



Legal Services Act: New forms of practice and regulation. Consultation Paper 6: Client Financial Protection

The Institute of Legal Executives (ILEX) is the professional and regulatory body for Legal Executives and currently has a membership of 24,000 students and practitioners.

Legal Executive practitioners are employed within solicitors' firms to conduct specialist legal work. Amongst other things, legal executives undertake the following work:

- Advice and representation to clients accused of serious or petty crime;
- Advice and representation to families with matrimonial problems;
- Handling various legal aspects of a property transfer;
- Assist in the formation of a company;
- Be involved in actions in the High Court and county courts;
- Draft wills;
- Undertake the administration of oaths.

Terms of Reference of Consultation Paper

This consultation paper is by the Solicitors Regulation Authority (SRA), which is developing its regulatory framework to facilitate firm, based regulation in light of the provisions of the Legal Services Act. The response is submitted following consultation from ILEX members.

Questions

1. Do you agree that individual solicitors (Category A above), and individual RELs and RFLs (Category B above) who are engaged in private practice, should continue to be covered by compulsory professional indemnity insurance through their firms?

Yes – This approach is consistent with firm based regulation

2. Do you agree that the compulsory professional indemnity insurance requirement should apply to all firms that we authorise?

Yes - Again, this approach supports firm based regulation.

3. Regarding unauthorised firms that only we can authorise, (Category D above), do you think:

(a) we should reject the role of default regulator so that the compulsory professional indemnity scheme does not cover unrecognised partnerships/sole practitioners (paragraph 19, D1); or

(b) we should adopt the role of default regulator in that the protection afforded by the compulsory professional indemnity scheme applies to partnerships and sole practitioners whether recognised or not (paragraph 19, D2)?

ILEX supports the adoption of the role of default regulator for the protection of the public. This approach affords protection to the consumer in circumstances where a firm have inadvertently omitted to gain recognition.

4. Regarding unauthorised partnerships/sole practices that can be authorised by us or another regulator:

(a) do you think that we should reject the role of default regulator so that the protection afforded by the compulsory professional indemnity scheme applies to recognised bodies and recognised sole practitioners only?

(b) If you believe that we should adopt the role of default regulator, should that be on the basis of: accepting it in all Category E cases ; confining cover to the personal liabilities of those individuals we authorise (paragraph 20, E3) or accepting it only in those cases where the partnership is dominated by individuals we authorise?

ILEX recognises the advantages of confining coverage of the compulsory insurance scheme to partnerships dominated by individual authorised by the SRA. This is consistent with firm based regulation and provides a simple, clear and unambiguous set of rules applying to these partnerships dominated by SRA authorised individuals.

However, confining it to cover personal liabilities would be inconsistent with firm based regulation. On balance, however, E4 (where a partnership is dominated by individuals authorised by the SRA) appears to be the most proportionate approach and one that is likely to be acceptable to the Legal Services Board, once it is up and running.

5. Do you agree that firms that are authorised by another regulator should be excluded from our compulsory professional indemnity scheme?

Yes – There would be clarity client, clarity for firms and clarity for the regulators. ILEX agrees that this would meet the reasonable expectations of clients, other parties and with the objectives of the Legal Services Act.

6. Do you agree that unauthorised firms that cannot be authorised by any regulator should be excluded from our compulsory professional indemnity scheme?

Yes for the reasons given in the consultation paper. ILEX, however adds the following further comments:

ILEX is mindful of the situation where an individual solicitor may have been involved in some sort of impropriety and the client will reasonably assume that the solicitor is being regulated by the SRA. As such, the client may reasonably, but erroneously, approach the SRA for financial redress.

Notwithstanding the above, ILEX is of the view that a line needs to be drawn somewhere in the interest of clarity. Eventually, this may well be a matter for the Legal Services Board, once it is up and running.

7. Do you believe that the Compensation Fund should continue to be available in the last resort for claims in respect of a solicitor's dishonesty, even if the solicitor is practising in a firm authorised by another regulator?

Yes – This approach would be consistent with the public interest. However, it should only be invoked in claims of dishonesty and in the last resort. For example, if the other regulator's insurance and compensation scheme, for whatever reason, fails to cover the claim.

We understand, however, the Compensation Fund will be subject of a separate consultation in the near future.

ILE/GG

23/4/08