

# Consultation response

## SRA: Future client financial protection arrangements

### Overview

1. **The Panel welcomes a number of the proposed changes, including the removal of a single insurance renewal date and clarifying the need for insurers to provide information to the Solicitors Regulation Authority (SRA).**
2. **However, it is disappointing that the focus is primarily on adjusting existing arrangements, rather than exploring more radical reform options such as insurance by activity.**
3. **The indirect consumer impacts of excluding financial institutions from compulsory Professional Indemnity Insurance (PII) need to be addressed. Although banks as consumers may not need this protection, their exclusion could restrict individual choice and drive up prices; both possibilities concern the Panel.**
4. **Further reforms of the Assigned Risk Pool (ARP) need to ensure that the consumer protections provided by the ARP are maintained.**

### The proposals

5. The SRA commissioned Charles River Associates (CRA) to undertake a 'root and

branch' review of its client financial protection arrangements. The review examined PII arrangements and the Compensation Fund. CRA's report was released in late 2010 and the SRA has now proposed a series of changes.

6. The Consultation Paper seeks comments on immediate and longer-term proposals, including:
  - New objectives and principles against which to assess client financial protection arrangements.
  - Changes for implementation from October 2011:
    - Removal of single renewal date for PII cover.
    - Removal of financial institutions from compulsory PII coverage. This means minimum PII will not need to cover claims from financial institutions.
    - Further tightening of access to the ARP. This will reduce the time a firm is eligible to be in the ARP from 12 months to 6 months and require ARP firms to develop plans for either exiting the Pool or orderly closure.
    - Clarifying obligations on insurers to provide information to the SRA. This will mean insurers must tell the SRA

of firms which fail to pay premiums or may have misrepresented information.

- Possible further changes which may be implemented from October 2012 onwards:
  - Widening PII coverage exclusions to all non-individual clients. This would mean that compulsory PII would only cover claims from individuals and small businesses, with larger firms having the option of purchasing a policy which covers claims from others.
  - Further changing the role of the ARP, including ending the provision of qualifying insurance, restricting the work that firms can undertake whilst firms in the ARP or shifting some ARP functions to the Compensation Fund.
  - Changing the funding mechanism for ARP. Possible options include a direct levy on the profession or a levy as a percentage of insurance premiums.
  - Considering whether insurers should be able to cancel policies for non-payment of premiums, for fraud or misrepresentation.
  - Possible changes to the funding mechanism for the Compensation Fund.

### Panel's response

7. Overall, the Panel has focused its comments on the changes which will have the greatest impact on consumers. We have also provided input via membership of

the SRA's Financial Protection Arrangements Reference Group.

8. We welcome a number of the proposed immediate changes, including:
  - Removal of the single insurance renewal date.
  - Making it a requirement that insurers inform the SRA of firms not paying their premiums or misrepresenting information. Such firms seem likely to be a greater risk to consumers, and need to be brought to the attention of the SRA. For this approach to be successful, the SRA needs to respond quickly and effectively to intelligence from insurance providers.
  - Further tightening the time limits for ARP coverage and the requirements placed on ARP-covered firms.
9. However, the SRA's overhaul of its regulatory arrangements provided a unique opportunity to rethink client protection. It is disappointing that the proposals seem more like a 'tinkering around the edges' rather than a comprehensive 'root and branch' review. This was a missed opportunity to consider more radical options, such as insurance by activity.

### The exclusion of financial institutions from minimum PII cover

10. PII is an important protection for consumers. In principle, the exclusion of financial institutions from the minimum PII cover makes sense; banks are sophisticated purchasers of legal services and can assess the risks of obtaining legal advice. However, the Panel is concerned about the indirect impacts of their exclusion

on other consumers, such as individuals and small businesses.

11. By excluding banks from minimum cover, any solicitor offering conveyancing will need an additional policy for financial institutions. Whilst such cover should be available from the open market, banks will need to verify that it is in place and is appropriate.
12. Many financial institutions already appoint their own solicitors for transactions where consumers want to use a sole-practitioner for conveyancing services, forcing consumers either to pay for both lawyers or to use only the lender-approved firm. The proposed change could exacerbate this issue, as banks may decide to use this approach for a wider range of law firms.
13. Financial institutions have indicated that it is likely to be expensive to verify whether firms have additional insurance. There is a real risk that this will lead to a reduction in the number of firms on their conveyancing panels, which would result in two negative impacts for consumers:
  - It will limit consumer choice by decreasing the range of firms banks allow clients to use.
  - It may increase the cost of conveyancing, due to the reduced levels of competition on panels, the reduced ability of consumers to shop around for better prices, and consumers having to pay twice if they choose to use a non-panel firm.
14. The SRA has not acknowledged these risks. Although the paper notes the possible development of a database for verifying solicitor insurance status (albeit not run by

the SRA), this initiative seems to be more focused on helping firms stay in the conveyancing market rather than ensuring consumers continue to have the right to choose their lawyer from a competitive market. In any event, it seems unlikely that a database will be ready by October 2011. There is therefore the risk that the damage would have already been done by the time a database is introduced.

15. The Panel strongly encourages the SRA to reconsider its proposal in light of the impacts on consumers rather than solely solicitor firms and financial institutions. At the very least, there needs to be sufficient time for financial institutions to make proper arrangements to verify top up insurance, either by use of a central database or other means.

#### Possible additional changes after October 2012

16. The Paper indicates that claims under compulsory PII may eventually be restricted to individual consumers only. Without further detail, it is difficult to comment on this proposal, other than noting the proposed definition of an individual needs further consideration.
17. The proposed definition could be open to misinterpretation, especially at the boundary. Coverage confusion could be risky for consumers, especially if it results in clients finding that firms are not covered for their claims after the event. In particular, the extent of coverage of claims from small businesses and small charities, which can face similar issues to individual persons, needs to be examined. The Panel encourages the SRA to undertake its

proposed research and consult further once results are known.

18. The future changes to the ARP need to be centred on consumer protection concerns. In particular, an important function of the ARP for consumers is providing immediate redress for consumers when there are disputes between insurers over responsibility. The future of this ARP function is not discussed but needs to be considered as part of ARP reform.
19. Finally, the desire of insurers to have the right to cancel policies is understandable. The Panel's interest is that consumers are not adversely affected. Whether it is the ARP, the compensation fund or otherwise, there needs to be a clear protection mechanism for the clients of a firm whose policy is cancelled.

**February 2011**