

Response to the SRA Consultation - Protecting the users of legal services: balancing cost and access to legal services

**A submission by
The Chartered Institute of Legal Executives (CILEx)**

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
- 1.2. The majority of our members are employed with SRA-regulated firms. The focus of our main points below is driven from that perspective. They cover:
 - Evidence and data and, related to that;
 - Suggested outcomes from the reforms;
 - Unforeseen consequences.

2. Main points

2.1. Evidence and Data

As an evidence-based regulator, the SRA has rightly based many of its proposals on the analysis of 10 years' worth of PII claims data. From that data, a number of key conclusions have been drawn, including that the majority of claims are under £580,000 in value. This informs proposals to reduce the minimum level of compulsory cover to £500,000 (and to £1m for firms offering 'conveyancing services').

- 2.2. CILEx's concern is that the data on which this rationale is based may be flawed. Firstly, it is historic data: the value of PII claims develops over time based on evolving claims history; the dataset used by the SRA it does not take into account developments in the market since 2014 which has seen, for example, an increasing incidence of cybercrime and online frauds on the one hand and, on the other, significant increases in average house prices particularly in London and the south-east of England.
- 2.3. Secondly, the data does not take into account the claims collected by insurers who have since left the market, notably Quinn, Balva and Enterprise whose claims experience in large part contributed to their exits. If the data evidence creates a shaky foundation, this begins to undermine the rationale that the reforms will lead to the outcomes suggested.

2.4. Suggested outcomes from the reforms

CILEx believes that it is by no means certain that firms will make savings through falling insurance premium costs as a consequence of these reforms, nor therefore, that those savings will be passed on to consumers.

- 2.5. Firstly, it remains a regulatory obligation for firms to have an 'appropriate' level of PII in place. Some may take the view that they wish to maintain their current level of cover by purchasing top-up cover. The Minimum Terms and Conditions (MTCs) will not apply to that cover so firms may either have to pay more for it, eating into any saving they may have made on the level of minimum cover, or may not be able to afford to buy quite the same level of cover. This may disadvantage small firms in particular or, at worst, price them out of the market, with adverse consequences for consumer choice.
- 2.6. Secondly, even if there are firms who do see a saving through reduced premiums after the reforms, data suggests that some firms might only achieve a 10% saving but receive 25% less cover than they had before; this outcome starts to look of questionable value. It is important for the SRA to listen to what insurers say about the PII market here too: many say they already take a 'whole market' view and already reduce premiums; others say that their ability to make a profit from the market is tight or non-existent already. Their ability to reduce premiums following these reforms also therefore appears questionable.
- 2.7. Thirdly, CILEx is concerned for the effect on consumer protection and awareness: given the above, it does not seem certain that any savings will be passed on to the consumer. There is research to indicate that general consumer purchasing decisions remain motivated by 'recommendations/ word of mouth'. In other words, level of PII cover from a firm is not a factor in their buying decision. That firms have PII cover is assumed, the level of that cover not known nor influenced by them. Clients could be exposed if it is found retrospectively that firms did not have the right level of cover in place. Again, if some of the rationale for the proposals is flawed, the potential for unforeseen consequences appears heightened.

2.8. Unforeseen consequences

CILEx is concerned that the SRA proposals to lower the minimum indemnity limits could increase the likelihood that solicitors and their employees will be sued in a personal capacity to make good losses that are no longer covered by the current comprehensive levels PII cover.

- 2.9. Currently, the level of cover through the present MTCs seems high enough to cover most firms in most circumstances. If that is no longer the case with the lowering of indemnity limits, the regulatory requirement for firms to purchase an appropriate level of cover may create an additional responsibility for senior staff within law firms to purchase a level of top-up cover that meets the particular requirements of their firm.
- 2.10. There are those within the PII insurers market who also believe that this could create an additional obligation for principals to take out Directors & Officers insurance as a protection against underestimating their liabilities. Even that is unlikely to protect employees given, for example the Court of Appeal in *Merrett v Babb* in which the Court held that, in a situation in which the firm in question had gone bankrupt and its PII cancelled, a house purchaser could pursue the defendant chartered surveyor valuer for damages in a personal capacity (even though the purchaser had not actually seen the valuer's report and was unaware, at the time of purchase, of his identity).

3. Conclusions

- 3.1. Many of the SRA's present proposals are revisiting those that it first consulted on in 2014 but which did not get LSB approval mainly because of a lack of evidence.
- 3.2. The SRA has sought to provide a greater volume of evidence this time but CILEx remains concerned that:
- The data and evidence used is flawed and out of date;
 - The outcomes expected by the SRA will not therefore result;
 - There will be adverse effects and/or few benefits for both consumers and for solicitors and their employees.

For further details

Should you
require any
further
information,
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