

Solicitors Regulation Authority

Protecting the users of legal services: balancing cost and
access to legal services

A response by
CILEx Regulation

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Introduction

1. This response represents the views of CILEx Regulation, the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx Practitioners are authorised by CILEx Regulation to provide reserved legal activities. CILEx is the professional body representing 20,000 qualified and trainee Fellows and is an Approved Regulator under the Legal Services Act 2007 (LSA). Fellows and CILEx Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEx members.
2. As an Approved Regulator CILEx can award practice rights in litigation and advocacy, conveyancing and probate. It regulates immigration services. CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities.
3. CILEx Regulation and CILEx provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice. With the implementation of the practice and entity rights, CILEx Regulation has opened up opportunities to CILEx's diverse membership, and more importantly for regulatory purposes, it has expanded the diversity of service providers available to consumers.

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4. We welcome the opportunity to contribute to the discussion around how the user of legal services is protected in the future.
5. We believe that this current debate is very timely given that innovation is now starting to impact on the way that legal services are delivered by firms and the models under which they operate will be changing. Clearly regulators need to respond to these changes in both facilitating innovation to enable the delivery of benefits to the consumer, but also in ensuring that appropriate protections remain in place to those consumers using regulated firms.
6. In addition, all regulators are seeking to respond to the needs of users of legal services in providing transparency information about redress as part of the implementation requirements following the Competition and Markets Authority report. If the market starts to see greater variation in the minimum levels of coverage on offer to the consumer, then this clarity on exactly what services are covered and in what way becomes even more important to the consumer.
7. We believe that this will be particularly relevant at a time when the market is starting to allow firms to move between regulators and we believe that it is important that whilst a change of regulator may benefit a law firm, it should also not be to the detriment of their clients and consumers.
8. This consultation seeks to focus on balancing public protection when things go wrong with the need to have proportionate costs for firms delivering legal services to the public on the basis that reducing costs to the firm may provide cheaper and therefore more accessible legal services to the consumer.
9. In relation to Professional Indemnity Insurance (PII), the SRA considers that its one size fits all approach is too rigid in that some firms will have PII cover in excess of the minimum needed to meet their needs, particularly small firms working in low risk areas. The one size fits all approach may also be preventing new entrants to the market. The rationale in relation to access to

legal services is that lower PII cover should lead to lower premiums and therefore lower fees for legal services.

10. In relation to the Compensation Fund, the SRA considers that the availability of the fund is currently too wide and that in future access to the fund should be limited to claims based on hardship, thereby protecting the most vulnerable from exhaustion of the fund from claims made by wealthy people and organisations.
11. We support the position that there is a need to be able to set different levels of consumer protection, as appropriate, for each regulator.

Our response to the consultation questions

12. We have not responded to the individual questions as laid out in the consultation but have made some general observations on the rationale for and potential outcomes of the proposed changes to the PII requirements.
13. We have not commented on the questions relating to changes to access to the Compensation Fund.
14. In considering the data provided to support the reduction in minimum terms, we have reflected upon whether there is significant benefit to consumers through a firm seeking to reduce their PII cover by 75% to achieve a reduction in the premium of up to 17% as quoted.
15. There may also be a perception that arguing for a reduction in cover is to the benefit of the client as any PII cost savings will then be automatically passed on to the client. However, we are unsure as to whether the perceived reduction in cost, if achievable, spread across all clients in a year, is sufficient to warrant a reduction in consumer protection provided.
16. There is also an acknowledgement in the consultation that these savings may not be passed on to the consumer which is at odds with the rationale in relation to increasing affordability and therefore access to legal services.

17. There may also be a question around whether these proposals, which would span the largest sector of the market, may effectively cause the opposite to the intended action; namely an increase in premiums for reduced cover and an impact potentially on the rest of the PII market. As this has broader consequences outside of just the solicitors market, we would be happy to engage with stakeholders, including other regulators, to ensure that there is minimal impact on the other legal markets. We would hope that these discussions would include the premiums and coverage that will be available to all firms across the legal services market.
18. Concerns have been expressed that for firms seeking to maintain the current levels of PII cover, then the overall price may rise as there may be a need to purchase additional cover to protect against personal liability. Again, we would like to seek more detail on this point, so consumers can be confident that the cost of the current protections they enjoy will not rise. We would hope that the market can provide assurances that a firm seeking a 300% increase in cover (from the minimum proposed level of £500k to £2M) would be able to achieve this for a quoted increase of up to 17% in premium, currently quoted as the potential saving.
19. As the legal services market comprises predominantly a large number of smaller firms, we would hope they will not be detrimentally affected, either through being priced out of the levels of cover that they may desire to protect themselves or coverage not being available at all. This will be important to ensure the market remains open and accessible to new entrants.
20. Changes to accessibility to PII cover may also impact on conveyancers' ability to access lender panels and whilst access to the conveyancing quality scheme (CQS) mark may provide some comfort to lenders and therefore mitigate the risk, access to this mark is limited to SRA regulated firms. Should the changes proposed by the SRA impact on the access to PII across the

legal sector, whilst mitigation may be available to SRA regulated firms, such action could have unintended consequences elsewhere.

21. We support the SRA in their desire to see more work being done across the sector to ensure consumers are aware of the level of protection available when they use legal services. We have already expressed that this will be a key part of the communication process for any firm looking to switch regulator to CILEx Regulation. With the SRA having made the positive policy decision last year of enabling firms to choose between regulator services, we would hope that the potential impact of these proposed changes will not mean that firms feel that their choice is restricted.

22. Although it is correct that insurance arrangements are not intended to replace regulatory oversight of professional standards, they do play a key part in the protections that a consumer may seek when engaging legal services from a regulated firm. This can be even more important for areas where the distinction between regulated and unregulated legal services is less than clear, for example, estate administration and probate.

23. Other parties have raised further issues with the proposed changes to run off cover and we would hope that these can be explored more fully, especially around the areas of personal liability for partners, directors and individuals. Again, that is a consideration for regulators where a firm has switched from the SRA and then seeks to put in place run-off that will cover work the firm undertook whilst it was regulated by the SRA.

24. We hope our observations will be of value.

Conclusion

25. We have concerns regarding the impact on consumers and whether there are going to be unintended consequences on the market as a whole, that will be to the detriment of consumers.

26. We would welcome greater clarity from the insurance market on the proposed changes and how they believe the provision of PII cover may be impacted.

27. Conscious of the impact these changes may have at a time when firms are switching regulator, we would welcome the opportunity to participate in stakeholder discussions on the potential impacts of that these changes could bring to the PII market, particularly with consumer representatives.