

## **The Insurance Act 2015 and consequential changes to the minimum terms and conditions of professional indemnity insurance**

Summary of responses and SRA response

### **Introduction**

1. The Insurance Act 2015 (the Insurance Act) will come into force on 12 August 2016 and will make changes to the law on non-disclosure and misrepresentation in relation, in particular, to commercial insurance contracts.
2. On 12 February 2016 we issued a consultation document seeking views on proposed amendments to the minimum terms and conditions (MTC) of professional indemnity insurance (PII) with effect from 12 August 2016 to bring them into line with some aspects of the Insurance Act 2015 when it comes into force.
3. The consultation closed on 24 March 2016. This report summaries the key points emerging from the responses together with our response

### **Responses received**

4. We received seven responses from a variety of stakeholders including local law societies, the Law Society, the Junior Lawyers Division, insurance brokers AON UK Ltd and the International Underwriters Association. A full list of respondents is set out in **Annex 1**.

### **Overview of responses**

5. With the exception of one local law society all respondents were generally supportive of the proposed changes. A number of respondents favoured the production of guidance or protocols for firms setting out what a standard fair presentation of risk should include.

**Question 1 - Do you agree that the MTC should adopt the non-consumer standard of non-disclosure once the Insurance Act 2015 comes into effect? If not, please supply any evidence that you have to indicate why we should intervene to impose the consumer standard.**

6. Six of the seven respondents, including the Law Society, agreed with our reasoning that the MTC should adopt the non-consumer standard of non-disclosure once the Insurance Act comes into effect. This is on the basis that an insurance contract between a firm and its insurer is a non-consumer contract.

7. The Junior Lawyers Division agreed with the proposal but wondered whether it would be appropriate to introduce a threshold based on the size of firm or turnover (for example) as they believe that a sole practitioner would be more likely to fall within a “consumer” rather than “non-consumer” classification bracket.
8. The Leicestershire Law Society was against the adoption of the non-consumer standard on the basis that “it would impose too great an administrative burden on remaining small firms”.

### **SRA response**

9. We are pleased with the support for this proposal to amend the MTC to reflect the changes to be introduced by the Insurance Act.
10. Most respondents accept the rationale for adopting the non-consumer standard, so we will go with this. The change being introduced by the Insurance Act will affect all policies of insurance so small firms will need to satisfy this duty in respect of all insurance. None of the respondents have supplied strong evidence that adopting the consumer standard is a proportionate intervention.
11. We still believe that the reasons for adopting the non-consumer standard set out in the consultation paper are compelling. Those reasons are:
  - the contract between a firm and its insurer is a non-consumer contract so we would need compelling evidence that the market was not working to impose the lower consumer standard;
  - under the MTC participating insurers cannot avoid cover so we take the view that they are entitled to expect firms to meet a high standard when presenting the risk; and
  - the proposal will have a neutral impact on the overall level of consumer protection as under the current MTC the only issue is the point at which the insurer’s rights of reimbursement against the firm are triggered.
12. We acknowledge that there may be a small indirect additional risk to consumers that can be mitigated by guidance on the new standard (see paragraph 19).

### **Question 2 - Do you have any further comments regarding the proposed changes?**

13. Five of the seven respondents made further comments regarding the proposed changes. One respondent suggested that it would be helpful for us to include additional definitions to give certainty e.g. “senior management” and “breadth of reasonable search”. A local law society suggested that we should be raising awareness among the profession of the new duty before it comes into effect. Several respondents favoured the production of guidance or protocols for firms setting out what a standard fair presentation of risk should include. In their response the International Underwriters Association has offered to assist us work with insurers to identify common ground on what is deemed to be a “fair presentation of risk” in solicitors insurance..
14. AON UK Ltd made the point that in the Consultation paper, we state that “The changes will affect all policies of qualifying insurance commencing or renewing on or after 12 August 2016.” However, the Act applies to insurance contracts which are entered into or varied on or after 12 August 2016. Their question to us was “Is

it your intention that the changes will be applied earlier under the MTC i.e. to contracts which are entered in before 12 August 2016, but which incept after 12 August 2016?”.

### **SRA response**

15. We welcome the constructive comments. We are not proposing to provide clarification by means of introducing additional definitions into the MTC. We believe that we should publicise the changes and ensure that guidance will be available to help firms to comply with the new standard. As the changes to be introduced by the Insurance Act will affect a wider range of insurance policies, insurers and brokers have produced a wealth of guidance on the effects of the Insurance Act and the steps that insureds should take to meet the new “non-consumer” standard of disclosure. We will be referring to that guidance in our publicity of the changes before they take effect.
16. In answer to AON’s question we confirm that the MTC changes will apply in the same way as the Insurance Act applies that is to insurance contracts which are entered into or varied on or after 12 August 2016. This means that if a contract is entered into or varied before that date but with a commencement date on or after the 12 August 2016 the current MTC will apply.

### **Question 3 - Do you have any views about our assessment of the impact of these changes and, are there any impacts, available data or evidence that we should consider in developing our impact assessment?**

17. The general view was that it was too early to make an assessment as to the impact but there was concern expressed by two of the respondents on the possible impact to small firms. AON UK Ltd believe there may be an indirect impact on consumers in circumstances where a firm fails to fairly present the risk and the insurer seeks reimbursement from the firm under the terms of the MTC. This would have a financial impact on the firm and subsequently a knock on impact on consumers.
18. Liverpool Law Society suggest that some firms may be taken by surprise by the new obligations. More widespread publicity about the changes now will improve the profession’s knowledge and its readiness to comply.

### **SRA response**

19. We have considered the position of small firms as set out in our response under question 1. We believe that the additional risk to consumers as a consequence of the proposed changes is very small given that the only remedy available to insurers under the MTC for a breach of the duty to make a fair representation of the risk is to seek reimbursement from the firm. We acknowledge that there may be an indirect risk to consumers in circumstances where a firm fails to fairly present the risk and the insurer seeks reimbursement. In some cases this could impact on the overall financial viability of the firm. Guidance will be available to support firms which will mitigate the risk and help firms, including small firms, to comply with the new standard.
20. We have acknowledged that we need to publicise the changes to be brought about by the Insurance Act and the proposed changes to the MTC.

## Respondents to the Consultation

Type of respondent	Number of respondents
Local law societies	3
Representative groups, trade and membership associations	3
Insurance brokers	1
<b>TOTAL</b>	<b>7</b>

### Local Law Societies

Liverpool Law Society  
Leicestershire Law Society  
The City of London Law Society

### Representative groups, trade and membership associations

The Law Society  
Junior Lawyers Division of the Law Society  
International Underwriters Association

### Insurance brokers

AON UK Ltd