

Solicitors Regulation Authority
Policy and Strategy Unit – Professional
Indemnity Insurance
The Cube
199 Wharfside Street,
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(By post and email: consultation@sra.org.uk)

18 June 2014

Dear Sirs

Response of the CLLS Professional Rules and Regulation Committee to the SRA's consultation "Proportionate Regulation: changes to minimum compulsory professional indemnity cover" (the "Consultation")

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its specialist committees. This response to the Consultation has been prepared by the CLLS Professional Rules and Regulation Committee.¹

Observations on the consultation

1. In principle we support the idea of reducing the insurance costs burden in a manner which allows firms to consider the appropriate level of cover they need (subject to a mandatory minimum). However, it is our view that the SRA needs to have consulted with the insurers before making specific proposals. The consultation adduces no evidence that the proposals would in fact attract the costs reductions they are aiming for and the research into average claims values is out-of-date.
2. It's our sense that a reduction in the minimum insurance requirement may have no effect on premiums charged by insurance companies. If that is true, then the proposal to reduce the compulsory cover to £500,000 could have only downside without any upside.

¹ A list of the members of the CLLS Professional Rules and Regulation Committee can be found here: http://www.citysolicitors.org.uk/index.php?option=com_content&view=category&id=151&Itemid=469

3. The CLLS would welcome evidence-based proposals, but point out that we believe a detailed factual record ought to be created to ensure that the solicitor brand is not placed at risk of harm without well grounded assurance that the proposal will lead to the desired result. We have a strong concern that these changes may increase significantly the incidence of uninsured claims and undermine confidence in the profession.
4. Our responses to the consultation questions below must be read in light of the above reservations. Our member firms, while purchasers of the subject insurances, do not have the industry knowledge to respond other than anecdotally or on the basis of certain inferences as to the behaviour of the market in response to the proposed changes.
5. Finally under this head, we have an overall concern around the timing of the proposed changes. We very much doubt that the market will be in a position to respond by October and would strongly recommend that any reform is delayed until the 2015 renewal.

The Consultation Questions

6. Do you agree with reducing the compulsory cover to £500,000?

- 6.1 We support the objective of reducing costs and encouraging new entrants to the market. Indeed, this proposal and the reduction of risk envisaged below with the cap on insurers' liability may tempt some of the insurers who have left the legal market back in and, if it does, the increased competition in the market might exert some downward pressure on premiums. More competition would certainly help those firms who have in the last year or two struggled to obtain insurance under the current minimum terms.
- 6.2 However, these are unknowns and we have no evidence to say whether or not such a reduction will achieve that objective. In our members' experience, it is the primary layer of insurance which is the most expensive and we understand that the vast majority of claims fall within the first £500k of the primary layer. On that basis, the reduction may have no impact on premiums.
- 6.3 In this context, we take it that the effect of this reform would be to enable firms to exclude liability to their clients above this figure of £500,000 as contemplated by Outcome 1.8 of the Code of Conduct. If so, given property prices in London, it may well be that there will be a category of unsophisticated purchasers of legal services who will be left to pursue uninsured claims against solicitors.

7. Do you agree with introducing a cap on insurers' liability?

- 7.1 Yes. It's our perception that the fear of unlimited sideways extensions impacts adversely on premiums because the uncertainty makes it difficult to price the risk. Introducing a cap gives certainty which should improve the ability of insurers to price competitively, against that certainty.
- 7.2 It should remain open to firms, however, to purchase cover with a larger cap should they wish to do so.

