicitors are dysfunctional in many respects and would benefit from a rethink, alongside reviewing other elements of financial protection such as the compensation fund. The Panel looks forward to participating fully in this review and stands ready to assist the SRA.

Finally, we note that the SRA consulted on the MTC with a limited range of stakeholders before opening this short two-week public consultation. The Panel appreciates that the SRA carried out a full consultation on the Assigned Risks Pool and that the impending renewal deadline has not allowed for the normal period of public consultation. However, it is disappointing that the Panel was not part of these preliminary discussions given our statutory responsibility to represent the interests of the many millions of consumers who use solicitors each year.

Yours sincerely,



Dr Dianne Hayter  
Chair

cc Chris Kenny, Legal Services Board  
Adam Sampson and Elizabeth France, Legal Ombudsman  
Nick Starling and Matthew Young, ABI