8. **Do you think any such cap should be £1,500,000, £5,000,000 or another figure?**
- 8.1 In the absence of accurate claims data and evidence of costs savings, it is difficult to respond meaningfully to this question. That said, we think that £5,000,000 (which effectively permits ten reinstatements assuming the £500,000 figure were to be adopted as the compulsory cover figure) would be an appropriate amount (subject to the point made in paragraph 7.2 above, namely that firms should be able to buy "better" cover if they wish to do so).
9. **Do you agree that the introduction of a cap should be balanced by reducing the opportunity for claims to be added together to treat them as "one claim".**
- 9.1 The question of aggregation of claims is a vexed one, given that insurers may swing between seeking to aggregate claims in one set of circumstances and to disaggregate them in another. The SRA will of course, because of its involvement, be aware of the case currently before the courts, *Godiva Mortgages vs Travelers Insurance*, on aggregation. We understand that the outcome of the case could have an industry-wide effect, in any event.
- 9.2 We think legal certainty in this arena is highly desirable - whether by the courts or by agreement between the SRA and the insurers.
10. **Do you agree with limiting the compulsory cover requirements to individuals, small enterprises, charities and trusts?**
- 10.1 For the firms that we represent this would have no impact, as their insurance arrangements (typically) far exceed any regulatory requirements. Further, they would not, we anticipate, discriminate among their clients as to who was entitled to the cover. We can, however, envisage difficulties in how this information is presented to clients. Those outside this particular category (who, by definition, would be more sophisticated clients) are unlikely to be comfortable with their law firm having no PII insurance at all. In which case, we can see no merit in making the distinction.
- 10.2 Further, a consequence could be, however, an increase in uninsured claims.
- 10.3 Would the Code be modified to permit firms acting for clients outside these categories to cap their liability without reference to such compulsory insurance? If so, the question then arises of the impact of the Unfair Contract Terms Act 1977 as to the reasonableness of any such limitation.
11. **Do you agree with reducing the run-off cover to 3 years?**
- 11.1 By virtue of the Successor Practice rules, we doubt that this would have any impact on our members. As above, we would anticipate that this would give rise to an increase in uninsured claims.
12. **Do you agree with the proposed changes to Code of Conduct Outcome?**
- 12.1 We do not think that the proposed additional Outcome is necessary because the point is already covered by SRA Principle 8. That Principle requires firms to carry on their business in accordance with sound financial and risk management principles. Well-run firms will therefore identify the risks they face and purchase cover beyond the regulatory minimum if appropriate.
- 12.2 If, however, the SRA does decide to include a new Outcome, we think that the following changes should be made to the draft language. First, the words "you consider" should be added before the word "appropriate" and, secondly, the words "factors such as" should be added before the word "potential". No firm can be fully insured so the SRA should avoid referring to assessing the "need" for additional insurance followed by an absolute obligation to purchase it.

13. **Do you have any views about our assessment of the impact of these charges?**
- 13.1 Overall, the concern would be that they would give rise to a number of uninsured claims, exposing clients to a greater insolvency risk than before, quite aside from reputation damage to the profession as a whole.
14. **Are there any impacts, available data or evidence that we should consider in finalising our impact assessment?**
- 14.1 We anticipate that such data would be available from the insurance industry itself, to the extent that it does not lie with the SRA or other legal regulators.
15. **Are there any other aspects of the minimum terms and conditions for PII that you think we should review?**
- 15.1 The minimum terms and conditions currently provide an excellent basis of cover that, in practice, can be extended to excess layers of insurance. This means cover disputes with insurers about properly notified claims are rare. We understand that this is not necessarily the case in other legal markets (e.g. the US). For this reason, we think the SRA should be cautious about making changes to the minimum terms and conditions - and only recommend change when there is good evidence it will bring other regulatory benefits.

Finally, we should mention here that the time given to respond to this consultation was short (just six weeks) and this was exacerbated by the fact that the SRA published four separate consultations on 7 May all with an 18 June deadline. Given our large membership, it has been a challenge to respond by the deadline. For future consultations, we would prefer to have a 12 week period in which to respond – recommended as the norm in the Cabinet Office's Consultation Principles Guidance.

Yours faithfully



Sarah de Gay
Chair, Professional Rules and Regulation Committee

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